

GZ: DSB-D123.848/0001-DSB/2019 from 22.1.2019□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and e-mail addresses), file numbers (and the like), etc.,□

as well as their initials and abbreviations can be used for pseudonymization reasons□

be abbreviated and/or modified. Obvious spelling, grammar and□

Punctuation errors have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of Bertram A***□

(Appellant) of December 3, 2018 against the District Court of N***□

(Respondent) for violation of the right to secrecy in a row□

Transmission of proof of income as follows:□

- The complaint is rejected.□

Legal basis: Articles 55 and 77 of Regulation (EU) 2016/679 (data protection□

General Regulation – GDPR), OJ No. L 119 of 4 May 2016, p. 1; § 1 of□

Data Protection Act - DSB, Federal Law Gazette I No. 165/1999 as amended; Sections 83 et seq□

Court Organization Act – GOG, RGBI. No. 217/1896 as amended; §§ 101 f des□

Non-contentious law - AussStrG, Federal Law Gazette I No. 111/2003 as amended.□

REASON□

A. Submissions of the parties and course of the proceedings□

1. The complainant alleges in his complaint, enclosing a□

"Call for comments (§ 17 AussStrG)" and the "Protocol of November 27th□

2018 on an application for an increase in maintenance payments", both recorded for□

GZ 1* Pu *26/18b of the respondent, a violation of his fundamental right□

Confidentiality.□

The respondent had Ms. Herta A*** due to her application for□

Recalculation of the maintenance payments to the applicant's two daughters□

handed over the complainant's proof of income for the last 1.5 years.□

2. The Respondent states in his statement of December 27, 2018,□

that the data processing was carried out in the context of judicial activity and not□

jurisdiction of the data protection authority. A substantive statement on□

Complaint was not made.□

B. In legal terms it follows that:□

1. On judicial activity□

According to Art. 55 Para. 3 GDPR, the supervisory authorities are not responsible for the supervision of the□

Processing carried out by courts in the course of their judicial activities□

responsible.□

According to recital 20 of the GDPR, this serves the independence of the judiciary in the exercise□

their judicial duties, including their passing of resolutions. With oversight□

the data processing operations should be carried out by special bodies in the judicial system□

Member States can be entrusted.□

The GDPR itself does not expressly state what judicial activity a□

constitutes judicial activity.□

According to a well-established opinion in the literature, matters that fall under the□

administration of justice bound by instructions, does not come under the concept of□

"judicial activity" (cf. Schmidl in more detail in□

Gantschacher/Jelinek/Schmidl/Spanberger, comment on data protection□

Basic Regulation¹ [2017] Art. 55 Note 3; Nguyen in Gola (ed.), Privacy□

Basic Ordinance [2017] Art. 55 para. 13; Selmayr in Ehmann/Selmayr (eds.), DS-GVO□

[2017] Art. 55 para. 12ff).□

To clarify the concept of judicial activity, the case law of the□

ECJ on Art. 267 TFEU can be used as a guide. Even if that□

Although the wording of Art. 267 TFEU does not refer to judicial activity, there is nonetheless an inseparable connection between a referable court and a judicial activity.

From this jurisprudence it can be deduced that not any judicial activity for

Authorized to submit requests for a preliminary ruling. For example, the ECJ has

Preliminary ruling requests from two Austrian regional courts in their

Property as commercial register courts rejected on the grounds that these

Courts would not have to decide on a legal dispute, but rather than the commercial register

leading authorities became active (cf. the decision of January 22, 2002, C-

447/00, as well as the judgment of January 15, 2002, C-182/00).

According to the case law of the data protection authority, an activity of a court lies in

The scope of judicial activity when a judge is engaged in the exercise of judicial functions

Office is located or a judge or a public prosecutor otherwise in the care of

transferred official business is free from instructions (cf. the notice of

16 October 2018, GZ DSB-D123.461/0004-DSB/2018).

Based on the above, the crucial element to

Answering the question of whether there is judicial activity, the existence of a

Legal dispute between at least two parties in which the court is considered neutral

authority has to make a decision of judicial character.

On the other hand, it is not decisive whether this procedure is

From a procedural point of view, it is a contentious or non-contentious procedure.

2. In the matter

The present case concerns the application by Herta A*** of November 27, 2018

Recalculation of the maintenance payments for the applicant's daughters, the

has put this on record with the respondent and in the course of this her

Proof of income of the complainant should have been handed over.

This matter is procedurally subject to the AussStrG.□

The general provisions of the AußStrG (I. Main part) can be seen that it□

proceedings under the AußStrG are usually multi-party proceedings□

(§ 2 AussStrG) and a procedure is initiated in principle at the request of a party□

(§§ 8 ff AussStrG). The court seized has ex officio responsibility for the progress of the□

To ensure the process and to design it in such a way that an exhaustive discussion and□

thorough assessment of the subject of the proceedings and as brief as possible□

duration of the procedure are guaranteed. The parties have the court to□

support (§ 13 AussStrG). If necessary, the court also has verbal□

to order negotiations (§ 18 AussStrG). The court seized decides□

Decision (§§ 36 ff AußStrG), which can be challenged by appeal (§§ 45 ff□

AussStrG).□

The special provisions for maintenance disputes can be found in §§ 101 et seq□

AußStrG, in which no procedural deviations are standardized□

(unlike in the sections on adult protection and□

probate proceedings).□

It follows that it is a maintenance proceeding – even if it is□

procedurally based on the AußStrG - it is a procedure that□

intended to settle a dispute and to a decision of judicial character□

aims The Respondent thus acted within the framework of a judicial activity.□

The data protection authority is therefore responsible for the treatment of data pursuant to Art. 55 (3) GDPR□

Complaint not competent.□

Legal protection in the event of alleged violations of the right to secrecy by a□

Court in the context of judicial activity is based on §§ 83 ff GOG.□

It was therefore to be decided accordingly.□