

OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00ENHHI *

Ref. UOOU-04077 / 20-13

DECISION

The President of the Office for Personal Data Protection as the appellate body competent under the provisions § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided in accordance with the provisions of § 152 paragraph 6

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

Appeal of the accused, company XXXXXX, against the decision of the Office ref. UOOU-04077 / 20-6 of 19 November 2020, is rejected and the contested decision is upheld.

Justification

Definition of things

[1] Administrative proceedings on suspicion of committing an offense pursuant to § 62 para. b) and c)

Act No. 110/2019 Coll., on the processing of personal data, in connection with the processing personal data of industrial property rights holders from public registers has been launched delivery of order no. UOOU-04077 / 20-3 of October 20, 2020 accused companies XXXXXX (hereinafter "the accused").

[2] The basis for issuing the order was the file collected by the Office for Protection personal data (hereinafter referred to as the Office) on the initiative of the Industrial Property Office of 17 September 2020 concerning the sending of unsolicited commercial offers to owners industrial property rights accused.

[3] It follows from the above complaint - the complaint forwarded to the Office on 17 September 2020 that:

XXXXXX in connection with an unsolicited offer sent to him by the accused as

to the owner of the industrial property rights, by e-mail sent on 8

September 2020 to the addresses accused of XXXXX, XXXXX and XXXXX objection to the processing of his personal data within the meaning of Article 21 of Regulation No 2016/679 of 27 April 2016 on the protection of personal data individuals with regard to the processing of personal data and on the free movement of such data repealing Directive 95/46 / EC (hereinafter referred to as "Regulation (EU) 2016/679")

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requested the deletion of his personal data pursuant to Article 17 of Regulation (EU) 2016/679 however, the defendant did not respond to the request in question (within the meaning of Article 12 paragraph 3 of Regulation (EU) 2016/679).

[4] By the order in question, the accused was imposed on the basis of the application of the absorption principle a fine of CZK 150,000 for committing an offense pursuant to Section 62 para. b) of the Act No. 110/2019 Coll. in parallel with the commission of an offense pursuant to § 62 para. c) of the Act No. 110/2019 Coll.

[5] Based on the opposition filed by the defendant's lawyer, the order was in compliance with the provision of § 150 paragraph 3 of Act No. 500/2004 Coll., Administrative Procedure Code (hereinafter referred to as "Administrative repealed and the administrative proceedings continued. The subject - matter of the proceedings itself is legal the defendant's representative did not comment - the opposition was not justified in any way.

[6] Subsequently, on 19 November 2020, the administrative body of the first instance issued a decision Ref. UOOU-04077 / 20-6, in which he maintained his legal opinion that the accused committed offenses under § 62 para. b) and § 62 par. 1 let. c) of the Act No. 110/2019 Coll. These offenses were intended to infringe Article 6 (1) and Article 12 Article 3 (3) of Regulation (EU) 2016/679 (ie not contrary to the order in breach of Article 17 Regulation (EU) 2016/679). The amount of the fine imposed was the administrative body of the first instance compared to the amount stated in the order reduced by CZK 30,000, ie to CZK 120,000.

[7] The administrative body of first instance concluded in its decision that the accused

demonstrably has no legal title to the processing of personal data pursuant to Article 6 (1) Regulation (EU) 2016/679, as it does not have the consent of the entity to which it is published (and the defendant further used) personal data within the meaning of Article 6 (1) (a) (a) of the Regulation (EU) 2016/67, and other legal titles of processing that would theoretically be possible apply in this case. According to the administrative body of the first instance, the accused does not testify processing of personal data necessary for the purposes of legitimate interests within the meaning of Article 6 paragraph 1 (a) (f) Regulation (EU) 2016/679, or the processing of personal data in public interest pursuant to Article 6 (1) (a) (e) Regulation (EU) 2016/679, as she is not accused of it authorized by a special legal regulation.

[8] The administrative authority of the first instance also stated in its decision that the accused infringed the data subject's right under Article 12 (3) of Regulation (EU) 2016/679, as he followed him did not inform the processing of the measures taken.

[9] The decision of the administrative body of first instance in question was a lawyer accused delivered on November 19, 2020. On December 4, 2020 filed legal representative accused through the data box against this decision appeal.

Decomposition content

[10] In the appeal, the defendant's lawyer merely stated that he was challenging the correctness decision of the Office no. UOOU-04077 / 20-6 of 19 November 2020 ('the contested decision' decision").

[11] Administrative body of the first instance, in accordance with the provision of § 37 paragraph 3 of the Administrative Procedure Code

sent a letter of formal notice to the defendant's lawyer on 8 December 2020, for it was not clear from the appeal that what was wrong was found

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of the contested decision. A deadline of 10 days from delivery was set for supplementing the submission the above challenges. However, the defendant's lawyer did not file a deadline within the time limit

did not complete.

Assessment by a second instance body

[12] Given that the lawyer of the accused company objected to the merits the irregularity was not substantiated in any way and no objections were raised, the contested decision, as well as the proceedings which preceded it, were considered by the Board of Appeal authority only in terms of its compliance with legal regulations, in the sense of the provisions of § 89 paragraph 2 of the Administrative Procedure Code.

[13] The Appellate Body concluded that both the contested decision and the procedure which it issued were in accordance with the law and that this decision was also taken duly substantiated by the administrative authority of the first instance.

[14] The Appellate Body agrees with the legal opinion of the first instance administrative body stated in the operative part of the contested decision, namely that the defendant did not have no legal title under the provisions of Article 6 (1) of Regulation (EU) 2016/679 to processing of personal data in relation to the use of personal data obtained from public registers for the purpose of offering trade or services, as the necessity of such processing that would take precedence over interests or fundamental rights and freedoms data subject requiring the protection of personal data has not been demonstrated. Even if perhaps accused this legal title testified, it was her duty to the personal data of the data subject after him do not further process the opposition unless it demonstrates compelling legitimate reasons for such processing as would outweigh the interests or rights and freedoms the data subject, or the reasons for determining, enforcing or defending legal claims, in accordance with Article 21 (1) of Regulation (EU) 2016/679.

[15] The Appellate Body also agrees that it is not possible in this case either processing of the complainant's personal data in the public interest pursuant to Article 6 (1) (a) E) Regulation (EU) 2016/679, as the accused is not empowered by a special legal regulation or law of the European Union, as required by Article 6 (3) of Regulation (EU)

2016/679.

[16] Consent within the meaning of Article 6 (1) of Regulation (EU) 2016/679 to extract its data from public industrial rights databases for the purpose of offering industrial registration rights on the site accused by the complainant in his objection to the processing of personal data pursuant to Article 21 (1) (EU) 2016/679.

[17] As regards the possible application of the legal title under Article 6 (1) (a). b) Regulation (EU) 2016/679 in relation to the "registration" of an international patent by the complainant appellate body states that this legal title for processing was not provided in any way by the accused, although proof of legal title is the responsibility of the administrator.

[18] It is also evident that the accused infringed the data subject's right under Article 12 (3) Regulation (EU) 2016/679, as the complainant, following his objection to processing in within the meaning of Article 21 of Regulation (EU) 2016/679, has not informed the resp. it has not substantiated this fact with the Office.

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[19] As regards the amount of the fine imposed, the Appellate Body finds that since the amount charged did not object to the fines imposed and they were imposed in accordance with he found no reason to change it. In this context, the Appellate Body finds that that an administrative proceeding had already been conducted with the accused in the past, in which she was accused obligations under Article 12 (3) of Regulation (EU) 2016/679 by the administrative authority of the first degree by order no. UOOU-02999 / 20-3 of 28 August 2020 imposed a fine of CZK 50,000.

and another administrative offense has been abandoned and used

[20] In addition to the above, the Appellate Body adds that from the order of the Enlarged Chamber Of the Supreme Administrative Court of 20 April 2010, No. 1 As 9/2008 - 133, it follows that that: 'It will therefore be for the party concerned to show that it has an interest in that the fine imposed on it does not have liquidating consequences for it, by giving the administrative authority

will provide basic information about their personal and property relations and these as well provide evidence or allow the administrative authority to verify their

In the opinion of the enlarged Senate of the Supreme Administrative Court mentioned above in the above-mentioned resolution, exceptions may also be granted in exceptional circumstances prohibition of the liquidation nature of fines imposed for other legal offenses persons. (Note Act No. 250/2016 Coll., On liability for misdemeanors and proceedings on them, the concept of administrative tort and thus only

term "offense.") This will be the case for particularly serious administrative offenses committed legal persons, or in a situation where the legal person has serious administrative offenses repeatedly and previous less severe sanctions have proved ineffective, or in cases where the legal person itself has in fact been established for the purpose of implementation illegal activities, and there is thus a very strong public interest in making this legal the person no longer operated in the given field of activity, and at the same time according to the relevant legal regulation it is not possible to impose a prohibition or other penalty on a legal person for a given administrative offense punishment having equivalent effect. "

Regarding the property relations, the accused can be stated that they are not on the www.justice.cz portal to date, no accounting records are available to the accused, although to her, such as an entity registered in the Commercial Register is subject to the obligation to file an accountant financial statements to the collection of documents pursuant to Section 21a of Act No. 563/1991 Coll., on related accounting with § 66 of Act No. 304/2013 Coll., on public registers of legal and natural persons and on the registration of trust funds.

Only the amount of registered capital (CZK 1,000) is stated here, but this information is not available informative value in relation to the (current) property of the accused.

Only the documents have the meaning of the accused

financial statements according to § 18 of Act No. 563/1991 Coll., on accounting - balance sheet, statement profit and loss and the notes to the financial statements, which explain and supplement the information contained in the balance sheet and profit and loss account.

[21] In conclusion, the Appellate Body did not find the contested decision illegal and did not find any errors in the procedure prior to the issue of this Decision. The legal conclusions of the first instance administrative body were correct justified and in accordance with the relevant legislation.

[22] On the basis of all the above, the Appellate Body therefore decided that as stated in the operative part of this decision.

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Instruction: Pursuant to the provisions of Section 91, Paragraph 1 of Act No. 500/2004 Coll., Administrative Procedure Code cannot be revoked.

Prague, March 31, 2021

official stamp imprint

Mgr. Jiří Kaucký

chairman

(electronically signed)

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