

OFFICE FOR PERSONAL DATA PROTECTION

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\* UOOUX00BMIEI \*

Ref. UOOU-01670 / 14-25

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, and according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 31 January 2018 pursuant to §

152 (6) (a) a), § 152 par. 5 and § 90 par. 1 let. (a) of the Administrative Procedure Code as follows:

Decision of the Office for Personal Data Protection ref. UOOU-01670 / 14-11 of 18 April 2014

is canceled and the proceedings are stopped.

Justification

Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. h) of the Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, in connection with processing of personal data contained in records recording the course of police actions

Of the Czech Republic (hereinafter referred to as the "Police") upon detention of a person was initiated by a protection of personal data (hereinafter referred to as the "Office"), which was a party to the

Ministry of the Interior, with its registered office at Nad Štolou 936/3, 170 00 Prague 7, IČ: 00007064 (hereinafter "Party to the proceedings"), received on 17 February 2014. The basis for initiating the proceedings was the complaint Chairman of the Office RNDr. Igor Němec of 12 February 2014 and the facts stated in the findings Office.

The file material showed that XXXXXX, provided on XXXXXX 2013 for broadcast on the show

Czech Television entitled "Questions of Václav Moravec", in which he participated as a guest, abbreviated

audiovisual recording originally made on XXXXXX 2013 by the Police at XXXXXX (hereinafter XXXXXX). In this record, the faces of the people who are blurred by technical means captured on the record.

To that end, a copy of the article entitled 'XXXXXX' dated

XXXXXX 2013 published by the news portal

iDNES.cz, including downloads

audiovisual recording of detention XXXXXX lasting 4:18 minutes, which is included

of the article in question and was taken from the program "Questions of Václav Moravec", as it contains a shot

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to the moderator in the last second of the record, of which an official record was made (ref. UOOU-

01670 / 14-2 of 17 February 2014). The article stated that the entire record of the arrest XXXXXX

it lasts about 20 minutes and that it was broadcast in abbreviated form by Czech Television in the program "Questions

Václav Moravec ". In this context, Col. was quoted in the article. Mgr. Robert Šlachta,

Director of the Organized Crime Unit of the Criminal Police and Investigation Service,

who stated the following on Czech Television: "It was a standard procedure that we do, no one ran

to the apartment, no one beat anywhere, no hammer was used. I totally reject that. Those people

in the cocoons, as you can see, they immediately withdrew and were by no means in the procedure, "he added.

with the proviso that no one from the Organized Crime Unit had a balaclava during the operation.

To that end, it was stated in the article that the knocking of a door by a hammer, a group of puppets and

XXXXXX, her daughters and her lawyer, spoke in indiscriminate methods. It also follows from the article that

Col. Mgr. Robert Šlachta stated that the Police published the record as a defense against the constant

attack. Subsequently, there is Col. Mgr. Robert Šlachta quoted as follows: "I think the time has come

after that investigation, so that we too can actively defend ourselves, because I don't think he's here

some possibility to be compared to the Gestapo, the StB and Hovad's behavior as I am

read this week. We would not proceed with this publication, but unfortunately after these

when we are not able to explain our activities after six months, we have decided to do so,

to put a stop to this (attacks), "said Col. Mgr. Robert Šlachta with the fact that the whole the record was available to the Security Committee of the Chamber of Deputies. The article further stated that XXXXXX has repeatedly called media detention inadequate. In Reflex magazine about this events in the week of the publication of this article stated: "An innocent citizen who never was linked to violent crime (...), a team of 12 arrested police officers arrests. "

From the official record ref. UOOU-01670 / 14-3 of 17 February 2014 revealed that on the web

A recording of the television program was available on the Czech Television website as of the date of the commencement of the proceedings

entitled "Questions of Václav Moravec" broadcast on XXXXXX 2013. The show is hosted by guests

The members of the Police, Robert Šlachta, Director of the Organized Detection Unit, took part and Milan Komárek, Director of the Corruption and Financial Crime Unit. Further

It was found from the record in question that in the discussion with the above-mentioned guests program (ie at 2:06 to 48:37 minutes of the program) on the subject of the investigation of serious cases, the situation in the Police and cooperation with other law enforcement agencies was broadcast abridged version of the audiovisual recording taken of the arrest of XXXXXX on XXXXXX 2013 (ie at 27:59 to 32:17 minutes of the show). As it turned out from the message of the moderator of the show Václav Moravec, the publication of the record was decided with regard to the public interest, due to fierce criticism of XXXXXX. Citations contained in the article entitled "XXXXXX" published on iDNES.cz news portal, as described above, correspond in content to what was heard in the program "Questions of Václav Moravec".

Based on the state of affairs thus established, the administrative body of the first instance issued a decision Ref. UOOU-01670 / 14-11 of 18 April 2014. In it, the proceedings of the party to the proceedings described as breach of the obligations specified in Section 13, Paragraph 1 of Act No. 101/2000 Coll. consisting of non-acceptance measures to prevent the unauthorized transmission of shortened and modified audiovisual media services recording of the arrest XXXXXX of Czech Television, and thus as the commission of an administrative offense under § 45 par. 1 let. h) of Act No. 101/2000 Coll., for which it was in accordance with § 45 par. 3 of the Act

No. 101/2000 Coll. imposed a fine of CZK 60,000. Decision no. UOOU-01670 / 14-11 of

On 18 April 2014, it was confirmed by a decision of the Chairman of the Office no. UOOU-01670 / 14-17  
of 23 June 2014 (hereinafter referred to as the "Decision").

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However, the party challenged the decision in an administrative action. Judgment of the Municipal Court in Prague  
Ref. 5A 138 / 2014-38 of 2 November 2017 (however, a copy of this decision is  
dated 2 October 2017, which must be considered a manifest error) then this administrative  
upheld the action by annulling the decision and returning the case to the Office for further proceedings.

In the judgment no. 5A 138 / 2014-38 of 2 November 2017 (hereinafter referred to as the "judgment") of the Municipal Court  
in Prague (hereinafter referred to as the "Court"), in particular, reminded that the provisions of Section 8d (1) of the Act  
No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), allows the publication of information,  
if justified by the public interest, if it outweighs the right to privacy of the person concerned  
persons. This provision of the Criminal Procedure Code also constitutes an exception to the ban on publishing  
information, which is enshrined in the provisions of § 8a of the Criminal Procedure Code. In the case, the court found  
that there was a strong public interest in publishing the information. In doing so, he took into account the whole context of the  
situation.

The detention of XXXXXX, as the court said, was a significant factor in the resignation

Prime Minister, the fall of the entire government and subsequently to the early elections to the Chamber of Deputies. In  
reaction

on arrest and indictment XXXXXX and others were the police and the prosecutor's office in public  
accused of causing the government to fall and inadmissibly interfere in politics.

Part of the criticism of the Police was the inadequacy of the procedure for the arrest of XXXXXX. The court agreed that  
that the situation was so serious and tense that it was impossible for the Police not to respond to it, and  
she did not resist the accusation. Due to repeated published reservations about inappropriate  
procedure in detention XXXXXX threatened a serious loss of confidence in the police, which in a democratic  
the rule of law is to ensure impartial compliance with the law and is paramount

executor of a monopoly of state power on the use of force. If the public loses that confidence

The police act impartially and with respect for the rights of individuals, it could be far-reaching

consequences for the functioning of the rule of law. According to the file, the police on these

the allegations responded through repeated verbal and written statements, but criticism of her actions,

including the XXXXXX detention procedure persisted. From the inadequacy of the procedure to the Police still

he blamed, for example, XXXXXX, who resigned on June 17, 2013. In this situation, the police

has decided to publish a video of arrest XXXXXX. She did so so that trust in the Police would not be further

reduced, as stated by the Director of the Organized Crime Unit, who spoke in

the program in which the video was published. The court therefore concluded that the publication of the video

pursued the public interest and § 8d para. 1 of the Criminal Procedure Code could generally be a legal basis

for its publication. In order for the disclosure of specific information to be this provision

justified, but it was also necessary to assess whether this public interest prevailed over

the right to privacy of the person concerned, here XXXXXX. The court had no doubts

about the fact that the publication of the video into the private life of XXXXXX really affected.

At the same time, however, he came to the conclusion that the publication of the video was capable of achieving the goal

restoring confidence in the Police and rejected the Office's opposite view. The beginning can be seen in the given video

intervention, its end and a certain part in between. Throughout the published record, police officers i

XXXXXX behave calmly. It can be reasonably assumed that if in the part of detention that is not

part of the edited record, there was some exalted situation, so the people present would not

at the end of the intervention they did not make a calm impression, they would not deal with ensuring dogs access to water

and XXXXXX would not leave the apartment calmly and without the use of any coercive means.

Even the edited video was able to communicate with a high degree of credibility that

how the XXXXXX detention actually took place. On the other hand, the court stated that the publication

A police video of a person 's arrest is not a standard procedure as it interferes with

privacy of the detainee. However, this fact does not affect the assessment of the fulfillment of the step

appropriateness, but it is a question of proportionality in the narrower sense. The court then identified with the Office

in the sense that the objective pursued could be better achieved by publishing an uncut one videos. However, this in turn could raise the question of the adequacy of the invasion of privacy. IN In any case, in the court's view, it cannot be inferred that the edited video was not available at all eligible to achieve the objective of restoring confidence in the Police. It is in the step of need it is necessary to examine whether the objective pursued could not be achieved to the same or a similar extent by other means which would be less intrusive on fundamental rights. The Office in this context offered two options. Verbal and written information on the one hand, and independent review on the other organs. However, verbal and written information was not able to achieve the goal to a similar extent. Yippee the fundamental difference between seeing what happened during the police intervention and what the police only claim happened. The Police's claim is then not capable of the same or similar dispel the suspicion of disproportionate police intervention. This is especially true in situations where the suspicion is expressed precisely in the context of a decline in confidence in the Police. The same would be watched this purpose could not be achieved through review by other institutions.

The court also rejected the view that the publication of the video would have any negative impact on the criminal proceedings against XXXXXX. The information that XXXXXX had been detained was already well known at the time information which, of course, the law enforcement authorities knew about. From the published In addition to the information already known, it was only possible to find out how the detention took place. However, this information did not adversely affect the presumption of innocence XXXXXX, impartiality of law enforcement authorities or otherwise adversely affect the proceedings. The court also agreed with the Office 's view that the publication of a video recording is a more significant interference with privacy than verbal or written information, as the scope of the information and the intensity of the perception is higher than in its verbal description. On the other hand, the scope of these The secondary information was not great. The public only learned from the video how looks like XXXXXX. Shots of the apartment equipment are minimal. Except for a few paintings on the wall nothing else could be seen in the hall and kitchen. No videos have been posted

very personal information from life or residence XXXXXX. As for the information that this one has dogs and two daughters, so even the court did not see any strongly personal information. In addition to these the facts were already publicly known at the time the video was published. The Court also considered it essential that the record does not show XXXXXX in any delicate or indecent situation. He's not that qualified adversely affect her honor and dignity, that is to say, in addition to the information itself, that she was detained in your apartment in the evening. However, this is again information that was already known and was not therefore published by the video in question. The court didn't even think there was XXXXXX shown in some very personal or private clothes. According to critics, the police should have been detained in nightgown. However, nothing like this can be seen in the published video. After opening the door is visible only her upper half of the body and is dressed in a striped upper with long sleeves. It cannot be inferred from this that it is a nightgown, as it can also be o T-shirt with long sleeves. Subsequently, XXXXXX is already visible on the record only in the jacket in which then she left the apartment. It is also important that the face of XXXXXX is out of focus on the recording. It is not to see the expression on her face and her emotions, which would be a greater intrusion on her privacy. According to the court It should also be borne in mind that XXXXXX, as the Prime Minister's closest collaborator, was a person public interest, which must withstand intensified invasions of privacy.

The judgment therefore concluded that the invasion of privacy XXXXXX was not large while monitored the legitimate aim was of great importance. The police were thus entitled to publish the video in accordance with § 8d paragraph 1 of the Criminal Procedure Code. This precludes a priori the possibility of a breach of Section 13 (1) Act No. 101/2000 Coll., and therefore to commit an administrative offense under § 45 para. h) of the Act No. 101/2000 Coll.

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The legal opinion expressed in the judgment is the Office, pursuant to Section 78, Paragraph 5 of Act No. 150/2002 Coll., Code of Administrative Procedure, bound. Therefore, the Appellate Body ruled as stated in the operative part of this decision. In so doing, the appellate body also took account of the fact that the original was thus upheld and at the same time no damage can be caused to any of the parties to the proceedings.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

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JUDr. Ivana Janů

chairwoman

Prague, January 31, 2018

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