OFFICE FOR PERSONAL DATA PROTECTION

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UOOUX00FB14A

Ref. UOOU-00575/21-16

DECISION

as the appellate authority competent under

Chairman of the Office for Personal Data Protection

provisions of § 152, paragraph 2 of Act No. 500/2004 Coll., Administrative Code, decided according to the provisions of § 152

paragraph 6 letter a) Act No. 500/2004 Coll., Administrative Code, as follows:

Decision of the Office for the Protection of Personal Data no. UOOU-00575/21-10 dated 22 July

2021 based on the dissolution of the accused, company XXXXXX, with registered office XXXXXX, XXXXXX,

ID: XXXXX, changes so that in statement III. of the contested decision are replaced by the words "fine in

in the amount of CZK 140,000" with the words "fine in the amount of CZK 80,000", in the rest the challenged decision

confirms.

Justification

Definition of the matter

[1] Proceedings in the case of suspected breach of obligations pursuant to Article 6(1) and Article 32(1) of the Regulation

of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of physical

of persons in connection with the processing of personal data and the free movement of such data and cancellation

directive 95/46/EC (hereinafter referred to as "regulation (EU) 2016/679"), in connection with the processing of personal

data XXXXXX (hereinafter referred to as the "complainant"), was initiated by order of the Office for Personal Protection

data (hereinafter referred to as the "Authority"), which was the accused, company XXXXXX, with registered office XXXXX,

XXXXX,

ID number: XXXXXX (hereinafter referred to as "the accused"), delivered on June 2, 2021. Basis for its release

there was an inspection report no. UOOU-00538/20-16 of August 26, 2020 and other file material
taken during the inspection (file number UOOU-00538/20) of the accused according to Act No. 255/2012 Coll.,
on inspection (inspection order), including the handling of objections by the Chairman of the Office, no. UOOU-00538/20-20 of
on December 21, 2020. Against the said order, the accused filed a timely objection, on the basis of which
the order was canceled and the administrative proceedings continued.

[2] Decision no. UOOU-00575/21-10 dated July 22, 2021 the accused was found
are guilty of committing offenses according to § 62 paragraph 1 letter a) and b) of Act No. 110/2019 Coll.,
about the processing of personal data, which she should have committed by acting as a personal data administrator
processed the complainant's personal data without a legal title, and also by being unauthorized
made this personal data available to the processor. A fine was imposed on her for the said criminal conduct
in the amount of CZK 140,000 and also the obligation to pay court costs in the amount of CZK 1,000.

[3] The accused filed an objection to the decision on August 6, 2021 through her lawyer
representative decomposition.

Decomposition content

[4] In the breakdown, the accused stated that the processing of the complainant's personal data on January 17
2020 carried out on the basis of a legitimate interest according to Article 6 paragraph 1 letter f) regulation (EU)
2016/679, and that this legal title was based on a contract that passed to the accused based on
successive contracts dated June 28, 2019, concluded with the company XXXXXXX, ID: XXXXXX,
including its Addendum No. 1 dated September 10, 2019 and Addendum No. 2 dated January 8, 2020. Accused
thus entered into the rights and obligations in the contractual relationship established on the basis of the application
on securing discounts on energy supplies with the complainant dated 29 May 2019 instead
the current service provider, the company XXXXXX. The accused does not agree with the conclusions
administrative body of the first instance, that the complainant from the contract with the company XXXXXX
she resigned on July 18, 2019, and therefore the assignment could not take place on January 8, 2020
contracts.

[5] According to the accused, the withdrawal from the contract sent by the complainant was invalid and contractual the relationship between her and the company XXXXXXX could not be annulled. The complainant resigned from contracts pursuant to § 1829 of Act No. 89/2012 Coll., Civil Code, after the expiry of the period of 14 days, while the file material does not show the fact that the complainant was not there before the closure contract in accordance with § 1820 paragraph 1 letter f) of the Civil Code, together with instructions about the options for withdrawing from the contract, a form for withdrawing from the contract is provided. The accused objected that the evidence in this regard was not carried out at all, and at the same time states, that she is able to prove that she fulfilled her teaching duties towards the complainant. Administrative according to the accused, the first instance authority acted contrary to the principle of material truth, when he considered the question without actually ascertaining the facts. In terms of effects withdrawal from the contract and its validity is not decisive according to the accused that the company XXXXXXXX did not dispute the withdrawal from the contract in question.

[6] Furthermore, the accused stated that on the basis of the Framework Agreement on the assignment of client contracts of June 28, 2019, as amended, there was a valid transfer of the contract concluded with the complainant from the company XXXXXX to the accused. Even if the accused admitted that against the complainant (assigned party) was not notified of the assignment of the contract, then the only the legal consequence according to § 1897 paragraph 1 of the Civil Code was the ineffectiveness of such assignment only in relation to the assigned party. The accused believes that she did not violate Article 6 para. 1 of Regulation (EU) 2016/679 and could not have committed a violation of Article 32 of this regulation.

[7] In addition to the above, the accused objected in the analysis that the fine imposed above is clearly disproportionate, as this is an isolated case of breach of duty, in a relationship only to one natural person. The accused also referred to the Office's previous decision-making practice, which published information on its website on January 5, 2021 that it had deposited 11

companies fined in the aggregate amount of CZK 3,111,000 for violating the same provision as in the case of the accused, with the fact that offers were sent to data subjects via

data boxes, while personal data was processed in the order of thousands of cases.

Furthermore, the accused stated that the nature and manner of possible commission of the offense, as well as the absence of another similar offence, do not indicate that an offense would be involved on the part accused of organized or intentional activity. On the contrary, it is obvious that this case is an exception in the case of the accused, and his commission was caused by an incorrect legal assessment of the situation, or error. Also, the scope of the offense and its consequences is small and it did not cause the subject of personal data no harm. According to the accused, there are also no circumstances for it to be an aggravating factor qualified circumstance that the offense was committed against an elderly person, as he was not present intention to act against the complainant because of her age. Given the circumstances of the case, it is obvious that the same conduct of the accused could take place in the case of any other person without regardless of her age.

[8] With regard to the above, the accused suggested that the President of the Office be challenged annulled the decision and stopped the proceedings.

Assessment by a second level authority

[9] It follows from the administrative file that the complainant concluded on May 29, 2019 at her place of residence contract called "XXXXXXX" (hereinafter referred to as the "Application dated May 29, 2019") with by XXXXXXX.

[10] On July 10, 2019, the complainant was again visited at her place of residence by a business representative of the company XXXXX and at the same time the accused XXXXXX, who presented the complainant with the “Agreement on the termination of the contract concluded on May 29, 2019 with the company XXXXXX.", which none of of the contracting parties did not sign, and at the same time he presented her with a new contract with the accused, the so-called "framework contract for the provision of services" signed by both contracting parties. From this one the complainant withdrew from the contract on July 18, 2019 within a period of 14 days, which is not

in the considered case of dispute.

[11] On July 18, 2019, the complainant sent an e-mail to XXXXXX and also

by registered letter in writing to the company XXXXXXX withdrawal from the contract (concluded on

May 29, 2019) "according to § 1829 para. 2 in conjunction with § 1820 para. 1 letter f) of Act No. 89/2012

Coll., Civil Code", in which she stated that she was not a business person when concluding the contract

informed by the representative about the right to withdraw from the contract within 14 days and was not handed over to her

sample form for withdrawing from the contract, therefore exercising your right to withdraw from the contract

within a year and 14 days from the date of its conclusion. At the same time, the applicant revoked the granted power of

attorney

and consent to the processing of personal data and requested the deletion of all data about her

company XXXXXX registers.

[12] On August 28, 2019, the complainant received from the XXXXXXX company a letter dated

August 16, 2019, which contained "Associated Services Agreement XXXXXXX" for the product

XXXXXX, entered into on June 25, 2019, between the company XXXXXX, represented by XXXXX,

and the company XXXXXXX. On September 11, 2019, the complainant contacted the accused by e-mail

and the company XXXXXX at the addresses XXXXXXX and XXXXXX, inter alia, asking for what reason

there was no immediate removal of her personal data.

[13] On September 18, 2019, the complainant received a reply to this question by e-mail from

back-office manager of the accused, in which it was confirmed to her that all cooperation

of the complainant "was properly with our company, then with the company XXXXX and with the company XXXXX

terminated", and that the complainant will continue to work with the current supplier

electricity. Furthermore, the complainant was informed that based on her request for deletion of personal data

organizational and technical measures were implemented based on which

they won't be anymore

processed her personal data for the purposes of concluding and fulfilling contracts.

[14] On January 17, 2020, the complainant was visited by a sales representative of the accused, who told her
(application) and then "Agreement
presented the "Framework Agreement for the Provision of Services"
on representation" with the complainant's personal data already filled in. In addition, the accused said that on
On June 28, 2019, it entered into a "Framework Agreement on the Transfer of Client Data" with the company XXXXXX
contracts" in accordance with § 1895 of the Civil Code, while Appendix No. 2 of this contract dated 8
In January 2020, the contract with the complainant was transferred to her.
[15] It follows from the extract from the commercial register that he was the director of the company XXXXXX
in the period from January 10, 2018 to June 2, 2019 XXXXX, who is the executive of the accused from her
creation, i.e. from June 11, 2019 to the present.
[16] The appellate body first dealt with the accused's argument that she was processing personal data
data of the complainant based on the valid Application dated May 29, 2019, which was given to her
forwarded on January 8, 2020 by XXXXXXX. According to the administrative file,
the complainant withdrew from the Application dated May 29, 2019 by letter dated July 18, 2019
according to § 1829 para. 2 in conjunction with § 1820 para. 1 letter f) of the Civil Code. Company
XXXXXX confirmed to the complainant on 18 September 2019 that all cooperation had been duly terminated,
and that measures have been taken on the basis of which her data will no longer be processed.
The complainant was therefore in the legitimate expectation that the company XXXXXX would withdraw from the contract
accepted and that her personal data are no longer processed for the purpose of fulfilling the contract. Day
On January 21, 2020, the company XXXXXXX issued an invoice to the complainant, signed by XXXXX,
by the executive of the accused, for CZK 3,630 "due to the cancellation of this Application after the expiry of the 14-day
period", from which, according to the appeal body, it follows that she accepted the withdrawal from the contract.
The representative of the accused also in his statement to the Police of the Czech Republic dated March 10, 2020
stated that "there really was an administrative error in the case of the client" and that "due to
due to the negligence of the relevant employee(s), the client was incorrectly processed
to the back-office". At the oral hearing on July 13, 2021 (protocol of the oral hearing

no. UOOU-00575/21-9) the representative of the accused informed that "The application with XXXXXX is therefore still valid and an effective contract". The appellate body thus summarizes that the accused and company XXXXX confirmed to the complainant that the contractual relationship was properly terminated, she was later issued for the termination of the relationship

an invoice for payment of the contractual penalty signed by the executive of the accused, and then the executive the accused confirmed that, in the case of the complainant, there was an error in the processing of her personal data data. He considers the accused's arguments regarding the invalidity of the termination of the contractual relationship as such appeal body for expedients.

[17] The appellate authority considers that to assess whether the accused processed personal data in accordance with Regulation (EU) 2016/679, it is not essential how the termination took place of the contractual relationship between the complainant and company XXXXXXX, but only that it was contractual the relationship ended, which resulted in the termination of the legal title for the processing of personal data complainants. Although the Office can assess the circumstances of termination of the contractual relationship itself (whether the complainant withdrew from the contract according to § 1820 of the Civil Code, whether her withdrawal from the contract was considered a proposal to terminate the contract by agreement, which the other contracting party party accepted, or whether the Application dated May 29, 2019 was already terminated by the conclusion of the Framework

contract for the provision of services with the accused on July 10, 2019, in view of to the identical subject of performance and the apparent attempt of XXXXXX to transfer the contract to the complainant to the accused), it is not according to the appellate authority in the case under consideration necessarily. Based on the above-described actions of both companies, the appeal body has for sufficiently proven that the contractual relationship between the company XXXXXX and the complainant was ended, while the accused knew about it, and not only because of the personal connection by the person of the accused's manager and sales representative XXXXXXX, but also considering that the termination of the contract was confirmed (for both companies) by the customer center of the accused. Considering that the contractual relationship between the complainant and the company XXXXXXX did not last,

there could not even be a valid transfer of the Application dated May 29, 2019 according to § 1895
of the Civil Code.

[18] According to the appeal body, the accused therefore knew that the contractual relationship between the complainant
and the company XXXXXX was terminated, yet it continued to process the complainant's personal data, already
without legal title according to Article 6(1) of Regulation (EU) 2016/679. Accused (through
back-office employee) on September 11, 2019, she herself declared the acceptance of organizational
and technical measures on the basis of which the complainant's personal data will not be processed
for the purposes of concluding and fulfilling contracts, which she obviously did not do. Still wrongfully accused
transferred the complainant's personal data to processor XXXXXX, who visited on January 17, 2020
the complainant with a proposal to conclude a contract in which her personal data had already been pre-filled.
information (e.g. from

[19] From publicly available

consumer websites

organization dTest XXXXXXXX) it follows that XXXXXXX's behavior is towards consumers
at least incorrect, which its then manager XXXXXX must have known about. In your own way
repeated assertion, he strongly distances himself from the actions of "XXXXXXX", and all the more he should have checked
whether the contracts forwarded by XXXXXXX are valid. The manager of the accused, however, despite the fact that
sent an invoice to the complainant on behalf of the company XXXXXXXX "due to the cancellation of this Application po
after the expiration of the 14-day period", still considers the contract to be valid and effective.

[20] Based on the above, the appellate body fully agrees with the opinion of the administrative body
first-instance authority that the accused has violated her obligation specified in Article 6, paragraph 1 and Article 32
Regulation (EU) 2016/679.

[21] On the basis of the Framework Agreement on the Assignment of Client Agreements dated June 28, 2019
and subsequent two amendments, 21 contracts were forwarded to the accused, while 10 contracts were
concluded with persons older than 80 years, another 5 contracts were concluded with persons aged 70 to 75
years and only 2 contracts were concluded with persons under the age of 65. Average age of persons with whom

contracts were concluded, he was 75.4 years old (calculated as of 2020). Addendum No. 2 was dated January 8 2020, 8 contracts were transferred (including the contract concluded with the complainant), while only 2 contracts were concluded with persons under 70 years of age. From the above according to the appellate body it follows that the accused was well aware that mostly concluded contracts were being forwarded to her with elderly people. The appellate body thus did not accede to the accused's argument that her the proceedings could take place regardless of the age of the complainant. The probability that it would the unauthorized processing of personal data occurred in the case of an elderly person, namely very high.

[22] Furthermore, the appellate authority states that the applicant, born in XXXXX, was at the time signing of the contracts in question via XXXX. From the initiative sent to the Office by the complainant's nephew it follows that the withdrawal from the aforementioned contracts concluded by the complainant (including further negotiations leading to the termination of the contractual relationship and the processing of the complainant's personal data) sent

appellant's nephew on her behalf. In the Official Record of the Police of the Czech Republic no. XXXXXX dated 17 January 2020, it is stated that the complainant's nephew intends her due to her age represent and solve the matter for her. The appellate body considers that the complainant can, given her of age and with regard to the fact that she used the help of her to defend her rights against the administrator nephew, consider a vulnerable person. The concept of "vulnerable person" is not in the national either uniformly defined in international law. According to Recital No. 75 of Regulation (EU) 2016/679, they are for Children are considered vulnerable persons. A more detailed definition can be found in the WP29 Guidelines for assessing the impact on data protection and determining whether “it is likely that data processing will result in a high risk' for the purposes of Regulation 2016/679 of 4 April 2017 as updated (WP 248 rev.01 p. 12). It follows from the given instructions that the assessment, whether there is processing of data concerning vulnerable data subjects is material “because of greater power imbalances between data subjects and data controllers, which means that for individuals it may be impossible to easily express consent or disagreement with the processing of your data,

or exercise your rights. Vulnerable subjects may include children (who may be considered
they are not able to consciously or thoughtfully express disagreement or agreement
processing their data), employees, more vulnerable groups of the population that require
special protection (persons with mental illness, asylum seekers or the elderly, patients, etc.) a
all those in whose cases it is possible to establish an imbalance in the relationship between status
data subject and administrator". By unauthorized processing of the complainant's personal data
her basic rights and freedoms were threatened to a greater extent.

[23] With regard to the sanction imposed above, the appellate authority states that the Municipal Court in Prague is in line
of his judgments (e.g. in case No. 11 A 178/2019 of 17 June 2021) stated that it is
"necessary to take into account the fact that administrative sanctions must fulfill not only a preventive function, but also
even punitive, which means that the imposed sanction must be felt by the offender
non-negligible damage - in this case as a negative interference in one's property sphere".
Article 83(1) of Regulation (EU) 2016/679 states that the imposition of administrative fines should be effective,
adequate and deterrent. Although the Appellate Authority agrees with the reasoning behind the penalty imposed
stated in the contested decision (the right to privacy, the legality of the processing was violated
referred to in Article 6(1) of Regulation (EU) 2016/679 is a fundamental principle, accused by its conduct
she committed two offences, and further the offense was committed against an elderly person), she still has
for the fact that the sanction imposed above is due to the circumstances of the case and the accused person
unreasonably high. According to the appeal body, the administrative body of the first instance insufficiently
took into account the fact that the accused was found guilty of committing two offences, but only against
one natural person, therefore he reduced the fine.

[24] When determining the amount of the fine, the appellate body assumed that the accused by his actions
(by processing personal data without a legal title) violated one of the basic principles of the regulation
(EU) 2016/679, for which she could be fined up to
20,000,000 EUR. The appeal body took into account that the unauthorized processing of personal data
the accused concerned only one data subject, while the scope of the processed data

was not too broad (name, surname, home address and telephone number). As in aggravating

circumstances, the appellate body took into account the fact that the accused had committed several offenses by her actions and these offenses were committed against a person of advanced age. From the financial statements established to the collection

commercial register documents show that the accused's net turnover for 2020 was CZK 16,737,000

(the financial statements for the year 2021 were not included in the collection of documents as of the date of issuance of this decision).

The appellate body believes that a lower fine will be adequate and taking into account the turnover of the accused sufficiently effective and deterrent.

[25] Regarding the accused's argument regarding the disproportionateness of the imposed fine in terms of the previous one decision-making practice of the Office, the appellate authority states that in the case referred to by the accused, namely Article 6(1) of Regulation (EU) 2016/679 was also violated, but the offense was committed entirely

different behavior (sending offers of goods and services via data boxes)

and thus the cases cannot be compared.

[26] The defendant stated in her deposition that no harm was caused to the complainant.

The appellate body states that the complainant filed a complaint based on the actions of the accused

Office and the sales representative who visited her on January 17, 2020, she called the Czech Police

of the Republic. The above proves that the complainant perceived the behavior of the accused and her business partner representative as very annoying. The appellate body considers that the complainant was mentioned

non-pecuniary damage caused by the action.

[27] For all the above reasons, therefore, the Appellate Body decided as stated

in the statement of this decision.

Lesson learned:

this decision in accordance with the provisions of § 152 paragraph 5 of the Act

Against

No. 500/2004 Coll., Administrative Code, dissolution cannot be filed.

Prague, April 7, 2022

M.Sc. Jiří Kaucký

chairman

(electronically signed)