OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00BYYOO *

Ref. UOOU-08596 / 17-40

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., The Administrative Procedure Code decided on 26 April 2018 according

to

provisions of § 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. b) of Act No. 500/2004 Coll.,

Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-08596 / 17-19 of 6 February 2018

is annulled and the case is returned to the administrative authority of the first instance for a new hearing.

Justification

Proceedings on suspicion of committing a misdemeanor against the accused, XXXXXX (hereinafter referred to as the

“accused”),

was launched on the initiative of the statutory city XXXXXX, which was the Office for Protection

personal data (hereinafter referred to as the "Office") delivered on 31 August 2017.

The complaint received and its annexes showed that the accused had published on 23 August 2017

via the social network Facebook on your profile post that contained personal

data XXXXXX, an employee of the Department of Social Affairs of the City of XXXXXX to the extent

name, surname, maiden name and date and place of birth obtained from the criminal file

proceedings, and further referred to her as a crooked witness in criminal proceedings, where XXXXXX as a witness

she really performed.

The accused was sentenced by a sentence of XXXXXX to a suspended sentence of XXXXXX,
however, subsequently, by resolution XXXXXX, the accused's criminal case was transferred to the statutory one
XXXXXX, the Commission for the Assessment of Misdemeanors, concluding that it was not a criminal offense.
This action of the accused was first described by the administrative body of the first instance as an offense
offense pursuant to Section 44a of Act No. 101/2000 Coll., on the protection of personal data and on the change of some
laws, in the form of indirect intent by disclosing personal data XXXXXX,
employee of the Department of Social Affairs of the City Hall XXXXXX, in the range of birth surname,
date and place of birth, which he obtained from the file of criminal proceedings file no. stamp XXXXXX, which should have
violated
the obligation stipulated in § 8b paragraph 1 of Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure)
order). According to this provision, persons to whom law enforcement authorities have been provided
information covered by the prohibition of publication pursuant to Section 8a (1), second sentence, of the Criminal Procedure
Code
for the purposes of criminal proceedings or for the exercise of rights or for the fulfillment of obligations imposed by special
may not pass them on to anyone unless it is necessary to provide them

for these purposes, of which these persons must be instructed. Therefore, the order ref. UOOU-
08596 / 17-5 of 19 October 2017, the accused was fined CZK 3,000. Against this
however, the accused gave due opposition to the order.
In the following proceedings, the accused was found guilty of identical conduct
offense, but this time according to § 44 par. 1 let. c) of Act No. 101/2000 Coll., as he had
violate the duty of confidentiality in the form of indirect intent, by disclosing personal data
XXXXXX, an employee of the Department of Social Affairs of the City of XXXXXX, in her native range
surname, date and place of birth, which he obtained from the file of criminal proceedings file no. stamp XXXXXX. He had
violate the obligation stipulated in § 15 paragraph 1 of Act No. 101/2000 Coll., ie the obligation of the person
which comes into contact with the administrator in the course of fulfilling the rights and obligations stipulated by law

with personal data, maintain the confidentiality of this personal data. For the act in question then was the accused by decision no. UOOU-08596 / 17-19 of 6 February 2018 (hereinafter "Decision") according to § 35 letter b) of Act No. 250/2016 Coll., on liability for misdemeanors and proceedings about them and in accordance with § 44 paragraph 4 of Act No. 101/2000 Coll. imposed a fine of CZK 3,000.

The accused later attacked the decision with a proper appeal. In the appeal proposes the contested decision to annul. In support of this, he stated above all that he is not a person who would be bound confidentiality. He then had to obtain the data in question as a participant in the criminal proceedings. Through Facebook only informed the circle of acquaintances who have access to the profile in question.

Access to the criminal file was to be denied to the accused, so that the data published from him they can't come. But XXXXXX was heard as a witness at the main trial and this information is here they sounded. As the public was not excluded, the data were presented to the public. Idea secrecy, according to which anyone present as a public in court should keep it secret The facts he heard there are, in the opinion of the accused, completely absurd.

Subsequently, the Office was sent by e - mail from the address XXXXXX in the period from 6. March 2018 to March 9, 2018 delivered a total of eight submissions marked as decomposition, respectively. supplementing the reasons for the dissolution or containing a request for additional documents to be entered in which, however, have no connection with the ongoing proceedings (eg regarding the appointment of inspectors of the Office by the President of the Czech Republic). Looking at the file, which took place on March 9, 2018, the accused confirmed the filing of the appeal, which he originally made electronically, to protocol and at the same time forwarded the handwritten text of the dissolution and the reasons for the dissolution. IN these submissions, which, however, are not always fully understood, the accused repeats in part arguments of the original appeal, alleges mismanagement of the file and in this context is demanded and also points to the Office's mistakes during the proceedings and to the mistakes of other bodies.

To that end, the appellate body, having thoroughly acquainted itself with the file, considers that necessary, in particular, to state that the administrative authority of the first instance did not clearly where the data in question come from. In that regard, the statement of reasons for the decision was merely

stated: “It is clear from the logic of things that a detailed knowledge of the personal data that is
stated in the operative part of this decision, ie maiden name, date and place of birth, cannot be obtained
mere presence at a public court hearing, but only from documents that are
the contents of the file, which can only be acquainted with the accused, not the general public. Also from
court orders received by the administrative body cannot be inferred as containing them
data or that such data would be read in court proceedings. "
At the same time, it is necessary to mention in particular the provisions of § 101 paragraph 1 of the Criminal Procedure Code,
according to which
"Before questioning a witness, his identity must always be ascertained."
on the basis of an identity card. Therefore, if the criminal proceedings in question were properly conducted, they could

in the case of the trial, particulars of the witness' s maiden name, date and place of birth,
can be considered as basic identifiers, sound. In this case, the accused would not really be
bound by the duty of confidentiality pursuant to Section 15 of Act No. 101/2000 Coll. and he could not commit an offense
according to § 44 par. 1 let. c) of Act No. 101/2000 Coll. However, even this has not been documented.
Nor was it documented whether the accused had accessed the file, which, as is hypothesized, would do so
in the very reasoning of the decision, the structure of the published data also corresponded in principle.
Furthermore, it would be necessary to find out whether, if the inspection took place, the accused was properly instructed in
accordance with § 8b
paragraph 1 of the Criminal Procedure Code, and if these facts are proved, prosecution would be possible
for an offense pursuant to Section 44a of Act No. 101/2000 Coll.
The appellate body therefore found that the administrative body of the first instance had not established the state of affairs so
that
there was no doubt. As he also points out, the documented facts are definitely in their entirety
does not constitute a logical, undisturbed and closed set of circumstantial evidence that is
in such a causal relationship to the proven fact that they would allow only one conclusion.

In those circumstances, the appellate body considers it irrelevant to consider further arguments

the defendant and, in the light of all the above, therefore ruled as is

stated in the operative part of this decision. At the same time, however, which the Appellate Body deems necessary

particularly emphasized at this point, this can in no way be interpreted as general

the inclination of the Office to publish, resp. dissemination of personal data of third parties through

social networks such as Facebook.

As can be concluded, in the following proceedings, the administrative body of the first instance should

first to properly ascertain the state of affairs and then to reclassify the accused's act, whether in a sense

committing an offense pursuant to Section 44a of Act No. 101/2000 Coll. or according to § 44 of Act No. 101/2000

Sb., Possibly in another way, while a conclusion in the sense that the accused cannot be ruled out

he did not commit any offense with his actions.

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, April 26, 2018

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JUDr. Ivana Janů

chairwoman