

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

April

2019

DECISION

ZSPU.440.99.2018

Based on Article. 138 § 1 point 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended) and Art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in connection with joke. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 9 sec. 2 lit. d), art. 12 sec. 6, art. 15 sec. 1 lit. a) - c) and lit. g) and art. 58 sec. 2 lit. c) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), after conducting administrative proceedings on the application of the Religious Union [...], based in N. [...] for reconsideration of the complaint of the Association [...] in K. [...], for the processing of personal data of Ms KZ [...] and Mr JZ [...], both of in G. [...], by the Religious Union [...], resolved by the administrative decision of the President of the Personal Data Protection Office of December 20, 2018 (reference number: ZSPU.440.99.2018. [...]), President of the Personal Data Protection Office

upholds the contested decision.

JUSTIFICATION

The Office for Personal Data Protection received a request from the Association [...] in K. [...], hereinafter referred to as the Association, to intervene in connection with the activities of a religious association [...], hereinafter also referred to as the Association, limiting the rights to information on information held and processed by The relationship of personal data of former and current members of this religious community.

In a letter of [...] May 2015, the Vice-President of the Management Board of the Association specified that he was acting on behalf of Mrs. K. Z. and Mr. J. Z., both of in G. [...]. It also pointed out that the Association refuses to reply to written requests

for information on the personal data held and processed in its possession and that it demands a photocopy of an official document confirming the applicants' identity. It stated that it is seeking an end to [...] practices restricting the right of access to personal data by data subjects.

In the course of the administrative procedure initiated in the above manner, the President of the Personal Data Protection Office, hereinafter also referred to as the President of the Personal Data Protection Office, established the following facts of the case:

1) The Union is entered under the entry [...] in the [...] section of the Register of churches and other religious associations kept by the Minister of the Interior and Administration and - pursuant to Art. 34 sec. 2 of the Act of May 17, 1989 on the Guarantees of Freedom of Conscience and Religion (Journal of Laws of 2005, No. 231, item 1965, as amended) - has legal personality.

2) On [...] March 2014, Ms K. Z. and Mr J. Z. sent letters to the Union in which they demanded that they fulfill the information obligation referred to in Art. 15 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on the protection of data) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), hereinafter referred to as the GDPR (before the date of application of the GDPR, i.e. before May 25, 2018: Art. 33 in connection with art.32 par.1 points 1-5a of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 as amended)) by answering from when and what personal data of Ms. KZ and Mr. JZ are held by the Religious Union [...]; from which source their personal data was obtained; for what purpose, scope and how their data are processed; have their personal data been transferred to another data controller, and if so, to whom (full name and address) and to what extent. They also requested that the information contained in the content of the form [...] drawn up in connection with their exclusion / detachment be made available to them. (proof: letters from Mrs. K. Z. and Mr. J. Z. constituting attachments to the supplementary explanations of the Association of [...] July 2018)).

3) In response to the requests of Ms K. Z. and Mr J. Z., by letters of [...] April 2014, the Association requested a photocopy of an official identity document containing the signature and photo of each of the applicants for verification. (proof: the Union's letters constituting appendices to the Union's supplementary explanations of [...] July 2018).

4) On [...] May 2014, Ms KZ and Mr JZ, sending photocopies of their identity cards, again asked the Association to fulfill their information obligation (proof: letters from Ms KZ and Mr JZ constituting attachments to the supplementary explanations of the

Association of [...] July 2018).

5) In response to the above, by letters of [...] June 2014, the Union informed Ms K. Z. and Mr J. Z. that they were no longer [...], as they had submitted signed letters of resignation. At the same time, the Union refused to provide a copy of the print [...], for which, inter alia, above they applied, justifying the quotation: "(...) with respect for the privacy rights of other persons whose names appear on the appropriate form (...)" (evidence: the Union's letters attached to the Union's supplementary explanations of [...] July 2018).

6) In the letter of [...] September 2018, it was additionally explained that the Association does not apply detailed rules for the protection of natural persons with regard to the processing of their data pursuant to Art. 91 of the GDPR.

7) The Association continues to process the personal data of Mrs. K. Z. and Mr. J. Z. in connection with their exclusion / exclusion from the group of its members.

After reviewing the entire evidence collected in this case, by an administrative decision of December 20, 2018 (ref. No .: ZSPU.440.99.2018. [...]), the President of the Office for Personal Data Protection ordered the Association to fulfill the information obligation under Art. 15 sec. 1 lit. a) - c) and lit. g) GDPR towards Ms. KZ and Mr. JZ, by answering the questions contained in their letters of [...] March 2014 and [...] May 2014, i.e. informing them: 1) from when and what data personal of the above-mentioned persons have a Religious Union [...]; 2) from which source the above data was obtained; 3) for what purpose, scope and how the above-mentioned data is processed people; 4) whether the personal data of the above-mentioned persons have been transferred to another data controller, and if so, to which one (full name and address); 5) providing the above-mentioned persons with copies of their personal data contained in the form [...].

By letter of [...] January 2018, received by the Office for Personal Data Protection on [...] January 2019 (letter submitted within the statutory deadline), the Association requested that the case be reconsidered. The subject of the appeal was the above-mentioned the decision in the scope covering only a part of its justification, indicating the lack of justification for such verification of the identity of Ms K. Z. and Mr J. Z. - as persons requesting the Association to fulfill the information obligation under Art. 15 GDPR - which involved obtaining their further personal data, unnecessary in the context of achieving the goal of meeting this obligation. As the Association pointed out as quoted: "(...) In the decision in question, the President ordered the Association to fulfill the information obligation towards K. and J.Z., indicating the exact scope of this obligation. The union does not contest the decision in this respect (...)" . At the same time, however, the Association raised the following quotation: "(...)

we request that a fragment of the justification be changed by indicating that in order to make sure that the request actually comes from the person signed under it, the Association is authorized and obliged to use all reasonable measures to verify the identity of the requesting party. access, and in a situation where there are justified doubts as to the identity of the natural person submitting the request, the Association may request additional information necessary to confirm the identity of the data subject, which is in accordance with Art. 12 sec. 6 GDPR (...) ". The union pointed out that the information it processes about its current and former members - as data revealing religious beliefs - is subject to special protection provided for in Art. 9 of the GDPR, which, in the opinion of the Association, is related to the obligation to exercise particular caution in the area of fulfilling disclosure obligations, quoting: "(...) so that unauthorized persons do not gain access to this type of data (...)".

After reviewing all the evidence gathered in the case in question, the President of the Personal Data Protection Office considered the following.

The contested administrative decision of 20 December 2018 (ref. No .: ZSPU.440.99.2018. [...]) is correct.

At the outset, it should be pointed out again that on May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), The Office of the Inspector General for Personal Data Protection has become the Office for Personal Data Protection. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922). as amended) in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended), hereinafter also referred to as the Administrative Procedure Code. All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) - 3 of the Act of May 10, 2018 on the protection of personal data). On the other hand, according to the wording of Art. 99 of the GDPR, the said regulation entered into force on the twentieth day after its publication in the Official Journal of the European Union (paragraph 1), but it has been applicable since May 25, 2018. The regulation is binding in its entirety and is directly applicable in all Member States (Article 99 (2) of the GDPR in fine).

In initiating the proceedings in the first instance before the authority competent for the protection of personal data, the Association raised an allegation of irregularities in the processing of the personal data of Mrs. K. Z. and Mr. J. Z. persons - the information obligation under Art. 15 of the GDPR Regulation (formerly Art.33 in conjunction with Art.32 (1) points 1-5a of the

Act of August 29, 1997 on the Protection of Personal Data) and the refusal to provide Ms KZ and Mr JZ with the content of the form [...] drawn up in connection with their exclusion / separation from the group of members of the Association, including the content of the announcement delivered at [...].

Considering the case in question again, it should be repeated that the Act of 2 April 1997, the Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483, as amended) in Art. 25 states that Churches and other religious associations have equal rights (Art. 25 (1)). Public authorities in the Republic of Poland shall be impartial in matters of religious, philosophical and philosophical beliefs, ensuring the freedom to express them in public life (Article 25 (2) of the Constitution). Relations between the state and churches and other religious associations are shaped on the basis of respecting their autonomy and mutual independence in their own scope, as well as of cooperation for the good of man and the common good (Article 25 (3) of the Constitution). The relations between the Republic of Poland and other churches and religious associations are determined by laws adopted on the basis of agreements concluded by the Council of Ministers with their respective representatives (Article 25 (5) of the Constitution).

In line with the content of recital 165 of the GDPR, this regulation does not affect the status accorded to churches and religious associations or communities under the constitutional law in force in the Member States and does not affect this status - as recognized in Art. 17 of the Treaty on the Functioning of the European Union (OJ EU.C.2016.202.47).

The Court of Justice of the EU stated, in turn, that the obligation to comply with the principles of EU law on the protection of personal data cannot be regarded as an interference with the organizational autonomy of religious communities, which results from Art. 17 TFEU (see judgment of the Court of Justice of the EU of 17 April 2018, Egenberger, C 414/16, EU: C: 2018: 257, paragraph 58, published in LEX 2476520).

Pursuant to Art. 91 paragraph. 1 GDPR, if in a Member State, at the time of entry into force of this Regulation, churches and religious associations or communities apply specific rules for the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation (paragraph 1). Churches and religious associations which apply detailed rules pursuant to para. 1 of this article are subject to the supervision of an independent supervisory authority, which may be a separate body (paragraph 2).

As follows from the evidence collected in this case, the Association is an institution entered in the register of churches and other religious associations kept by the minister responsible for religious denominations and does not apply detailed rules for

the protection of natural persons in connection with the processing of their data pursuant to Art. 91 of the GDPR. Moreover, it is undisputed that Mrs. K. Z. and Mr. J. Z. do not belong to the above-mentioned Relationship (disfellowshipped / disassociated). This means that the President of the Personal Data Protection Office in this case is the competent supervisory authority to hear the Association's complaint regarding the activities of the above-mentioned Relationship in the area of personal data processing of Mrs. K. Z. and Mr. J. Z.

Pursuant to Art. 57 sec. 1 GDPR, without prejudice to other tasks under this Regulation, each supervisory authority on its territory shall monitor and enforce the application of this Regulation (point a) and handle complaints brought by the data subject or by an entity, organization or association pursuant to art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (point f). The instruments for the implementation of the tasks provided for in Art. 57 sec. 1 GDPR are set out in particular in Art. 58 sec. 2 GDPR, remedial rights, including the possibility to order the controller or processor to comply with the data subject's request resulting from the rights conferred on him by this Regulation (Article 58 (2) (c)).

The authority may order the removal of deficiencies by ordering the fulfillment of the information obligation, only after prior assessment of the behavior of the data administrator, who previously refused to comply with it, or remained inactive despite requests addressed to him. The role of the authority is therefore to examine whether the controller of personal data (the Association), to whom a specific request was made, properly responded to it. It is the personal data administrator who is obliged to examine whether there are legal grounds to take into account the request addressed to him, while the President of the Personal Data Protection Office checks the correctness of the administrator's decisions in this regard.

Art. 15 sec. 1 GDPR guarantees the data subject the right to obtain from the controller confirmation as to whether personal data concerning him or her are being processed, and if so, to obtain access to it and the following information: a) the purposes of the processing; b) the categories of personal data concerned; c) information on the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular on recipients in third countries or international organizations; d) if possible, the planned period for which the personal data will be stored, and if this is not possible, the criteria for determining this period; e) information on the right to request the administrator to rectify, delete or limit the processing of personal data relating to the data subject and to object to such processing; f) information on the right to lodge a complaint with

the supervisory authority; g) if the personal data have not been collected from the data subject, any available information as to their source; h) information on automated decision making, including profiling referred to in art. 22 sec. 1 and 4, and - at least in these cases - relevant information about the rules for their taking, as well as the significance and envisaged consequences of such processing for the data subject. The mentioned provision is the equivalent of the previously applicable (before the application of the GDPR and the entry into force of the Act of May 10, 2018 on the protection of personal data - i.e. before May 25, 2018): art. 33 in connection with joke. 32 sec. 1 points 1-5a of the Act of August 29, 1997 on the protection of personal data.

An element of the right of access to personal data is the right of the data subject to receive a copy of the personal data from the data controller (see: P. Litwiński (ed.), P. Barta, M. Kawecki: "EU Regulation on the protection of natural persons in connection with the processing of personal data and the free movement of such data. Comment "Wydawnictwo CH Beck, Warsaw 2018, p. 394).

In the present case, Ms. K. Z. and Mr. J. Z. correctly applied to the data controller - the Association for the fulfillment of the information obligation referred to in Art. 15 of the GDPR, while the Association asked them to send a legible photocopy of an official document confirming their identity, containing the applicant's signature and photo, but did not provide them with the requested information in the requested scope.

The authority competent for the protection of personal data assessed the above-mentioned activity of the Association as a failure to fulfill its obligation to provide information under Art. 15 sec. 1 of the GDPR, the complaint in the specified scope as justified, and, consequently, by a decision of 20 December 2018 (ref. ZSPU.440.99.2018. [...]), ordered the Union to fulfill the said obligation in a specific manner. The Association did not deny the correctness of the above assessment of the President of the Personal Data Protection Office, or the legitimacy of the order formulated against him, limiting its allegations only to a fragment of the justification of the authority's decision, which included comments on the issue of the identity verification by the Association of applicants for the fulfillment of the information obligation - Ms KZ and Mr. JZ

It should therefore be repeated, as was the case in the contested decision, that according to recital 57 of the GDPR preamble, if the personal data processed by the controller does not allow him to identify a natural person, he should not be required to obtain additional information to identify the data subject, solely for the purpose of complying with the provisions of this Regulation. The controller should not, however, refuse to accept additional information from the data subject to facilitate the

exercise of his rights. The verification of identity should involve the digital identification of the data subject, for example through an authentication mechanism such as the same credentials that the data subject uses to login to the online services offered by the controller. Recital 63 of the GDPR preamble states that, as far as possible, the controller should be able to grant remote access to a secure system that will give the data subject direct access to his personal data. This law should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property, in particular copyrights protecting the software. However, these considerations should not result in the data subject being refused any information. In turn, in line with recital 64 of the GDPR preamble, the controller should use all reasonable measures to verify the identity of the data subject requesting access.

Pursuant to Art. 12 sec. 6 GDPR, without prejudice to Art. 11, if the controller has reasonable doubts as to the identity of the natural person submitting the request referred to in Art. 15-21, may request additional information necessary to confirm the identity of the data subject.

When carrying out any activities in the area of personal data processing, their administrator should also take into account the expressed in art. 5 sec. 1 lit. c) GDPR, the principle of data minimization, according to which personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed.

In the light of the above regulations, it is undoubtedly necessary to limit the scope of personal data processed as much as possible at every stage of this process. The intention of the President of the Personal Data Protection Office (UODO) was and remains to emphasize the importance of this rule, in particular when - as was the case in the present case - identity verification is performed by obtaining a full range of personal data recorded in an identity document. Meanwhile, as the Association itself admitted in the content of the request for reconsideration of the case, the following citation: "(...) this requirement {from Art. 12 sec. 6 in connection with Art. 5 sec. 1 letter c) of the GDPR} may be performed, for example, by obtaining a copy of an identity document containing only selected information necessary to verify that the application was submitted by an authorized person, and blackened in the remaining scope. This (...) would enable the Association to confirm its identity while maintaining the principle of adequacy and minimization of processed data (...) An additional example of the application of Art. 12 sec. 6 GDPR during the applicant's verification process is, in some cases, a request from the Association for the applicant to indicate the date of his baptism and [...] to which he / she belongs. This type of information is also of practical importance for the timely response to the request (...)".

In the case in question, however, the comments made were and are still only secondary and do not affect the content of the ruling issued therein, due to the fact that its subject matter was limited to the verification of the legitimacy of the allegation that the Association failed to meet Ms KZ and Mr. JZ, information obligation. In a case of such a scope, it is indisputable that the Association has no doubts that the persons who asked it to fulfill the information obligation under Art. 15 GDPR are indeed - as stated in the content of these applications - Ms. K. Z. and Mr. J. Z. And this fact is decisive in the context of assessing the correctness of the Union's response to the given applications.

Considering the above, the President of the Personal Data Protection Office resolved as in the sentence

The decision is final. Based on Article. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 21 sec. 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and in connection with joke. 13 § 2, art. 53 § 1 and art. 54 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended), a party dissatisfied with this decision has the right to lodge a complaint with the Provincial Administrative Court in Warsaw, in within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Office for Personal Data Protection (to the following address: Office for Personal Data Protection, 00 - 193 Warsaw, ul. Stawki 2). The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

2019-05-24