

DECISION NO. 21/2022 (Department) Athens, 19-04-2022 Prot. No.: 942 The Personal Data Protection Authority met as a Department by video conference on 23-03-2022 at the invitation of its President, in order to consider the case referred to in the history of the present. Konstantinos Menudakos, President of the Authority, and regular members Demosthenes Vougioukas and Maria Psalla, as rapporteur, were present. The meeting was attended by order of the President, Georgia Panagopoulou and Spyridon Papastergiou, specialist scientists - auditors as assistant rapporteurs and Irini Papageorgopoulou, an employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: PROJECTS "PREMIUM MEDIA AUDIO-VISUAL PRODUCTION" With the no. prot. C/EIS/6730/18-10-2021 document by the company with the name PRIVATE CAPITAL COMPANY" with d.o. "PREMIUMMEDIA IKE" (hereinafter the applicant) submitted a treatment request against the no. 44/2021 of the Authority's Decision, which was issued following the no. prot. C/EIS/637/27-01-2020 of a complaint submitted against her. With this decision, a fine of 5,000 euros was imposed on the company for violations consisting of sending unsolicited e-mails and not satisfying the right to object which was repeatedly exercised by the complainant. 1 The applicant company, with the aforementioned request for treatment, requests the revocation of the above decision or otherwise its amendment citing the following: A) Paragraph 9 of the Authority's decision has been based on a misinterpretation of what it stated, as the decision states that "the technical problem lasted from 15/12/2019 until 18/01/2020 which was fixed. From the data presented to the Authority by the person in charge, it emerged that there were another 592 cases of failure to satisfy the subject's right to object during this period" while according to the applicant "from 18/01/2020, when we corrected the problem to the day we responded to the clarification question that is, on 24/2 we had 592 unsubscribes. In addition it should be noted that since the problem was fixed, i.e. on 18/1/2020, registered users were able to unsubscribe by clicking on any old newsletter. Thus, only 57 deletions from the newsletters sent during the period when the problem existed from 12/16/2019 to 01/18/2020 were subsequently recorded." To confirm the above, the applicant attached a screenshot from a database that, according to the company, records the deletions in question. B) The company has found itself in a difficult situation due to the fact that, due to the pandemic and the area in which it operates (among its activities is the operation of the complaint site which is a culture guide), the years 2020 and 2021 have been greatly reduced both the company's turnover and profits, providing relevant proof of management use for the year 2020 and staff payroll (May 2021). The Authority, after examining the elements of the file, after hearing the rapporteur and the assistant rapporteurs, and after a thorough discussion, OPINIONED IN ACCORDANCE WITH THE LAW 1. Regarding the first claim, from the evidence

presented to the Authority by the applicant company it emerged that from the moment of the restoration of the technical problem, due to which it was not possible to satisfy the complainant's request to be deleted from the recipients of the company's newsletter, a series of cases of satisfaction of the subject's right to object were recorded, while the one referred to in Opinion 9 of the contested decision quantification of the 592 deletion failures not documented. 2 2. For the measurement of the fine with the contested decision, the amount of the company's turnover and profits after taxes during the period 1.1.2019 to 31.12.2019 was taken into account, among other things, as stated in decision, in the amount of 323,636.65 euros and 101,014.07 euros, respectively. With the treatment application under review, the company claims that in the years 2020 and 2021 both its turnover and profits have been greatly reduced, providing relevant proof of management use for the year 2020 and staff payroll (May 2021). And according to GEMI's data, the applicant during the management year 01/01/2020 to 12/31/2020, a period prior to the issuance of the decision, against which the treatment application under consideration is directed, had a total net worth and liabilities of 193,107, 25 euros and a period result after taxes of 13,757.64 euros. These facts prove the second allegation of the applicant company, which is related to its difficult financial situation due to the reduction of its turnover and profits. 3. With the above data, new elements emerge, which were not taken into account when the challenged decision was issued and which justify the review of the case. 4. In accordance with article 11 par. 3 of Law 3471/2006, e-mail contact details obtained legally, in the context of the sale of products or services or other transaction, may be used for the direct promotion of similar products or services of the supplier or to serve similar purposes, even when the recipient of the message has not given his consent in advance, provided that he is provided in a clear and distinct manner with the possibility to object, in an easy way and free of charge, to the collection and use of his electronic data and this during the collection of contact data, as well as in every message in case the user had not initially objected to this use. According to article 21 par. 2 of the General Data Protection Regulation (GDPR), "If personal data is processed for direct marketing purposes, the data subject has the right to object at any time to the processing of personal data concerning him for that marketing, 5. 3 including profiling, if related to that direct marketing." In addition, in accordance with Article 21 para. 3 of the GDPR when data subjects object to processing for direct marketing purposes, personal data are no longer processed for these purposes. 6. Article 25 para. 1 of the GDPR states that "Taking into account the latest developments, the costs of implementation and the nature, scope, context and purposes of the processing, as well as the risks of different probability of occurrence and severity for the rights and the freedoms of natural persons from processing, the controller effectively

implements, both at the time of determining the means of processing and at the time of processing, appropriate technical and organizational measures, such as pseudonymization, designed to implement data protection principles data, such as the minimization of data, and the incorporation of the necessary safeguards in the processing in such a way as to meet the requirements of this Regulation and to protect the rights of data subjects." 7. In this particular case, the personal data of the complainant was processed for the purposes of promoting products and services by the controller. There is no question of the legality of the initial collection and the complainant accepts that he had provided his data to the controller. 8. From the information in the file, it appears that the applicant company, as data controller, provided the recipient of the newsletter with the possibility to object to any future message, through the relevant link, in accordance with the requirement of article 11 par. 3 of n 3471/2006, however, it was not possible to satisfy the right to object provided by Article 21 of the GDPR of the complainant, who expressed his objection to future sending of messages for promotional purposes, due to a technical problem that lasted from 15/12/2019 until 18/01/2020. Therefore, the company, although it had the obligation to have the appropriate organizational measure, i.e. a defined procedure, through which it could identify that the subject's right to object could not be satisfied, did not act to stop the sending of the advertising messages and to satisfy the relevant right of the subject, as it should. In particular, the definitive cessation of processing of the subject's email by the person in charge for direct marketing purposes and consequently the satisfaction of the right to object, was not carried out even after the problem was identified, following a relevant report sent by the complainant to the person in charge. The right has been satisfied after the technical problem has been remedied and only after the complainant has re-exercised the right to object. 9. Because, according to the above, the conditions for imposing the administrative sanction of the fine on the controller are met, based on article 58 par. 2 para. i of the GDPR, for violation of articles 21 par. 3 and 25 par. .1 of the same Regulation. Further, the Authority, considering the criteria which

defined in article 83 par. 2 of the GDPR, considers that the amount of the fine must to be set at 1,000 euros, which based on the facts of the case, such as referred to in the previous considerations, is an effective sanction, dissuasive and proportionate sanction. Therefore, it must be amended accordingly decision 44/2021 of the Authority, against which the treatment request is directed.

FOR THOSE REASONS

The Personal Data Protection Authority modifies the decision
of 44/2021 and imposes on the company "PREMIUMMEDIA AUDIO-VISUAL PRODUCTION
ERGON PRIVATE CAPITAL COMPANY" fined 1,000 euros for violation of
of articles 21 par. 3 and 25 par. 1 of the GDPR, in accordance with what is stated above in
thinking.

The president

Konstantinos Menudakos

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The Secretary

Irini Papageorgopoulou