OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-04674 / 18-33

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, according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, and according to § 10 paragraph 1 letter a) of the Act

No. 480/2004 Coll., on certain information society services and on the amendment of certain acts,

decided on 24 January 2019 pursuant to § 152 para. b) of the Administrative Procedure Code as follows:

Appeal filed by the accused, the company

based

against the decision of the Office for Personal Data Protection

Ref. UOOU-04674 / 18-27 of 19 November 2018, is rejected and the contested decision

is confirmed.

Justification

Proceedings on suspicion of committing an offense pursuant to § 11 par. 1 let. a) point 1 of the Act

No. 480/2004 Coll., on certain information society services and on the amendment of certain acts,

conducted against the accused, the company

based

(hereinafter referred to as the “accused”) was initiated by issuing an order no. UOOU-

04674 / 18-24 of 12 October 2018. The basis for its issuance was the inspection report

Ref. UOOU-04674 / 18-21 of 7 September 2018 acquired pursuant to Act No. 255/2012 Coll., On control

(Control Rules), by the inspector of the Office for Personal Data Protection Ing. Josef Vacula within

checks carried out on the accused, including the file gathered under this

controls. However, on 22 October 2018, the Office for Personal Data Protection (hereinafter referred to as the “Office”)

delivered the opposition to the accused, which was the said order in accordance with § 150 paragraph 3 of the Administrative

Procedure Code

annulled and the administrative body of the first instance continued the proceedings.

Based on the results of the following proceedings, the administrative body of the first instance issued a decision

Ref. UOOU-04674 / 18-27 of 19 November 2018 (rozhodnutí the Decision ’), stating that

the accused repeatedly spread unsolicited commercial messages to the specified e-mail addresses

in the sense of § 2 letter f) of Act No. 480/2004 Coll., while the addressees of the business in question

the communications did not consent to their sending and were not charged to customers. She violated this

obligation stipulated in § 7 paragraph 2 of Act No. 480/2004 Coll., and therefore committed an offense

according to § 11 par. 1 let. a) point 1 of Act No. 480/2004 Coll., for which a fine was imposed on her

in the amount of CZK 15,000.

The defendant objected to the decision with a proper appeal (albeit incorrectly marked as

appeal). In particular, it stated that it had already taken remedial action during the inspection,

duly instructed the responsible staff on strict compliance with all provisions of the law

No. 480/2004 Coll., as well as checked the database of all e-mail addresses to exclude

any further errors in the future. She further emphasized that the offense was not in any way

does not argue or does not question the commission of the offense, but in her view it is

the sanction imposed is disproportionate, taking into account the negligible seriousness of the breach.

The decision should then be expressed only briefly and insufficiently, if only

points out the absence of mitigating or aggravating circumstances and the extent of the consequence

was relatively small. In this connection, the accused stated that the list of mitigating circumstances in § 39

Act No. 250/2016 Coll., on liability for misdemeanors and proceedings on them, is only demonstrative

and the Office had to take into account that the consequence of the violation of the law is completely negligible, did not cause no damage and violations related to only ten public e-mail addresses.

The accused therefore considers that the amount of the sanction is disproportionate (or that the administrative body of the first the level of the offense is not commensurate and

given the negligible effects of the error and the immediate remedy itself

discussion of the administrative offense corrective effect and in this case was sufficient. Moreover,

the inspecting inspector should express in the inspection that the whole matter will be

resolved without financial penalty. For these reasons, the defendant therefore proposed that the decision be annulled.

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

its release.

In that regard, it states, first of all, that the arguments contained in the appeal are, in principle, merely repeated

allegations made by the accused in the previous proceedings, which were, albeit sometimes very

briefly, has already been settled at first instance, with the appellate body dealing with this settlement

in principle identifies and refers to them in the alternative.

In particular, however, the Appellate Body considers it necessary to reject the defendant 's view that

the sanction of CZK 15,000 should have been disproportionate, given the fact that it could

be assessed in the amount of up to 10,000,000 CZK and also taking into account that the sanction in the imposed

the amount must be perceived as minimal regardless of the economic result of the accused. Although

the accused has taken certain measures to ensure that commercial communications are sent for the next time

in accordance with Act No. 480/2004 Coll., this does not relieve it of liability for established violations

obligations which are unquestionable and which have affected the privacy of the persons concerned. In that

The context must then be considered irrelevant and, moreover, the unsubstantiated statement of the inspector

inspector regarding the exclusion of a financial sanction.

On the other hand, it must be acknowledged that the extent of the consequence, as it was accused of tortious conduct

only ten persons are affected, which is relatively small, which is a mitigating circumstance in the sense

§ 39 of Act No. 250/2016 Coll., However, this was taken into account in determining the amount of the fine, which

was, as indicated above, measured at the very lower limit.

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The appellate body therefore rejected the defendant's arguments. At the same time after a general review

found no reason to be unlawful.

On the basis of all the above, the Appellate Body therefore ruled as indicated

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, January 24, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

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