OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DR4MD *

Ref. UOOU-00136 / 19-31

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10
and § 152 para. 2 of Act No. 500/2004 Coll., Administrative Procedure Code, and further pursuant to § 10 para. a) and § 12
paragraph 1 of Act No. 480/2004 Coll., on certain information society services and on change
certain laws, decided pursuant to § 152 para. 6 let. b) of the Administrative Procedure Code as follows:

Appeal filed by the accused, XXXXXX, against the decision of the Office for Protection
personal data ref. UOOU-00136 / 19-25 of 21 June 2019, is rejected and challenged
the decision is confirmed.

Justification

By decision no. UOOU-00136 / 19-25 of 21 June 2019 ('the decision') was
the accused company XXXXXX (hereinafter referred to as the “accused”), found guilty of committing offenses
according to § 11 par. 1 let. a) points 1 and 2 of Act No. 480/2004 Coll., on certain information services
and to amend certain laws as they unjustifiably disseminated the statement specified
commercial communications without a legal title and without proper labeling. For her described tortious conduct
a fine of CZK 120,000 was imposed.

The accused company filed an appeal against the decision within the statutory time limit. First and foremost
disputed the conclusion that it did not have consent to the commercial communications sent. In that
In that regard, it stated that it had provided access to the database, which they were required to prove
these cannot be fraudulent as they have been examined by the administrative authority of the first instance together with the
representative

accused online in the Office's premises. She also commented on XXXXXX.

In this case, it should have clearly demonstrated that a request had been sent from that e-mail

services of a company that has a website established and operated by it, by submitting a form

on the request, the user agreed to send a request for evaluation of the company. She further stated that

for all other e-mail addresses, modified the business conditions and all addresses in the database

are part of the websites that users create in the system themselves. It also stores IP

the address from which the registration originated. In the next part, the accused described the procedure for registration,

sending

messages, options to log out of the system and delete or edit the presentation. Finally accused

stated that they are only a small company and the amount of the fine is very crucial for them, taking

the previous two fines were forced to pay because the company's executive could not due

disease to respond in a timely manner.

The appellate body examined the contested decision in its entirety, including the process which

preceded its publication, and reached the following conclusions.

The administrative documentation shows that the accused company disseminated more specified in the statement

commercial communication in the sense of § 2 letter f) of Act No. 480/2004 Coll., with none

does not question in any way. The appellate body therefore first considered the existence of a legal title

to such dissemination.

From the wording of Act No. 480/2004 Coll. it follows that the sender of a commercial communication must prove that:

has the consent of the addressee of the commercial communication, or that the addressee is his customer

in the sense of § 7 paragraph 3 of Act No. 480/2004 Coll. The burden of proof thus lies with him

all the complainants stated uniformly that the accused had never given their consent and were not hers

customers. However, at the request of the Office, the accused submitted only printscreens from the database in which they are

individual complainants, including the date of their alleged registration on the website

accused together with publicly available data. To the business message sent to the user

e-mail address XXXXXX stated that he apparently gave his consent to the use of closer

unspecified contact form. Although the accused wording of the consent itself
it did not document its grant in any way and at the same time in the proceedings before the administrative
authority of the first instance in the sense that it only considers that it could have been granted
this (vague) consent to take place, taking into account the content of the commercial communication,
the appellate body emphasizes in particular that the consent incorporated in the terms and conditions, without
in addition, the provision of which is not directly related to the dissemination of commercial communications,
apparently it could not even be considered freely granted. At the same time, the appellate body considers
necessary to state that the allegation of a mere requirement to evaluate the services of a third party does not correspond
the content of the sent commercial message, because in addition to encouraging the evaluation of the presentation of the third
the communication of the accused is also promoted in the communication.
As for the documented screenshots from the database accused, it can be stated that although it is
true that they can be constructed relatively easily (cf. the judgment of the Supreme Court)
Administrative Court ref. 9 As 183 / 2017-41 of 31 July 2018, according to which simple
printscreen, if disputed and not supported by further evidence, is in principle insufficient
to prove the alleged facts), this is not directly relevant in this case. Essential
is that even if they reflect the actual contents of the database of the accused, which is not possible in this case
find reasonable doubt, the statement itself containing, in principle, publicly available information
does not further prove the real existence of the legal relationship between the user and the accused, either
consent or customer relationship granted. Especially not in a situation where all the complainants
uniformly registering or any other relationship with the accused strongly denies the user an email
XXXXXX has substantiated a number of previous refusals of any cooperation or sending of business
communications addressed to the accused companies. It is also possible to point out the improbability
registration of users in categories of services which they do not provide and whose activities are not otherwise related to it.
According to XXXXXX, he runs a software development business while

in the database the accused is listed in the category of engineering. He himself stated that he would do so

he certainly never registered. Similarly, the file documentation shows that the user e-mail
XXXXXX operates a computer service, however, the accused is registered, for example, in categories
pressing or food technology. It is also known ex officio that:
in the case of the accused, more similar cases of erroneous (alleged) registrations can be found. For the same
for example, the user pointed to the e-mail address XXXXXX, to whose address the business was directed
The communication was, among other things, the subject of administrative proceedings in file no. No. UOOU-07544/17.
Regarding the relevance of the data submitted from the database, the appellate body also came to the following conclusions
finding. According to the business communication dated March 24, 2017 addressed to the user
user XXXXXX, the user was registered to date on the following categories: “Machines
and facilities Kolín ”, while the commercial communication of 30 November 2017 shows that in this
The day was already held in the following categories: “Machinery and equipment Kolín, Automation technology, Pressing
technology Kolín, Food technology Kolín “. According to an extract from the database, which accused within
provided her comments to the e-mail contact XXXXXX, but had to update
profile to occur on August 12, 2016. Obviously, the profile had to be updated without it
the record of updating the data in the database in any way, while emphasizing that
that this happened at a time when this user has repeatedly requested that their profile be deleted
and refused to send business messages. Similarly, the appellate body points out irregularities
at the time of the alleged registration of the relevant user. According to the documented data from the database, the user
XXXXXX was due to register on 3 May 2010, however, as the complainant demonstrated under
correspondence with the Office, in the catalog of the accused was kept, as well as commercial communications were
sent, at least since 2008 - ie before the alleged registration. This is another reason
leading appellate body to doubts about the relevance of the data recorded in the database
in order to prove a real relationship with the addressees of the commercial communication.
However, in addition to the submitted screenshots from the database, accused of no other facts
to support its claims to grant consent or the existence of a customer relationship - e.g.
e-mails confirming the granting of consent (so-called double opt-in) or paid invoices. Specifically, it is possible

point back to the facts documented by XXXXXX. He was in a business statement from

On August 7, 2017, he was informed that his complete presentation had been completed and repeated

activation is conditional on payment of a fee of CZK 3,327.50. Activation of the complete presentation

however, any payment of the invoice was not documented by the accused.

In view of all the above, it is possible to agree with the opinion of the administrative body of the first instance,

namely that the accused company did not prove a proper title for dissemination in the statement of the specified

business communications.

Finally, the appellate body dealt with the amount of the fine. Its adequacy, above all, is not possible now

evaluate only in terms of the number of unauthorized commercial communications. Appeal

The Authority emphasizes that the type and level of sanctions should reflect the nature and severity of the sanction committed

tort, and these characteristics must be considered in relation to each other so that

the sanction imposed, in addition to its repressive nature, also led the accused to redress

and prevented further problematic behavior.

Given that a number of previous proceedings had already been conducted with the accused in a similar case

- specifically inspections sp. No. INSP4-6920 / 08 and file no. INSP4-3232 / 09 (in the contested decision

there is an obvious typing error when sp. UOOU-3232/09) and further

administrative proceedings on fines file no. UOOU-07195/16 (imposed a fine of CZK 25,000), subsequently

sp. UOOU-07544/17 (imposed a fine of 37,000 CZK) and the last file No. UOOU-00752/18

(fined CZK 69,000). In all the above proceedings, the administrative body arrived at

to the conclusion of the violation of Act No. 480/2004 Coll., as the accused unjustifiably disseminated business

a statement to which no legal title was absent. She is thus accused of her duties in the area

unsolicited advertising had to be clearly aware, however, all previous proceedings,

including the fines imposed, did not lead to the correction of the defendant's defective practices. As essential

then the appellate body also considers a clear lack of interest in the rights of users - specifically users

XXXXXX, who has worked for many years to end harassing correspondence,

and despite several assurances from the accused that he would no longer be harassed, to no positive

there has been no change.

The appellate body thus considers the fine imposed to be adequate and duly justified. At the same time

is within legal limits, rather at the very lower limit of the possible legal rate. That

accused in the collection of documents of the Commercial Register in no way

it does not follow that it could be regarded as a liquidator, and therefore also on this point by the appellate body

notes that he did not find any errors on the part of the administrative body of the first instance.

After an overall examination, the appellate body did not find the decision illegal, either

found no errors in the procedure which preceded the issuance of the decision. Based on all

therefore, the appellate body rejected the defendant 's arguments and ruled as follows

is set out 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, December 20, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)