OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00ERVUJ *

Ref. UOOU-03580 / 20-23

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

The appeal of the accused, XXXXXX, established XXXXXX against the decision of the Office for Personal Protection data ref. UOOU-03580 / 20-14 of 1 February 2021, is rejected and the contested decision is upheld confirms.

Justification

Definition of things

(1) The basis for proceedings in the matter of suspicion of committing an offense pursuant to § 62 para. C) Act No. 110/2019 Coll., on the processing of personal data with the accused, XXXXXX with its registered office at XXXXXX (hereinafter referred to as the “accused”), the file was collected on the basis of an initiative sent to the Office for the protection of personal data (hereinafter referred to as the “Office”) by the complainant, XXXXXX (hereinafter referred to as the “Complainant”).

It follows from the above complaint that the complainant had raised an e-mail on 29 June 2020 XXXXXX object to the processing of your personal data, sent to the e-mail address accused XXXXXX and at the same time accused the accused of deleting them. Despite the above, it was on On August 19, 2020, the accused was contacted via SMS to his telephone number XXXXXX with marketing offer accused. Based on this fact, the complainant of the day

On 19 August 2020, he turned to the Office, which on 16 September 2020 alerted the accused to the possible Infringement of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of individuals with regard to the processing of personal data and on the free movement of such data repeal of Directive 95/46 / EC (the "General Regulation") and informed her that the complainant objected to direct marketing pursuant to Article 21 (2) of the General Regulation,
For this reason, the accused as a controller of personal data is obliged without undue delay terminate the processing of the complainant's personal data for this purpose.
(2) On 9 October 2020, the Office received a statement from the accused stating that immediately upon receipt of the above notification, the Office ensured the exclusion of the telephone number

and the complainant's e-mail addresses from all lists for sending commercial communications and stopped processing of his personal data for marketing purposes. The accused further stated that she had done so an internal investigation which verified that she had not received any request for annulment from the complainant sending commercial communications or deleting the complainant's personal data. On November 25, 2020 however, the complainant turned to the Office again, stating that, despite the above, he was from The accused is re-contacted with the business offer via SMS sent on 25 November 2020 to his telephone number.
(3) In view of the above, the administrative body of the first instance initiated proceedings in the matter on offense, by order ref. UOOU-03580 / 20-9 of 14 January 2021, which was a misdemeanor has been established pursuant to § 62 para. c) of Act No. 110/2019 Coll., for which a fine of CZK 20,000 was imposed on the accused. However, on the basis of timely resistance, he was the said order in accordance with § 150 paragraph 3 of Act No. 500/2004 Coll. canceled and was pending continued.
(4) The result of the ongoing proceedings on the offense was the issuance of a decision no. UOOU-03580 / 20-14 of 1 February 2021 ('the decision') by which the accused was again found guilty of committing an offense according to § 62 par. 1 let. c) of Act No. 110/2019 Coll. and was fined

this time, however, in the amount of CZK 2,000, as it violated some of the data subject's rights under Article 12 to 22 of the General Regulation, which she committed as a controller of personal data by complainant's deletion of personal data of 29 June 2020 continues to him via SMS messages sent on 19 August 2020 and 25 November 2020 to his telephone number XXXXXX contacted the commercial communication, in breach of the data subject's right set out in Article 17 paragraph 1 (a) c) of the General Regulation, ie the right to the administrator without undue delay delete the personal data concerning the data subject concerned if the data subject so requests objections to processing pursuant to Article 21 (2) of the General Regulation.

(5) However, the accused objected to the decision in due course.

Decomposition content

(6) In the appeal, the accused stated above all that she did not agree with the imposed administrative penalty. In particular, the accused should have taken all measures in accordance with the general regulation in relation to to the complainant's personal data. Furthermore, as she recalled, the complainant's personal data were at on the basis of his request deleted from its automated systems, which he uses for sending advertising messages via SMS messages, ie for direct marketing. To repeat the sending of a commercial communication to the complainant should then have taken place only by coincidence, resp. consequence human error, when the accused, for operational reasons, had the commercial message sent manually, without the use of automated systems.

(7) The accused further points to the mitigating circumstance that economic reality should be associated with the global pandemic associated with the spread of SARS-CoV-2, for which it was the state of the Czech Republic has repeatedly declared a state of emergency. As a result of this situation, he perceives accused a fine of CZK 2,000 as liquidation and considers that in such In this case, there is room for imposing an administrative penalty by reprimand pursuant to Section 45 of the Act No. 250/2016 Coll., on liability for misdemeanors and proceedings on them. It should also be the case space for consideration of waiving the imposition of an administrative penalty pursuant to Section 43 (2) of the Act

No. 250/2016 Coll., as in addition to the above already during the discussion of the subject

The defendant took steps to prevent similar mistakes in the future

infringement.

(8) Finally, the accused drew attention to the ambiguities in the operative part of the decision.

(9) Article 17 (1) of the General Regulation is worded as follows:

Applicable law

"The data subject has the right to have the controller delete personal data without undue delay,

concerning the data subject and the controller has a duty of personal data without undue delay

deferred if, for one of the following reasons:

(a) the personal data are no longer needed for the purposes for which they were collected or otherwise

processed;

(b) the data subject withdraws the consent on the basis of which the data referred to in Article 6 (1) (a) were and)

or Article 9 (2) (a) (a) processed, and there is no other legal reason for

processing;

(c) the data subject objects to the processing referred to in Article 21 (1) and there are none

overriding legitimate reasons for the processing or the data subject objects

processing in accordance with Article 21 (2);

(d) the personal data have been processed unlawfully;

(e) personal data must be deleted in order to comply with a legal obligation laid down in Union law

or the Member State to which the administrator applies;

f) personal data has been collected in connection with the provision of information society services

pursuant to Article 8 (1).

(10) Article 21 of the General Regulation is worded as follows:

„1. The data subject has the right to object at any time for reasons related to his or her specific situation

against the processing of personal data concerning him, pursuant to Article 6 (1) (a) e) or f),

including profiling based on these provisions. Administrator personal data further

does not process unless it demonstrates compelling overriding reasons for processing

over the interests or rights and freedoms of the data subject, or for the determination, exercise or defense

legal claims.

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right

to object at any time to the processing of personal data concerning him for this purpose

marketing, which includes profiling as far as this direct marketing is concerned.

3. If the data subject objects to processing for direct marketing purposes,

personal data will no longer be processed for these purposes.

4. The data subject shall be explicitly informed of the right referred to in paragraphs 1 and 2 and that right shall be

clearly and separately from any other information, at the latest at the time of the first

communication with the data subject.

5. In connection with the use of information society services, and without prejudice to the Directive

2002/58 / EC, the data subject may exercise his right to object by automated means

means using technical specifications.

6. If personal data are processed for the purposes of scientific or historical research or for

statistical purposes under Article 89 (1), the data subject shall, for reasons relating to his specific

situation, the right to object to the processing of personal data concerning him, unless it is

processing necessary for the performance of a task carried out for reasons of public interest. "

(11) Provisions of § 62 par. 1 let. c) of Act No. 110/2019 Coll. reads:

"A controller or processor under Title II commits an offense by:. c) violates some

from the rights of the data subject under Articles 12 to 22 of Regulation (EU)

2016/679 or Title II. "

Assessment by a second instance body

(12) On the basis of the appeal lodged, the appellate body examined the contested decision in its entirety

scope, including the process that preceded its publication and first dealt with argumentation
accused.
(13) In particular, he found that the alleged irregularities, resp. obvious inaccuracies in
of the decision were in accordance with the provisions of Section 70 of Act No. 500/2004 Coll. removed
by issuing a corrective decision of the Office ref. UOOU-03580 / 20-18 of 17 March 2021.
(14) The Appellate Body further rejected the defendant's assertion that all should have been made
measures in connection with the deletion of the complainant's personal data. Even if they are really personal
it erased the complainant's data from all automated systems, as claimed in its statement
of 9 October 2020, sent on the basis of a notification from the Office dated 16 September 2020,
this did not result in the consistent destruction of the complainant's personal data and the termination of their processing,
as the accused complainant contacted the commercial communication again on 25 November
2020. For the alleged "human error" in the sense of the provisions of § 20 paragraphs 1 and 2 of the Act
No. 250/2016 Coll. fully accused of the accused, who, moreover, cannot be released from liability for
offense pursuant to Section 21, Paragraph 1 of Act No. 250/2016 Coll., as she clearly did not make every effort,
which could be required to prevent the offense. Pursuant to Article 4 (2) of the General Regulation
processing means any operation with personal data, with or without assistance
automated systems, the general regulation covering in whole or in part
automated processing of personal data and non - automated processing of personal data
data contained in or to be included in the register (Article 2 (1) of the General Agreement)
ordinance). The processing of personal data therefore also includes the manual sending of commercial communications
via SMS messages, as performed by the accused in the treated case. From above
For these reasons, the matter cannot be resolved by reprimanding or waiving the sanction.
(15) After an overall examination, the Appellate Body then found that in the administrative procedure
no irregularities were found to render the decision unlawful.
In particular, the amount of the fine imposed at the very lower limit of the rate seems appropriate to him and which
therefore, it cannot be considered a priori liquidation. She could have been responsible for the offense in question

a fine of up to EUR 20 000 000 or up to 4% of the total annual turnover is imposed

(Article 83 (5) of the General Regulation). In addition, the decision significantly reduced the amount of the fine originally saved by command no. UOOU-03580 / 20-9 of 14 January 2021. In this regard the appellate body also recalls that the accused did not substantiate its specific financial situation (see Resolution of the Enlarged Senate of the Supreme Administrative Court No. 1 As 9 / 2008-133 of April 20, 2010, where it states: “It will therefore be up to the party to decide whether to do so his interest in ensuring that the fine imposed on him did not have liquidating consequences for him by provide the authority with basic information about his personal and property situation and these as well prove or enable the administrative authority to verify their veracity in a credible manner ’).

(16) For all the above reasons, the Appellate Body therefore ruled as set out in opinion 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, May 31, 2021

Mgr. Jiří Kaucký

chairman

(electronically signed)