OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DM4WS *

Ref. UOOU-02928 / 19-13

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent under

provisions of § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code decided in accordance

with the provisions

§ 152 par. 6 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Appeal of the accused, association XXXXXX, with its registered office XXXXXX, against the decision of the Office for

Protection

personal data ref. UOOU-02928 / 19-6 of 7 August 2019, is rejected and the contested decision

is confirmed.

Justification

are served

through which

The accused, XXXXXX, with its seat in XXXXXX (hereinafter referred to as the “accused”), is a

inter alia in order to protect human rights, gather evidence of human rights violations

and the publication of specific cases of human rights violations. It is also an operator

website www.XXXXXX,

information about

specific cases of infringement

human rights, in the form of a file

documentation with adequate commentary for the public. Accused thus in relation to

make all communications (in particular sent and received) available to the public in a specific case

letters received, including proof of delivery). The basic purpose of this is to exert pressure

to human rights violators.

In connection with the operation of the website, the Office for Personal Protection was

data (hereinafter referred to as the "Office") through the initiative of the Police of the Czech Republic

disclosure of personal data XXXXXX relating to criminal proceedings conducted therewith. Another stimulus

concerning the website in question, the Office sent XXXXXX, which he complained to

publication of personal data in the form of documents from misdemeanor proceedings.

In view of these complaints, the administrative body of the first instance of the Office initiated administrative proceedings,

within which a decision was issued no. UOOU-09787 / 18-11 of 19 December 2018, which

Office accused in connection with the processing of personal data through the web

www.XXXXXX, inter alia, in statement I.1. imposed within the set deadline

disclosure of specified personal data XXXXXX and in the statement I.2. stop publishing

specified personal data XXXXXX. Issued on the basis of a duly filed appeal

Decision of the President of the Office Ref. UOOU-09787 / 18-20 of April 5, 2019 then attacked

decision no. UOOU-09787 / 18-11 of 19 December 2018 as regards statement I.1. and statement I.2.

confirmed.

On the other hand, the latter decision annulled the I.3 statement.

decision no. UOOU-09787 / 18-11 of 19 December 2018, by which it was imposed on the accused

the obligation to inform the data subjects pursuant to Article 14 on the website www.XXXXXX

Regulation (EU) 2016/679 on the processing of personal data to which it provides

website is taking place and in this part the matter has been referred back to the administrative authority of the first instance

for a new hearing. Following the annulment of the statement I.3. decision no. UOOU-09787 / 18-11

of 19 December 2018, the administrative body of the first instance of the Office subsequently issued a resolution

Ref. UOOU-09787 / 18-26 of 10 June 2019, by which he stopped the proceedings in question, for

the omission of his reason.

However, given the finding that the accused took remedial action in

statement I.1. and statement I.2. decision no. UOOU-09787 / 18-11 of 19 December 2018 was not adopted,

the administrative body of the first instance of the Office initiated proceedings on the offense with the accused. As a result

was the first issue of the order ref. UOOU-02928 / 19-3 of July 8, 2019, but later

annulled on the basis of the defendant's opposition, and then the issuance of a decision no. UOOU-02928 / 19-6 ze

on 7 August 2019 (hereinafter referred to as the "Decision"). By decision, the accused was found guilty of

committing an offense according to § 62 par. 1 let. d) of Act No. 110/2019 Coll., as he did not comply with the order

or violated the restrictions on the processing of personal data or did not comply with the interruption of data flows

imposed by the Office pursuant to Article 58 (2) of Regulation (EU) 2016/679, for which a fine has been imposed on it

in the amount of CZK 40,000.

However, the accused objected to the decision in a timely appeal, in which he sought annulment

decision. In this context, he stated above all that by resolution no. UOOU-09787 / 18-26 of

On June 10, 2019, the Office declared the absence of any legal reason for management

any proceedings with the accused and this legal act should then be de facto annulled

as well as all previous legal acts because they have become illegal from a legal point of view. If

therefore, the Office does not conduct any proceedings with the accused, nor can it demand any from the accused

legal acts, nor to impose a fine on him. He further stated that the call for acquaintance with the documents

the decision was delivered to him on 31 July 2019 and he therefore had only a few days to exercise his rights,

which it considers insufficient.

It should be added that XXXXXX supplemented the appeal with its letter of 4 September 2019. However, within

of the present proceedings is not a party and its submission of 4 September 2019 is therefore from above

irrelevant in this respect. However, since it was possible in the present proceedings

considered to be the person concerned, his submission of 4 September 2019 was dealt with as a complaint under

provisions of Section 175 of Act No. 500/2004 Coll., Administrative Procedure Code.

The appellate body reviewed the decision in its entirety, including the previous process

its issue and first dealt with the arguments of the accused.

In this context, he stated above all that by resolution no. UOOU-09787 / 18-26 of

On June 10, 2019, the proceedings were stopped only with regard to the obligation of the accused to inform the

website www.XXXXXX data subjects pursuant to Article 14 of Regulation (EU) 2016/679

on the processing of personal data, ie as regards statement I.3. decision no. UOOU-09787 / 18-11

of 19 December 2018. However, the present resolution did not affect the statement I.1.

decision no. UOOU-09787 / 18-11 of 19 December 2018, which accused the accused

imposed within the set deadline to terminate the publication of specified personal data

XXXXXX, or statement I.2. decision no. UOOU-09787 / 18-11 of 19 December 2018, which was

the accused is ordered to stop disclosing the specified personal data XXXXXX. These

the statements were subsequently confirmed by a decision of the President of the Office ref. UOOU-09787 / 18-20 ze

on 5 April 2019, the failure to fulfill obligations arising from these statements was

the subject-matter of these proceedings or the ground for issuing the contested decision. Is so

the defendant's view that there should be none should be unequivocally rejected

legal reason for conducting this proceeding.

Furthermore, the appellate body found that a factual period of several days for the exercise of the defendant 's rights to

on the basis of note no. UOOU-02928 / 19-5 of July 22, 2019 was caused late

by collecting the document (it was delivered to the data box on July 22, 2019 and

she was not picked up until 31 July 2019), while the accused did not advocate for her

extension, resp. he has not exercised his right of access to the file to date. Especially necessary

emphasize that the invitation of 22 July 2019 provided for access to the file by telephone

meeting the deadline. The adequacy of the actual time - limit for consulting the file must be measured in

in relation to such a procedural initiative of the accused, which he would stabilize by telephone (or otherwise)

actual inspection date. Therefore, the accused's key objection that they were

provided only three working days for inspection of the file, as the telephone (or other)

the agreement on the deadline was not reached at all due to the inactivity of the accused (and suggestively stated
distance of the accused's residence thus plays no role), although he objectively knew at what stage he was
his business finds it, and the challenge for him was not surprising in terms of content.
In addition, the accused could exercise his rights throughout the extradition proceedings
order no. UOOU-02928 / 19-3 of 8 July 2019, when the accused collected this document
on 16 July 2019. At the same time it should be recalled that the appeal filed by the accused against
the decision is in terms of content in comparison with the resistance filed against the order ref. UOOU-
02928 / 19-3 of 8 July 2019 only extended by arguments concerning the alleged
inability to defend their rights sufficiently. In the rest, they are both last mentioned
submission identical. The fact that the contested decision is based on facts which
were known to the accused from the previous proceedings (previous decisions), resp. of his own
action (ignoring calls for redress resulting in unchanged facts). Necessary
emphasize that the accused did not state any new facts or proposals even in the appeal filed,
which he intended to apply in the proceedings and the procedure of the administrative body of the first instance had in it
prevent. The defendant's allegations that he was unable to adequately defend his rights were therefore appellate
authority considers it appropriate.
Annulment of the contested decision on the sole ground of the allegedly unreasonable time-limit would therefore appeal
authority considered it an exaggerated formalism because of no aspect of procedural development
it does not follow that this could affect the correctness and legality of the decision itself.
The appellant's argument was therefore rejected by the appellate body and at the same time after an overall examination
found in no way a reason to render the decision unlawful
considers the fine imposed to be reasonable. Nor did he find any mistakes in the procedure
administrative authority of the first instance.
However, in the context of the overall examination, the Appellate Body considers it particularly necessary
emphasize that this proceeding was initiated after April 24, 2019, when the law came into force

No. 110/2019 Coll., on the processing of personal data, and therefore the provision of § 66 is inapplicable

paragraph 5 of Act No. 110/2019 Coll. imposing proceedings initiated pursuant to Act No. 101/2000 Coll.

to complete just according to this last mentioned law.

Furthermore, the appellate body states that it did not find any legal title enshrined in law

No. 110/2019 Coll., which would additionally legalize the processing of personal data described in

statements I.1. and I.2. decision no. UOOU-09787 / 18-11 of 19 December 2018. In particular for

such a legal title cannot be considered a provision of § 17 et seq. Act No. 110/2019 Coll. new

enabling the processing of personal data without the consent of the subject, if it serves a reasonable level

for journalistic purposes. It is necessary to admit that the carrier with which they are personal

the data transmitted is not decisive for the assessment of the journalistic purpose and may be this medium

and the Internet (see the judgments of the Court of Justice of the EU in cases C-73/07 and in case C-345/17). From the other

side

however, the very primary purpose of running a website needs to be recalled

www.XXXXXX, which is, among other things, putting pressure on alleged human rights violators. So this is

contrary to the generally declared purpose of journalism, which is to make information accessible,

public opinion (see again the judgments of the Court of Justice of the EU in Case C-73/07 and

C-345/17), resp. the scope of personal data disclosed by the accused is in trafficked cases

manifestly disproportionate to the legitimate purpose of journalism defined above. Range of personal

The data that can be used for journalistic purposes then corresponds to the degree of the right to liberty

speech and information according to Article 17 of the Charter of Fundamental Rights and Freedoms, which is not unlimited and

can

is to limit e.g. even if it is necessary to protect the rights and freedoms of others, that is, for a reason

protection of privacy guaranteed by Article 10 of the Charter of Fundamental Rights and Freedoms. In this context

the appellate body refers primarily to the finding of the Constitutional Court file no. No. II.ÚS 171/12, according to which

it is necessary to distinguish between the so-called public person and a private person. While for private

information is in principle information self-determination, ie it is basically up to the person what information to release

For the outside world, public figures, by being public, have made their actions subject general attention, which means that their private sphere can be entered to some extent. As the persons concerned are clearly not public figures, the disclosures in question personal data would also clearly go beyond the scope of § 17 et seq. of the law No. 110/2019 Coll.

Therefore, for all the above reasons, the appellate body ruled as stated in the operative part of this Decision.

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.

Prague, October 21, 2019

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JUDr. Ivana Janů

chairwoman