

OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-06298 / 18-38

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, pursuant to § 52 paragraph 1 of Act No. 110/2019 Coll.,

on the processing of personal data, and further according to § 10 par. a) of Act No. 480/2004 Coll.,

on certain information society services and on the amendment of certain laws, decided

on 24 June 2019 pursuant to the provisions of § 152 para. b) in connection with the provision of § 152

paragraph 5 and § 92 paragraph 1 of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Appeal filed by the accused, the company

based

against the decision of the Office for Personal Protection

data ref. UOOU-06298 / 18-32 of 25 March 2019, is dismissed as out of time.

Justification

Administrative proceedings in the matter of suspicion of committing an offense pursuant to § 11 par. 1 let. and) point 1 of Act No. 480/2004 Coll., on certain information society services and on change

certain laws (the law on certain information society services), in connection with

The sending of commercial communications was initiated by a notification to the Office for Personal Protection , based

"the Authority", which was indicted, the company

(hereinafter referred to as the "accused"),

delivered on January 31, 2019.

The basis for initiating the proceedings was primarily the protocol on control ref. UOOU-06298 / 18-22 of 17 December 2018, acquired pursuant to Act No. 255/2012 Coll., on Inspection (Inspection Rules), as part of the inspection carried out on the accused from 15 October 2018 to 8 January 2019, inclusive file material collected as part of this inspection. Objections to the above

inspection report were not filed by the accused. As part of the inspection, it was the inspectors stated that commercial communications sent in violation of Act No. 480/2004 Coll. from e-mail

which contained

addresses

offer computer technology and link to websites

Was sent

accused. Other documents for the infringement proceedings in question were also subsequently sent three complaints from the complainants received by the Office between November 2018 and January 2019.

from the IP address

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Then the Office issued a decision no. UOOU-06298 / 18-32 of 25 March 2019, which was

the accused has been found guilty of committing an offense under § 11 para. a) point 1 of the Act

No. 480/2004 Coll., which it committed by repeatedly disseminating commercial communications within the meaning of § 2

letter f) of Act No. 480/2004 Coll., while the addressees of the above-mentioned commercial communications did not give

accused consent to the sending of commercial communications and were not its customers within the meaning of § 7

paragraph 3 of Act No. 480/2004 Coll. By doing so, the accused violated the obligation set out in § 7

paragraph 2 of Act No. 480/2004 Coll., thus used the details of electronic contact for the purpose of

dissemination of commercial communications by electronic means without electronic users being required to do so

addresses gave their prior consent, for which she was fined CZK 36,000.

The accused was legally represented in the administrative proceedings

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lawyer (see power of attorney attached to the record of access to the file of administrative proceedings under Ref. UOOU-06298 / 18-31). How

it is clear from the delivery note of the decision in question, legal

the decision was delivered to the accused's representative via the data box of

March 26, 2019. The appeal was also delivered to the Office by a data box, on April 14

2019

It is apparent from the administrative file that, although the accused was legally represented in the administrative proceedings lawyer, the appeal was filed by the accused herself. According to

However, the provisions of Section 34, Paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code,

when the represented person has to do something in person, the documents shall be delivered only by the representatives, while

delivery to the principal has no effect on the running of time limits, unless otherwise provided by law.

Pursuant to Section 17, Paragraph 3 of Act No. 300/2008 Coll., On Electronic Acts and Authorized Conversion

documents, the document that was delivered to the data box is delivered at the moment

when the authorized person logs in to the data box in the sense of § 8 par. 1 to 4 of the cited

of the law. With regard to the wording of the provisions of Section 83 of the Administrative Procedure Code, then the deadline for filing an appeal

is 15 days, which expired on Wednesday, April 10, 2019. The appeal was filed late

and at the same time did not even contain a request for remission of a missed act pursuant to Section 41 (2) of the Administrative Procedure Code

order.

In view of the fact that the contested decision is final, it refers to § 92

paragraph 1 of the Administrative Procedure Code, the obligations of the appellate body to examine whether they are not fulfilled

preconditions for reviewing the contested decision in the review procedure, preconditions for reopening of proceedings or to issue a new decision.

In the review proceedings pursuant to § 94 et seq. of the Administrative Procedure Code, the administrative body shall examine it ex officio

final decision if there can be reasonable doubt that the contested decision

is in accordance with the law. In assessing whether it should be justified

Doubt that the final decision is in accordance with the law and is therefore

reason for conducting the review procedure, it is first necessary to examine the proceedings that issue

preceded by this decision. In that regard, the appellate body states that

In this respect, he did not find any procedural error in the procedure of the administrative body of the first instance.

In addition to the contested decision of the administrative authority of the first instance, the appellate body further states that

this decision contains all legal requirements according to § 68 of the Administrative Procedure Code. In his

the operative part contains a solution to the issue which was the subject of this administrative proceeding,

the relevant provisions of the law under which the decision was made, proper labeling

the time limit and other necessary information for the proper fulfillment of the imposed obligation.

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The statement of reasons for the contested decision sets out the grounds on which the legal opinion is based

the administrative authority of first instance in the operative part of the decision with which the appellate body

fully identifies, the documents for its issuance, is further duly ascertained in accordance with § 3 of the Administrative

the facts and considerations followed by the administrative body of the first instance in its evaluation

and in the interpretation of relevant legal norms. The appellate body further states that the participant instructs

proceedings under the contested decision are in accordance with the provisions of § 68 of the Administrative Procedure Code,

because

it contains an instruction that an appeal may be lodged against the decision, within what period it is possible to do so, where

this can be done from which date this deadline is calculated and that the President decides on the dissolution

Office. In view of the above, the appellate body summarizes that the decision of the administrative body

first instance is in line with the law and therefore the reason for implementation is not fulfilled

review procedure.

Furthermore, the appellate body examined whether the preconditions for reopening the proceedings were given.

In that regard, the appellate body states that the proceedings which were closed by a final decision

in accordance with the provisions of Section 100 of the Administrative Procedure Code, at the request of a party to the proceedings, it shall be renewed, if any

some of the conditions specified in § 100 par. 1 let. a) or b) of the Administrative Procedure Code,

ie if previously unknown facts or evidence that existed at the time were discovered

of the main proceedings and which the party to their advantage was unable to do so in the main proceedings

or if the decision which gave rise to the decision has been annulled or amended

issued in the proceedings to be renewed, and if these facts, evidence or decisions

they may justify a different solution to the issue which was the subject of the decision. After review

of the entire file, including the dissolution of the party to the proceedings, the appellate body concluded

that in the present case there are no grounds for reopening the proceedings.

The appellate body also examined whether a new proceeding could be instituted and a new decision issued.

In accordance with the provisions of Section 101 of the Administrative Procedure Code, this may be done if any of them is met

from the exhaustively determined conditions specified in § 101 par. 1 under letter (a) to (e) of the Administrative

order. The appellate body states that for the new proceedings and the issuance of a new decision

did not find the existence of any of the reasons provided by law.

On the basis of all the above facts, he therefore decided as stated in the statement

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, June 24, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů

chairwoman

in z. Mgr. Josef Prokeš, v. R.

deputy chairman

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