OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00CQZDF *

Ref. UOOU-07100 / 13-70

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and Section 32 of Act No. 101/2000 Coll., on the Protection of Personal Data and on the Amendment of Certain Acts and pursuant to § 10 and § 152 para. 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided on 27 September 2018

according to the provisions of § 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. a) of the Act No. 500/2004 Coll. thus:

Decision of the Office for Personal Data Protection ref. UOOU-07100 / 13-47 of 29 October 2013 is canceled and the proceedings are stopped.

Justification

The basis for initiating administrative proceedings for suspected misdemeanor conducted against the accused,

(hereinafter referred to as the “accused”), the complaints were sent to the Office for Protection personal data (hereinafter "the Office") and its own findings. The notice of initiation was then accused delivered on August 30, 2013.

Subsequently, on the basis of the evidence provided and the collected file material issued administrative body of the first instance of the Office decision no. UOOU-07100 / 13-47 of , according to which the accused committed a misdemeanor pursuant to § 44 para. c) of the Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts by: through a website located at an internet address

witnesses and protocols

she left

on the interrogation of the accused from the file of the Police of the Czech Republic

publish copies of the minutes of the hearings

which contained the name, surname and full text of the testimony of the witnesses and the accused

made before the prosecuting authorities. The police of the Czech Republic were then to be

the administrator of the relevant personal data in the sense of § 4 letter j) of Act No. 101/2000 Coll., whereby

the defendant obtained those documents in connection with the defendant's position in the present case

criminal proceedings. Thus, the accused was to violate the duty of confidentiality laid down in § 15

paragraph 1 of Act No. 101/2000 Coll., and therefore a fine of CZK 16,000 was imposed on it.

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That decision of the administrative authority of the first instance was (with the exception of the addition of the date

birth and residence of the accused) confirmed by the decision of the President of the Office ref.

Chairman of the Office, namely by the judgment of the Municipal Court in Prague ref.

. Subsequently, the action brought against that decision was also dismissed

of

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that

that

of

However, the judgment of the Supreme Administrative Court ref.

('the judgment') issued on the basis of the cassation appeal of the accused set aside the judgment

Municipal Court in Prague Ref.

, so the decision

Chairman of the Office Ref.

and returned the matter to the Office for another

management. The Supreme Administrative Court stated in the judgment that the facts of the case are not in dispute. The same thus agreed that the protocols on the statements of persons obtained from the Police of the Czech Republic and published on the web should be considered as documents containing personal data, but qualified the operation of the site as personal processing data in the sense of § 4 letter e) of Act No. 101/2000 Coll. She was accused, as the Supreme found administrative court with reference to the judgment of the Court of Justice of the European Union in the Lindqvist case v. Sweden, C-101/01, in the position of administrator according to § 4 letter j) of Act No. 101/2000 Coll. and covered therefore the relevant obligations. However, these do not include the obligation of confidentiality pursuant to Section 15 Act No. 101/2000 Coll. The defendant's conduct was therefore incorrectly qualified.

The Supreme Administrative Court therefore concluded that it was necessary to reassess how the accused received their rights and obligations of the administrator arising from Act No. 101/2000 Coll. In that In this context, a proportionality test should also be carried out and the right of the accused to be considered for the processing of the personal data in question by their publication prevailed over protection privacy of the persons about whom personal data have been disclosed. Next, you need to consider the extent to which it was necessary to fulfill the intended purpose of publishing personal data to the extent done accused. Nor can it be overlooked that the regulation entered into force on 25 May 2018 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons in connection with the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation). Criminality The conduct of the accused must therefore be assessed in the light of more favorable legislation accused. This opinion of the Supreme Administrative Court is the Office according to § 78 par. 5 of the Act No. 150/2002 Coll., Administrative Procedure Code, bound.

To that end, the appellate body, having thoroughly acquainted itself with the file, considers that It is necessary, first of all, to state that the accused committed the act in question before effectiveness of the General Data Protection Regulation and the Office in previous proceedings

conducted against the accused had to be based primarily on Act No. 101/2000 Coll. and the law
No. 200/1990 Coll., on misdemeanors. The appellate body therefore, in accordance with the instructions of the Supreme
administrative court, first addressed the question of the law under which this conduct
to judge. In this context, the Appellate Body was fully aware of the constitutional principles
enshrined in Article 40 (6) of the Charter of Fundamental Rights and Freedoms, which he
i Supreme Administrative Court and according to which the criminality of the offense is assessed and the sentence is imposed
according to
the law in force at the time the act was committed, a later law applicable if
it is more favorable for offenders. Because, due to the fact that the general regulation
on the protection of personal data allows, in contrast to Act No. 101/2000 Coll. imposition of a sanction of up to
20,000,000 EUR, or 4% of worldwide annual turnover, is more favorable for the accused

previous legislation, the Appellate Body reviewed the conduct accused under the previous one
legislation.
The appellate body also followed the findings of the Supreme Administrative Court, which in the judgment
found that the accused is in the position of personal data controller and to this extent at her hearing
apply the rights and obligations arising from effective data protection rules. Therefore
the appellate body primarily examined whether the processing of personal data in question, resp.
publication, which according to the definition given in § 4 letter e) of Act No. 101/2000 Coll. once
from the forms of processing, one of the legal titles according to Act No. 101/2000 Coll. At the same time, Mon.
Considering all the circumstances of the case, the Appellate Body came to the conclusion that the issue existed
or the absence of a legal title is of a fundamental nature in this case. From this
therefore, from the very nature of the matter, it no longer made sense to deal with the fulfillment of other obligations
administrator stipulated by Act No. 101/2000 Coll., as any violations of these
obligations would have to be absolutely marginal and trivial in this context
character.

Given that the accused did not have the consent of the data subjects, it is possible that
as the appellate body found, only the legal title resulting from the provisions of § 5 para. E)
Act No. 101/2000 Coll., according to which data may be processed even without the consent of the subject (and thus
and publish) personal data if this is "necessary for the protection of the rights and legally protected interests
the administrator, the beneficiary or other persons concerned; however, such processing of personal data must not be
contrary to the data subject's right to protection of his private and personal life. '
However, the degree of necessity for the protection of rights must be considered on the one hand
and the legitimate interests of the administrator, in relation to the degree of breach of private or
personal life of the data subjects concerned, on the other hand.
In this context, however, it should also be recalled that the handling of personal data within the
criminal proceedings, which are also the case here, special provisions also apply
Act No. 141/1961 Coll., Criminal Procedure Code (hereinafter referred to as the “Criminal Procedure Code”). According to the
provisions of § 8a paragraph 1 sentence
second of the Criminal Procedure Code "may not be published in the preparatory proceedings
the identity of the person prosecuted, the injured party, the person concerned and the witness'.
At this point, therefore, it must be reiterated that the Supreme Administrative Court in its judgment clearly
expressed his view that
are persons in criminal proceedings in the protocols
identified in an unmistakable manner. At the same time, according to § 8b par. 1
of the Criminal Procedure Code, "persons to whom law enforcement authorities have been provided,
to which the prohibition of publication pursuant to Section 8a (1), second sentence, applies, for the purposes of criminal
proceedings
or to exercise the rights or fulfill the obligations stipulated by a special legal regulation, is
they may not provide it to anyone unless it is necessary for that purpose.
These people must be informed of this. ”However, this exception primarily concerns others
provision, not publication, of information which is already prohibited by the provisions of § 8a

of the Criminal Procedure Code. However, exceptions to the ban on disclosure are set out in § 8d
of the Criminal Procedure Code, according to which “information subject to the prohibition of publication pursuant to § 8a to
8c, may be disclosed to the extent necessary for the purpose of searching for persons, in order to achieve the purpose
criminal proceedings or if permitted by this law. That information may also be published,
if justified by the public interest, if it outweighs the right to privacy
the persons concerned; in doing so, special care must be taken to protect the interests of persons under the age of 18. "
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It can therefore be stated that the conditions for publication according to § 5 par. e) of the Act
No. 101/2000 Coll. in principle, they correspond to the conditions laid down in the Criminal Procedure Code, however
in both cases, two conflicting rights must be weighed. Specifically in this case,
the accused, who is a politician, declared her right to a fair defense before the public
in criminal proceedings concerning
taking its launch
was publicized. At the same time, however, it is clear that the defendant's actions interfered with
the private sphere of the persons concerned.
The appellate body therefore carried out the proportionality test in question. He also mentioned the Supreme
administrative court, referring to its judgment no. 1 As 113 / 2012-133 of
February 25, 2015 in the case
and on the decision of the Municipal Court in Prague ref. 5 A 138 / 2014-38-
45 of 2 October 2017. In this context, however, the Appellate Body found that the test criteria
established by the two latter judgments are, despite completely different verbal ones
statement, essentially identical in content. However, this case is out of fact
point of view, a much closer test described by the decision of the Municipal Court in Prague ref. 5 A
138 / 2014-38-45 of 2 October 2017, as it deals with the conflict of the right to information with the law
privacy and a fair trial in the context of ongoing criminal proceedings
(publication of information about him), while the judgment ref. 1 As 113 / 2012-133 of 25 February

2015 in the case

concerned a much differenter issue of public monitoring

space.

For these reasons, the appellate body primarily took into account the decision of the Municipal

Court in Prague Ref. 5 A 138 / 2014-38-45 of 2 October 2017. According to him, it is necessary to proceed

from the judgment of the European Court of Human Rights No 56925/08 in the case of Bedat v. Switzerland,

on March 29, 2016. As stated by the Municipal Court in Prague, the last-mentioned judgment

The factors formulated by the European Court of Human Rights are intended to find application in

conflict disclosure information and the right to privacy and a fair trial in context

ongoing criminal proceedings. Specifically, these are the following factors:

(a) the content of the information published and the manner in which it was published, it is necessary to examine whether:

the information was published in a serious way or, conversely, whether it sought to evoke rather

sensation, or to describe a person in a purely negative way;

(b) how the disclosure of the information contributed to the public interest debate, or whether it was intended only

satisfying public curiosity;

(c) the impact of the information disclosed on criminal proceedings, whether the principle has been violated

the presumption of innocence or whether the impartiality of the court has not been affected;

(d) the seriousness of the invasion of privacy of the person concerned.

In this context, the Appellate Body found above all that the information in question was

published in a serious manner,

since the method of publication was very factual, by no means

scandalizing. Specifically, only the minutes of the interrogations were published

witnesses

and one accused, on the official website without any comment

including defamating.

With regard to the second criterion, the Appellate Body found that the publication contributed to the public debate

of interest. This was a media-watched case concerning the efficiency of spending

public funds (allegations of abuse of power and breach of duty in the administration of a foreign

property) at the Ministry

performed a function

. According to the indictment, the ministry

where accused in the period from

led by the accused in

to

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concluded an unfavorable contract for the state at

with company

. According to an expert opinion, the price of several billion CZK was

extremely processed by the Police of the Czech Republic. The state had

indictments suffer a loss of hundreds of millions of CZK. The public interest must then be perceived

in the context of the whole situation in order to clarify the true state of affairs, as the company 's trust in

State authorities (and ministries are the central administrative body of the state) is for the functioning

democratic rule of law.

As regards the third criterion, the Appellate Body first recalls that the defendant in its

In several statements, it pointed out that the objective pursued was its public defense, namely:

due to the extensive media coverage of the case. However, the decision on guilt is the task of the independent

and impartial tribunal. The accused should therefore defend herself in the relevant proceedings. This would

in principle indicated that the relevant criterion was not met. But here it is necessary to recall the time

factor. Formation of the former

whereas ke

the publication of the protocols on the denunciations took place

The indictment was filed in court

however, the District Court for Prague 6 returned the case for further investigation. This

In

the decision was annulled by the Municipal Court in Prague. The main make-up in the purchase case

started

in

and the case has not yet been closed. Thus, for about 6 years, the accused was de facto

had no other means of public defense and, moreover, the ongoing criminal proceedings resulted

interruption of its political activities. In view of this, the Appellate Body found that despite

a degree of non-compliance with the criterion in question, the defendant's conduct in that regard lacks

social danger. In addition, it should be recalled that within the proper

proceedings before a court, which according to § 2 par. 10 of the Criminal Procedure Code is public, with the exception of legal

exceptions,

witnesses would be interrogated, resp. concerned, or the protocols in question would be

read. Restrictions no longer apply to the provision of information concerning court proceedings

relating to the disclosure of personal data pursuant to Section 8a of the Criminal Procedure Code, concerning the preparatory

phase

criminal proceedings and the information in question should be considered as lawfully published.

namely, it was raised in

in September

As regards the last of the criteria, the Appellate Body found that copies of the minutes in question

published by the accused through

on its official website

and retained the names of the persons concerned for each statement. So she is accused

sought to keep the personal data disclosed to a minimum, which concerned in particular

performance of work activities. The interference with the purely private sphere of the persons concerned is therefore not

significant.

Overall, therefore, it can be stated that the target of the accused was of considerable importance and is necessary considered legitimate. At the same time, the way the information was published was not scandalous, but it took place in a serious way in the context of informing an important public issue of interest. Likewise, for the reasons set out above, the Appellate Body found that disclosure the statements in question were not a disproportionate interference with the privacy of those persons, as they were outweighed by the legitimate interest pursued. If the data subjects concerned disclosure they saw the statements as a strong intrusion on their privacy, nothing preventing them from claiming their own rights in civil proceedings by an action for the protection of personality. On the other hand, the publication could have some negative impact on ongoing criminal proceedings, but social harm this has already passed, taking into account the time factor.

In the light of all the above, the Appellate Body ruled as indicated in the operative part of this decision. In this context, however, he considers it necessary in particular emphasize that this was done solely in the light of the exceptional circumstances of the case, which

does not in any way imply a general tendency on the part of the Office to publish documents relating to criminal proceedings that contain personal data. At the same time, the appellate body found that a decision is also admissible given that it complies with the original decomposition, and 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, v. R.

chairwoman

Prague, September 27, 2018

For correctness of execution: