OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00EMBCQ *

Ref. UOOU-04272 / 20-17

DECISION

Chairman of the Office for Personal Data Protection as an appellate body competent pursuant to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided pursuant to the provisions of § 152 para. and)

Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-04272 / 20-9 of 24 November 2020 and corrective decision of the Office for Personal Data Protection ref. UOOU-04272 / 20-11 of On December 14, 2020, based on the dissolution of the accused, Czech Television, based in Na Hřebenech II 1132/18, 147 00 Prague, IČ: 00027383, cancel and the case is returned to the administrative body of the first instance for a new hearing.

Justification

Definition of things

[1] Administrative proceedings for suspected infringements pursuant to Article 6 (1) of the Regulation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons with regard to the processing of personal data and on the free movement of such data and on cancellation Directive 95/46 / EC (hereinafter nařízení Regulation (EU) 2016/679 ') in relation to broadcasting and The report "Some schools pass a report card" containing the personal data of a minor XXXXXX, was initiated by command no. UOOU-04272 / 20-3 of October 21, 2020, who was accused, Czech television, with its registered office at Na Hřebenech II 1132/18, 147 00 Prague, IČ: 00027383, delivered on the same day. By the order, the accused was found guilty of committing an offense under § 62 para. b)

Act No. 110/2019 Coll., on the processing of personal data, while according to § 62 paragraph 5 of this

The law waived the imposition of an administrative penalty.

[2] The basis for issuing the order was the material collected on the basis of the notification

Offense by the Police of the Czech Republic, Ostrava Municipal Police Directorate, District Department

Ostrava - Wednesday, delivered to the Office for Personal Data Protection (hereinafter referred to as the “Office”) on 2 October

2020. According to the case-file, the accused on 26 June 2020 at 8:26 p.m.

broadcast live on the ČT24 program in the program "Studio 6" the report "Some schools

which were also available to the public on the accused's website

www.ceskatelevize.cz/ivysilani. A report on the report card was published as part of this report

minor XXXXXX, from which her name and surname, date and place of birth, birth were legible

number and subjects of teaching, including grades for individual semesters. This shot lasted 10 seconds.

[3] In response to a request from the Police of the Czech Republic to provide a report of

On 2 July 2020, the defendant stated by letter dated 6 July 2020 that the report in question

removed from its website, and at the same time discussed the matter with the cameraman

intended to minimize intrusions into the privacy of individuals during live news entries

to broadcast.

[4] From the official record of the Police of the Czech Republic, Regional Police Directorate Ostrava,

District Department Ostrava - Wednesday, dated July 16, 2020 on the filing of XXXXXX, a minor by the father

XXXXXX, it appears that they knew about the report in question with his wife, but they agreed

by publishing their daughter's birth number, they did not give it to anyone.

[5] On 29 October 2020, the accused lodged an early opposition to the order issued, against which

on the basis of which the order was revoked and the administrative body continued the proceedings which resulted in the

issuance

appeal of the contested decision.

[6] In the resistance, the accused stated that according to § 21 paragraph 1 of Act No. 250/2016 Coll., On liability

for a misdemeanor and proceedings, the legal person is not liable for the misdemeanor if he proves that

made every effort that could be required to prevent the offense. Accused

stated that it has very detailed procedures regarding the processing of personal data

through

always

on high level. In the case under review, it was a unique situation when shooting

The cameraman's reportage and mistake occurred during a live broadcast in the presence

pedagogical worker of the school concerned, and the report was not in any way towards the data subject

negative, the shooting was not aggressive, and it was a short footage. The accused also stated that

that the administrative body of the first instance did not sufficiently assess whether the material fulfillment had taken place

sign of the offense, ie the social harmfulness of the offense, according to § 5 of Act No. 250/2016 Coll.

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[7] On 24 November 2020, a decision was issued by the first instance authority,

Ref. UOOU-04272 / 20-9 ('the contested decision') by which the accused was found guilty

from committing an offense pursuant to Section 62, Paragraph b) of Act No. 110/2019 Coll., as it violated any of

basic principles for the processing of personal data pursuant to Articles 5 to 7 or 9 of Regulation (EU) 2016/679,

as a controller of the personal data of minor XXXXXX pursuant to Article 4 (7) of Regulation (EU)

2016/679, committed by broadcasting live on June 26, 2020 at 8:26 p.m.

transmission of a video recording of the reportage "Some schools pass on a report card", in which there was

published name, surname, date and place of birth and birth number of the minor XXXXXX, whereby

this record was also available to the public on the defendant's website

www.ceskatelevize.cz/ivysilani. In accordance with § 62 paragraph 5 of Act No. 110/2019 Coll. was dropped

from the imposition of an administrative penalty and according to § 95 paragraph 1 of Act No. 250/2016 Coll. an obligation has

been imposed

to reimburse the costs of proceedings in the amount of CZK 1,000.

[8] The administrative authority of the first instance justified its decision by stating that

the accused processed personal data without a legal title because she did not have consent

the data subject, and the accused was not convinced by any other legal reason for the processing

in Article 6 (1) of Regulation (EU) 2016/679.

[9] The defendant's argument that it has very detailed processing procedures

personal data through an internal regulation and did its best to assess the situation

did not occur, the administrative authority of the first instance stated that the capture of the certificate lasted 10 seconds,

and the report was subsequently made available

site accused

www.ceskatelevize.cz/ivysilani, until the accused removed it on the basis of

ongoing police investigation. According to the administrative body of the first instance, this is not possible

to agree that the accused is not liable for the conduct in question, as it is in question

publish a report containing the personal data of minors on its website,

While it can be concluded that without the initiative of a third party, this report would be from the website

has not been removed. The allegedly established procedures were thus clearly not sufficient to prevent them

further unauthorized disclosure of the minor's personal data.

internet

and on

[10] Regarding the social harmfulness of the act, the administrative authority of the first instance stated that this

represents a material feature of the offense, which is a violation or threat to the interest

protected by law. It is then sufficient for its fulfillment that the interest threatened the negotiations
society, not necessarily to endanger individual individuals. Furthermore, the administrative body of the first
degree stated that according to the judgment of the Supreme Administrative Court No. 9 As 34 / 2012-28 it is necessary
based on the premise that already by establishing the formal features of a certain factual nature of the law
assumes that in their fulfillment in common cases there will be a degree
social dangers are generally higher than negligible. With reference to the judgment of the Supreme
Administrative Court ref. 7 As 63 / 2015-29, according to which the social danger of action, ie
the material aspect of the offense would not be fulfilled if there were special circumstances
case which would substantially reduce the danger of the conduct in question, administrative
the authority of first instance stated that it did not find that there were special circumstances in this case
reducing the social harmfulness of the conduct, as it was not in the present case
illegally published only the name, surname, date and place of birth of the minor, but also
her birth number, which serves as a general identifier for citizens. The nature of the personal concerned
data thus poses a higher risk to the rights and freedoms of the data subject. From recital 38
Regulation (EU) 2016/679 also states that children deserve special protection of personal data,
because they may be less aware of the risks, consequences and guarantees involved and their rights
in connection with the processing of personal data. The administrative body of the first instance concluded that
the conduct of the accused endangered the public interest in the protection of personal data of entities
these data.

[11] The defendant filed a complaint against the above-mentioned decision of the administrative body of the first instance
on December 9, 2020 decomposition.

Decomposition content

[12] In the appeal, the accused stated that the administrative body of the first instance was insufficient
settled with the application of § 21 paragraph 1 of Act No. 250/1016 Coll., as it made the maximum possible
to avoid such a situation, ie has very detailed procedures regarding
processing of personal data through an internal regulation, while in the assessed

In this case, it was a completely unique situation when filming and processing

personal data occurred during a live broadcast. Accused with reference to the decision of the Supreme

of the Administrative Court No. 5 As 104 / 2008–45 stated that it could not be automatically concluded that

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the material feature of the offense is fulfilled whenever it is fulfilled

formal sign. If the circumstances of the conduct that fulfill the formal character of the facts

offense, associate such circumstances as to preclude such conduct from being infringed or

endangered by the legally protected interest of the company, the material feature will not be fulfilled

offense and such conduct cannot then be classified as an offense. The administrative body shall, according to

the accused had to deal carefully with the circumstances of the material side (eg the circumstances under which

the offense was committed, the manner of execution and its consequences, the person accused, etc.)

nor did he deal with the fact that the shot of the birth number XXXXXX was in a significantly shorter period of time (approx

3 seconds), not 10 seconds, which was the total shot time on the report card. In the opinion

the accused was not considered to be socially harmful.

[13] The defendant further stated that it considered the description of the act in the operative part I of the contested decision

insufficient, as it does not preclude confusion with another act. According to the accused

it is not stated in the description of the act on which program the report should have been broadcast, resp. is not

nor was it clear that it was a television broadcast, and the description does not include information

in what time period the record was accessible on iVys broadcasting. From the description of the deed, according to the

accused

at first it appears to have been a "one-off" offense committed on 26 June 2020 at 8:26, then

however, in relation to iBroadcasting, it can be concluded that this could be a persistent offense. Accused so

considers the description of the act to be internally contradictory and completely ambiguous.

[14] On statement III. of the contested decision, the defendant stated that it had been ordered to do so

the obligation to reimburse the costs of the proceedings, followed by the sentence "both due within 30 days". Accused

considers a statement in quotation marks to be incomprehensible when it is only a question of (one) duty

to pay the costs.

[15] It was subsequently issued by the first instance administration on 14 December 2020

corrective decision ref. UOOU-04272 / 20-11 ('the corrective decision'), since in the operative part

of the contested decision, the administrative authority erred in writing, with the original text “both

due within 30 days… ’was replaced by splat due within 30 days’.

[16] The defendants filed an appeal against the above-mentioned appeal decision on 23 December 2020

timely dismissal, in which she objected that the corrective decision stated that she was correcting the text

"On page 1, 2nd paragraph of the operative part of point III, third line", but on the first page of the contested party

the decision is not a corrected text (it is only on the other side). The accused also stated that the original

the text has been replaced by splat due within 30 days ’, which casts doubt on the fact that

maturity is linked to the costs of proceedings, when the corrected text reads… the obligation to reimburse is imposed

costs…, due within 30 days ’. Accused so (according to her first appeal)

annul the contested decision (together with the corrective decision) and set aside the proceedings

stopped.

Assessment by a second instance body

[17] The appellate body first considered the operative part of the contested decision. According to § 68

paragraph 2 of the Administrative Procedure Code, the operative part of the decision shall set out, inter alia, the solution of the

question which:

is the subject of the proceedings, the legal provisions under which the decision was made and the identification of the

participants

according to § 27 par. 1. From § 93 par. 1 let. a) of Act No. 250/2016 Coll. then it follows that in the propositional

part of the decision on the offense by which the accused is found guilty shall, in addition to the

of the Administrative Procedure Code shall contain a description of the act, indicating the place, time and manner of its

commission.

According to the appellate body, the accused then refers quite appropriately to the decision of the Supreme

of the Administrative Court No. 2 As 34 / 2006-73, in which it was stated that “Definition of the subject
the procedure in the operative part of the decision on the administrative tort must therefore always consist in the specification
of the tort
so that the sanctioned conduct is not interchangeable with the conduct of another. /… / In the decision
of a criminal nature, which are also decisions on other administrative offenses, it is necessary to build
to be sure of the specific conduct for which the subject is affected - this can only be guaranteed by specifying the data
containing a description of the act, stating the place, time and manner of the commission, or stating others
facts necessary to ensure that he cannot be confused with another. Such a level of detail
it is certainly necessary for the entire sanction procedure, in particular to eliminate the obstacle of lis pendens,
double sanction for the same act, to eliminate the obstacle to the decision, to determine the scope
evidence and to ensure a proper right of defense. /… / The individual facts are
decisive for determining the identity of the act, exclude for the next period the possibility of confusion of the act
and the possibility of repeated sanctions for the same act, while at the same time allowing an assessment of whether it has not
occurred
to limit the possibility of sanction in a given specific case. For all the above reasons, it is
it must be rejected that it is sufficient for those particulars to be set out in the statement of reasons for the decision. '

[18] In the operative part I of the contested decision, the defendant's act is described as 26 June
In 2020, at 8:26 a.m., she broadcast a live video of the report “Some
schools hand over the report card ", in which the name, surname, date and place were published
birth and birth number of the minor XXXXXX, and this record was also available
public and on the accused's website www.ceskatelevize.cz/ivysilani. Description of the deed
concerning the publication of the report of the report on the accused's website
does not state when, resp. what time period it was supposed to have taken place. Since the publication
personal data on the Internet has been committed a continuing offense, it is necessary to sufficiently define the period after
which the data were published. It must therefore be clear from the statement of the decision from when to when
the illegal situation persisted. Notification of the offense to the Police of the Czech Republic dated 27 June 2020

contains a link to the accused 's website (iBroadcasting) stating that the report in question is
publicly available here. The file also shows that the Police of the Czech Republic
turned the accused on 2 July 2020 with a request to provide the report in question. On this
The defendant replied to the request by letter dated 6 July 2020, stating that, on the basis of the above
the report removed the request from its website (the same claim is
also included in the dissolution of the accused). The appellate body therefore considers that it is relevant
the report has been publicly available on the accused's website since at least June 27
until 2 July 2020, when the accused was notified of a report by the Police of the Czech Republic. Above
however, the said time limit of the act is absent in the operative part of the contested decision, which according to
appeal body renders it unlawful and therefore annulled the contested decision.

[19] Next, the Appellate Body states that, although the description is in the contested decision, the description
The act of broadcasting a live report does not contain information on which program
and on which program it was broadcast, he considers it to be sufficiently specific (the name
reportage, date and time of transmission, identification of the data subject to whom it related) so that it cannot be
confused with another act, however, it considers it appropriate, for the sake of clarity, that
in the new decision, the administrative authority of the first instance formulated the statement in such a way that it is sufficient
it was obvious that it was a live broadcast in the program "Studio 6" broadcast on the ČT24 program.

[20] Next, the Appellate Body dealt with the accused 's argument that the administrative body of the first
degree did not adequately address the defendant's alleged liberation grounds. Responsibility
legal persons for the offense is, according to the appellate body, conceived as liability
objective, ie regardless of fault. Legal entity according to § 21 paragraph 1 of Act No. 250/2016 Coll.
he shall not be liable for the offense if he proves that he has made all the efforts possible

require it to prevent the offense. In addition, the Supreme Administrative Court in Judgment No. 9 As
195 / 2018-27 stated: “Liberation reasons are intended for application only in exceptional cases
cases as they constitute an exception to the principle of strict liability. They represent a tool

whose aim is to prevent the application of disproportionate harshness of the law. Therefore, if there are circumstances in which it is necessary to assess whether the legal person has made every effort to prevent it breach of duty, the administrative authority must actually deal with them and not just state that the conditions were not met. However, a person who wants to invoke a ground for liberation must demonstrate that it has taken technically possible measures capable of effectively preventing infringements of the law. It cannot be satisfied that she has made every effort to prevent an administrative offense… '.

The accused stated in the dissolution that she has very detailed processing procedures personal data through an internal regulation and that this was a completely unique one the situation that occurred while filming the report during the live broadcast. Administrative body of the first did not agree with the defendant 's view that he was not responsible for that conduct, since subsequently published the report on its website and the accused the procedures in place were thus clearly not sufficient to prevent further unauthorized use disclosure of personal data of minors. According to the appellate body, it is therefore the accused who has to prove that it made every effort that could be required to make the infringement legal obligations. Although she stated that her procedures were regulated by an internal regulation, she nevertheless did obvious that the breach nevertheless occurred, not only in the live broadcast but also subsequently by publishing a report on the Internet, which clearly indicates that the accused it does not have sufficient mechanisms in place to prevent the publication of the report.

He does not have the fact that the reportage was not negative and the filming took place in the presence of a teacher no effect on the accused's liability for the content of the report. Not even that it was unique the situation cannot relieve the accused of its strict liability, since for the fulfillment of the factual the essence of the offense according to § 62 par. 1 let. b) of Act No. 110/2019 Coll. not required repeated breach of duty by the personal data controller. Although from the administrative decision authority of the first instance it is clear that he dealt with the reasons for liberation, he considers his argument the appellate body is rather strict, especially as regards dealing with the existence of internal prescription accused.

[21] Regarding the assessment of whether the conduct of the accused can be considered a misdemeanor
states that according to § 5 of Act No. 250/2016 Coll. socially harmful offense,
which is expressly designated as an offense in the law and which has the characteristics required by law,
if it is not a criminal offense, where the social harmfulness of the offense is a material feature
offense. From the accused judgment of the Supreme Administrative Court No. 5 As 104 / 2008-
45 states that, in general, it can be 'assumed that conduct whose formal features are indicated
law for a misdemeanor, fulfills the material feature of the misdemeanor in commonly occurring cases,
because it violates or threatens a certain interest of society. However, it cannot be concluded from this conclusion that
the material feature of the offense is fulfilled whenever it is fulfilled
a formal sign of an offense caused by the actions of a natural person. If the circumstances of the hearing
which fulfill the formal elements of the factual nature of the offense, associate such other significant ones
circumstances which preclude such conduct from being infringed or jeopardized by the law protected
interest of the company, the material feature of the offense will not be fulfilled and such action will then occur
cannot be considered an offense '. Furthermore, the judgment cited:
"Circumstances that reduce the risk of acting for the protected interest of society below the level that
is typical of common offenses, they may be particular, but not
exclusively, the significance of the legally protected interest affected by the offense, the manner
its execution and its consequences, the circumstances under which the offense was committed, the person of the offender,
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the degree of his fault and his motive. ". The legitimate interest of the company is in this
In this case, the protection of personal data, resp. public protection
(data subjects) before
unauthorized disclosure of personal data. In order for an offense to be committed pursuant to Section 62
paragraph 1 (a) b) of Act No. 110/2019 Coll. personal processing may not be abused
data, it is fully sufficient that the personal processing is an unauthorized processing (publication)
endangered. The fact that personal data has not been misused (has not been identified) does not mean that

the factual nature of the offense was not fulfilled, but that the interest protected by it was not violated, but "Only" endangered, ie. it is only a different nature and intensity of the consequence of the offense negotiations. In addition, the Supreme Administrative Court states in its judgment No. 1 As 237 / 2015-31 that "The material feature of a threatening administrative offense consisting in social harm is fulfilled by the very creation of a potentially dangerous situation without having to happen to specific harmful consequences. Part of the factual nature of the offenses it does not result in an interference with the interests protected by law, but merely theirs It is clear from the administrative file (and the defendant does not dispute this in any way) that it has taken place disclosure of personal data of the minor pupil in the range of name, surname, date and place of birth and her birth number, not only in the live broadcast, but subsequently also on the website accused, which clearly jeopardized the interests protected by law. Moreover, administrative the first instance body correctly stated that the publication of the birth number poses a higher risk for the rights and freedoms of the data subject. According to the appellate body you need to agree with the objection of the accused that the capture of the birth number XXXXXX in legible form lasted about 3 seconds, not 10 seconds, which was the total shot time on the report card, however, when watching the report on the internet it is possible to play it repeatedly, pause the image, save it, etc., notwithstanding that modern television can do this, so it is possible, for example, to record and play back live broadcasts, therefore The fact that the shot lasted only 3 seconds is not decisive. After all, also from the notification of the offense it is obvious that the published personal data could be easily copied or copied by anyone. The fact that accused of the report in question after being notified by the Police of the Czech Republic from its Internet could be considered as an attenuating circumstance in the determination the amount of the sanction (if imposed), but as already mentioned, the act was already committed by himself by broadcasting a live report and then publishing it on the Internet and to assess whether it was the act was committed or not so that the report was immediately notified by the Police of the Czech Republic deleted is not decisive. In order for the administrative body to state that the material has not been fulfilled

a sign of the factual nature of the offense, the conduct of the accused could not lead to a breach / threat
the legitimate interest of society. However, personal data of minors by their publication
were jeopardized and apparently did not preclude circumstances and therefore the appellate body
does not consider it necessary with the individual circumstances arising, for example, from the aforementioned
judgment of the Supreme Administrative Court No. 5 As 104 / 2008-45, to deal with.
[22] In the new decision, the administrative authority of the first instance should add to the operative part
the timing of the act of publishing the report on the website
the accused and at the same time (in the case of broadcasting a live report) can be supplemented, or better worded
statement in such a way as to make it sufficiently clear that it was a live broadcast on "Studio 6"
broadcast on the CT24 program. At the same time, the appeal body should deal better
with the accused's grounds for liberation, in particular the existence of an internal regulation.
[23] Simultaneously with the annulment of the contested decision, the Appellate Body decided to annul
corrective decision, since that decision lost its decision by annulling the contested decision
legal basis.

[24] For all the above reasons, the Appellate Body therefore ruled as indicated
in the operative part of this decision. In the new decision, the administrative body of the first instance
especially repair, resp. complete the operative part of the 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, March 15, 2021
official stamp imprint
Mgr. Jiří Kaucký
chairman
(electronically signed)