

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

November

2019

DECISION

ZKE.440.54.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and pursuant to Art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2018, item 1000, as amended), art. 12 point 2, art. 18 sec. 1 point 6, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), Art. 6 sec. 1 lit. f of 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 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after conducting administrative proceedings from the complaint of MK regarding the processing of his personal data by Mr. PK running a business under the name of P., President of the Office for Personal Data Protection orders Mr. P. K., running a business under the name P., to eliminate any irregularities in the processing of personal data of Mr. M. K., by deleting his personal data processed on the website named [...] at the address: [...]. [...].

Justification

The Inspector General for Personal Data Protection (currently the President of the Office for Personal Data Protection) received a complaint from Mr. MK, (hereinafter: the Complainant), against Mr. PK running a business under the name of P. [...], (hereinafter: the Entrepreneur) regarding the refusal to delete data the Complainant's personal data processed by the Entrepreneur on the website named [...] (hereinafter: [...]). In the content of his application, the complainant requested that the Entrepreneur delete his personal data processed by the Entrepreneur due to his personal situation. The complainant emphasized that the disclosure of his personal data by the Entrepreneur in the above-mentioned the website infringes his personal rights and freedoms, in particular, causes discrimination in employment ("negatively affects his job interviews and makes him inconvenient").

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

The entrepreneur runs a website - [...] - operating at the internet address [www. \[\]](http://www.[]). Access to basic services is free and does not require prior registration on the website. However, access to detailed data on bankruptcy collected in [...] is possible after registering on the website and paying for a subscription or subscription in accordance with the Regulations of the Website [www. \[\]](http://www.[]). The content of information published on the Website is not modified and comes directly from Monitor Sądowy i Gospodarczy (MSiG). The website contains information about natural persons and entities against whom bankruptcy has been pronounced, including consumer bankruptcy.

The entrepreneur obtained the Complainant's personal data from MSiG, year 2015, number [...] / 2015 ([...]) item [...] of [...] May 2015. The Complainant's personal data was made available in connection with the Complainant's petition to declare his consumer bankruptcy in the case no. act [...], by the decision of the District Court in O. of [...] May 2015 and making it public pursuant to Art. 4915 paragraph. 1 of the Bankruptcy Law of February 28, 2013 (Journal of Laws of 2019, item 498, as amended), hereinafter referred to as the Bankruptcy Law. The following personal data of the Complainant were disclosed in the notice in MSiG: name, surname, address, case file number [...], [...], date of issuing the bankruptcy decision by the District Court in O.

The complainant's personal data was made available on the website [...] as the data of a natural person in liquidation bankruptcy and made public. The entrepreneur in the explanations as the basis for placing the above-mentioned personal data on his website is indicated by art. 4915 paragraph. 1 of the Bankruptcy Law in connection with the announcement of the decision of the District Court in O. of [...] May 2015 in MSiG.

The following personal data of the Complainant can be found on the website [...] at the website [https: // www. \[\]](https://www.[]): name, surname, contact details, PESEL number and information on bankruptcy, i.e. bankruptcy file reference number [...], reference number bankruptcy petition: [...], date of bankruptcy: 2015-05- [...] year, court details, details of the trustee, announcement from the MSiG on the preparation and submission of a list of claims to the judge commissioner, announcement from the MSiG on declaration of bankruptcy and a decision on declaration of bankruptcy . The aforementioned information concerning the Complainant is available after logging in to the website [...] in the details tab. In the search results without logging on to the website [http: // www. \[\]](http://www.[]) after entering the first and last name of the Complainant, the following personal data appears:

"Consumer - a natural person, not conducting business activity of MK in liquidation bankruptcy ([...]) [...] ”.

In the content of the application, the Complainant indicated that the information on the bankruptcy proceedings published on the website of [...] was out of date and misleading. There is no mention on the website that the District Court in O. V Commercial Division, by a decision of [...] February 2016 (reference number [...]), canceled the debtor's liabilities without establishing a repayment schedule.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

The subject of these proceedings is the processing of personal data without the legal basis of the complainant's personal data on the website [...].

On May 25, 2018, the provisions of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 u.o.d.o. proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Office for Personal Data Protection on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, ., item 922, as amended), hereinafter: the "Act", in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "Kpa". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

In the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07 The Supreme Administrative Court stated that "when examining [...] the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision on the matter and whether it is done in a lawful manner" .

The processing of personal data, including their sharing, is lawful when the data controller has one of the conditions listed in

art. 6 (1) of the Regulation 2016/679. These conditions apply to all forms of data processing listed in art. 4 point 2 of Regulation 2016/679, including making them available. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them. In accordance with the above-mentioned the provision "processing is lawful only if and to the extent that at least one of the following conditions is met:

- a) the data subject has consented to the processing of his personal data for one or more specific purposes;
- b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- c) processing is necessary to fulfill the legal obligation incumbent on the controller;
- d) processing is necessary to protect the vital interests of the data subject or of another natural person;
- e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular, when the data subject is a child. "

The legal basis for the processing of the Complainant's personal data in the form of the provisions of the Bankruptcy Law, indicated by the Entrepreneur, does not apply in this case, because it concerns the issuance of a bankruptcy decision by the court and the announcement of this provision to the public by an announcement in the court building and an announcement in the Court and Economic Monitor. . It does not, however, constitute the basis for publishing information on bankruptcy on a private website.

Taking into account the catalog of premises legalizing the processing of data, listed in art. 6 of the Regulation 2016/679, the Entrepreneur could see the legal basis for the processing of the Complainant's personal data only in the premise specified in art. 6 sec. 1 letter f of Regulation 2016/679, i.e. in its legitimate interest. However, it should be emphasized that this premise is not absolute, as it is constructed on the basis of the weighing of interests. "It requires the legitimate interest of the data controller (or a third party) to be placed on one scale, and the fundamental rights and freedoms of the data subject, which require protection, on the other. If the result of this weighing of interests indicates that the data subject's rights that require protection should be considered prevailing, then the controller should not base data processing on the legal basis discussed

here "(P. Fajgielski, Commentary to Art. 6 [in:] edited by P. Fajgielski, General Data Protection Regulation. Personal Data Protection Act. Comment. Wolters Kluwer Polska, 2018).

Referring to the circumstances of the present case, it should be stated that the Entrepreneur processes the Complainant's data in connection with running a business - for profit. However, in the opinion of the President of the Personal Data Protection Office (UODO), publishing on a private website the data of a consumer - a bankrupt whose liabilities were canceled by a court decision without a repayment plan, i.e. a person who was de facto indebted, is not justified, because in such a case there can be no question of protecting the interests of his creditors. . The interests of the bankrupt's creditors are protected by solutions introduced by the legislator, including the publication of bankruptcy decisions in the Court and Economic Monitor. In addition, it should be emphasized that the purpose of legal regulations regarding consumer bankruptcy is, inter alia, enabling the fallen to "start a new start", while the disclosure of information about the applicant's bankruptcy may adversely affect his reputation and significantly hinder him from finding a new job. Thus, in the opinion of the President of the Personal Data Protection Office, publishing the Complainant's personal data on the website of a private website [...] run by the Entrepreneur, infringes the Complainant's interest. Therefore, after analyzing the interests of both parties, it should be stated that in the present case the personal interest of the Complainant in the form of the right to protect his own good name outweighs the interest of the Entrepreneur, which is to earn money from the processing of the Complainant's personal data. Thus, it excludes the possibility of applying the premise of Art. 6 f of the Regulation 2016/679 as the legal basis for the processing of the Complainant's personal data by the Entrepreneur.

Pursuant to Art. 18 sec. 1 point 6 of the Act, in the event of violation of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status. Taking into account the circumstances of the case, the President of the Personal Data Protection Office is authorized to order the Entrepreneur to remove from [...] the above-mentioned the complainant's personal data.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with the

Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

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