OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00D2FIT *

Ref. UOOU-09166 / 18-25

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 4 February 2019 pursuant to § 152 para. (a) of the Administrative Procedure Code as follows:

The appeal filed by the accused, XXXXX, established XXXXX, against the decision of the Office for Protection personal data ref. UOOU-09166 / 18-19 of 3 December 2018, is partially complied with, namely so that

1st statement II. of the contested decision is worded as follows:

„II. for which, according to § 35 letter a) of Act No. 250/2016 Coll., on Liability for Offenses and proceedings against them impose an administrative penalty of reprimand ';

2. from statement III. of the contested decision, the word 'both' is deleted after the words' costs in the amount of CZK 1,000 "

and the remainder of the contested decision is upheld.

Justification

Proceedings on suspicion of committing an offense pursuant to § 11 par. 1 let. a) points 1 and 2 of the Act No. 480/2004 Coll., on certain information society services and on the amendment of certain acts against the accused, XXXXX, established in XXXXX (hereinafter referred to as the “accused”),

order no. UOOU-09166 / 18-15 of 22 October 2018. The basis for its issuance were complaints
delivered to the Office for Personal Data Protection (hereinafter referred to as the “Office”) in the period from September 2018 to October
2018. However, in view of the defendant's opposition, the said order was in accordance with Section 150
paragraph 3 of the Administrative Procedure Code was repealed and the administrative body of the first instance continued the proceedings.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-09166 / 18-19 of 3 December 2018 (rozhodnutí the Decision ’), stating that
accused of the e-mail address XXXXX repeatedly spread unsolicited commercial communications in

within the meaning of § 2 letter f) of Act No. 480/2004 Coll., the addressee of the commercial communications in question
he did not consent to their sending and also previously refused to send commercial messages. The team
the accused violated the obligation stipulated in § 7 paragraph 2 of Act No. 480/2004 Coll., and therefore
committed an offense under § 11 para. a) point 1 of Act No. 480/2004 Coll., for which it was
imposed a fine of CZK 15,000. At the same time, however, the decision stated that the accused
by its actions did not violate the provisions of § 7 par. a) of Act No. 480/2004 Coll. prohibiting
send e-mails for the purpose of disseminating commercial communications, unless these are clearly and unambiguously
marked as a commercial communication, and therefore did not commit an offense under § 11 para. and)
point 2 of Act No. 480/2004 Coll.
The accused objected to the decision with a proper appeal. In particular, she stated that
the decision is to be incorrect and that she has not committed an offense of which she was found to have been found
guilty. For those reasons, the defendant sought annulment of the contested decision.
In that regard, it challenged, in particular, the findings of fact set out in the statement of reasons for the decision,
according to which: „ině accused on 6 June 2018 on the basis of the received notification ref. UOOU-
05275 / 18-5 deleted the email address XXXXX from its database to send more
commercial communications ’. The fact is, however, that the accused, as stated in the appeal,

on June 6, 2018, deleted XXXXX's email address from its distribution database

commercial communications at the request of the addressee of the commercial communication sent to the accused on 4. June 2018 to the e-mail address XXXXX and therefore not on the basis of the notification of the Office ref. UOOU-05275 / 18-5 of 23 July 2018, which was not available at all at that time

(The accused was not delivered until 26 July 2018).

The accused further stated in the filed appeal that the user of the e-mail address XXXXX really did

He refused to send commercial communications from the accused. However, the office should have ignored the others

circumstances which, in the opinion of the accused, indicate that he cannot be found guilty of the offense

of the above offense. The accused then states the facts that, if any, according to

considered in its entirety and not individually, it must lead to a conclusion about it

innocently. On 17 July 2017, it was carried out by means of distance communication

(internet) registration in the user account on the e-shop accused under the name "XXXXX", which

was placed in the system accused under number 3479273 and was under that registration on the same day

concluded by means of distance communication (internet) purchase contract No. 9170498189. On 4.

June 2018, the addressee of the commercial communication and the user of registration No. 3479273 requested the cancellation

sending business messages to the e-mail address XXXXX. The request has been sent by e-mail

accused XXXXX. On June 6, 2018, the accused removed the e-mail address XXXXX from the database

for sending business messages and further business messages to the e-mail address

XXXXX did not ship. Subsequently, the user under registration No. 3479273 requested the deletion of contacts

personal data (e-mail address, telephone number) from the accused's database, after which the accused

deleted that information, including your XXXXX email address, from its database. On September 16, 2018

However, it was done by means of distance communication (Internet user registration

account on the accused's e-shop under the name "XXXXX", which was deposited in the accused's system under

No. 4244352 and on the same day, means of communication under

distance (e-shop) purchase contract No. 9180511897 with the e-mail address XXXXX. User

therefore registered under No. 4244352 had never previously refused to send commercial communications. From the perspective of

The accused was a new customer, based on a new registration, which is to be completely

understandable, because in the e-shop system, a mere match of name and address cannot be considered

identity of two persons, when there are commonly cases of two persons with the same name, and

surname living at the same address (eg father / son, mother / daughter). Extra email address

XXXXX appeared in the accused's database only at the newly established registration No. 4244352. Accused

therefore, it considers that it acted in good faith that it was a new customer and

used the e-mail address in question in accordance with Section 7, Paragraph 3 of Act No. 480/2004 Coll. for

the need to disseminate their own commercial communications concerning their own like products

or services.

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

its release.

In that regard, it states, in particular, that the statement in the statement of reasons for the decision that

„… Accused on 6 June 2018 on the basis of the received notice Ref. UOOU-05275 / 18-5

deleted the email address XXXXX from its database for further business communications "

it is really incorrect and should have been more precise instead of the words "based on the notification received"

stated "at the request of the addressee of 4 June 2018". At the same time, however, the appellate body

notes that this error has no bearing on the assessment of the case.

Regarding the defendant's arguments, indicating that a subsequent user registration has taken place

"XXXXX" with the e-mail address XXXXX., It should be noted that the accused had the parameters of her

system set up so that the user of this e-mail address even after making another purchase at

The accused no longer received any further business communications, so this email address should be

included in the so-called Robinson list, in order to enable the accused to meet

an obligation not to send further commercial communications to e-mail addresses that have already refused to do so.

The refusal to send further commercial communications to the e-mail address XXXXX has been made
already on 4 June 2018, while § 7 paragraph 3 of Act No. 480/2004 Coll. provides details
The customer's electronic contact can be used for the dissemination of relevant business
notice, but only if the customer has not already refused. In addition, from the documents sent
in the context of the appeal (Annexes 3 and 4), it is clear that the accused had information on
that "XXXXX" has requested the deletion of the e-mail contact. From the designation of Annex No. 4 submitted
The appeal could be inferred that a new consent had been granted, but the accused did nothing
she did not even try to prove such.
The appellate body therefore rejected the defendant's arguments. At the same time, however, he stated that the administrative
the first instance authority did not take sufficient account of extraordinary measures in determining the administrative penalty
the circumstances of the case where, after the relevant email address has been discarded, on the basis of
rather rudimentary expression, this address was relatively small in time
re-registered. The interference with the privacy of the person concerned was therefore negligible
and, for those reasons, the appellate body did not find that a fine was imposed, albeit at the very bottom
limits of the statutory rate for reasonable and administrative punishment moderated.
In this context, however, the appellate body accused, as has been indicated above, of
urges that immediate measures be taken to eliminate similar events without delay;
Therefore, to avoid sending business messages even if the user emails that
he has already refused this, yet he has re-ordered a certain product or service. Such a suitable one
the primary measure could be, in particular, the establishment of an effectively functioning user database
e-mail addresses who refused to send commercial messages (ie a database of so-called Robinsons).

It is also necessary to avoid a situation where the order of goods or services would be conditional
by giving your consent to the sending of commercial communications. The appellate body then according to § 45 of the Act
No. 250/2016 Coll. warns the accused that in case of recurrence of a similar illegal
negotiations in the future, in particular as a result of not taking effective corrective action, would be

it is necessary to proceed to the imposition of a fine.

After an overall examination, the Appellate Body found no further reason in any other respect causing illegality or incorrectness of the decision. Based on all of the above therefore ruled as set out in the operative part of this decision. In this context then states that such a decision is in the light of the appeal and cannot cause it harm to any of the participants.

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, February 4, 2019

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman