

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 01

September

2021

DECISION

DKE.561.28.2020

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256), art. 7 and art. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), pursuant to art. 58 sec. 2 lit. b) and g) in connection with Art. 83 sec. 6 of the Regulation of the European Parliament and of the EU Council 2016/679 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 data protection regulations) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding the imposition of an administrative fine on M. Sp. z o.o., the President of the Personal Data Protection Office

reminds M. Sp. z o.o. for non-compliance with an order issued by a supervisory authority pursuant to Art. 58 sec. 1 lit. g)

Regulation 2016/679 of the European Parliament and of the Council and of the EU Council 2016/679 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 Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended)

JUSTIFICATION

On [...] August 2018, the Personal Data Protection Office received a complaint from Ms. M. K., running a business under the name of "K.", represented by the attorney Mr. K. I., (hereinafter referred to as: the complainant), about irregularities in the processing of her personal data by M. Sp. z o.o. (hereinafter referred to as: the Company). The applicant's attorney informed that on the website [...], on the complainant's profile on [...] May 2018, two entries were posted, the content of which was defamatory and thus infringing the complainant's personal rights. Due to the fact that the website administrator did not react to the correspondence addressed to him, containing a request to remove comments, the attorney sent to the President of the Personal Data Protection Office a request to delete the complainant's personal data, or to limit their processing on the website [...].

The President of the Personal Data Protection Office (hereinafter the "President of the Personal Data Protection Office"), as part of the administrative procedure initiated to consider the complaint (file number [...]), sent a letter to the Company of [...] November 2018 (reference number : [...]) and of [...] March 2019 (ref. ref. : [...]), in which he called pursuant to Art. 58 sec. 1 lit. a) and lit. e) to answer the following questions:

on what legal basis, for what purpose, scope and set of files the Company is currently processing the complainant's personal data, as well as from what source and on what legal basis the data was obtained;

whether the Company enables persons to whom the personal data processed by it relates to communicate with it regarding the processing of such data, pursuant to art. 15-22 and 34 GDPR, and how it exercises these rights of data subjects;

whether the complainant communicated with the Company regarding the processing of her data, in particular with regard to the exercise of her rights under the GDPR, including their removal or limitation of their processing;

if the answer to the question in point 3 is positive, please explain how the Company responded to the complainant's demands and how and to what extent the complainant's rights under Art. 15-22 and 34 GDPR;

if, and if so, when and to what extent and how the Company fulfilled the information obligation under Art. 13 (possibly with Art. 14) GDPR.

These letters were notified and returned to the Office with the annotation "Return - not received on time".

By an administrative decision of [...] June 2020 (reference number [...]), the President of the Personal Data Protection Office ordered the Company - pursuant to Art. 58 sec. 2 lit. g) Regulation 2016/679 - deletion of personal data in the form of name, surname and address of business activity from two comments of [...] May 2018, of a user using the pseudonym K., placed under the entry from [...] January 2016, by a user with the pseudonym M., available at the link: [...]. The company collected the above-mentioned the decision [...] of July 2020 (signature of the person on the confirmation of receipt of correspondence: S.), did not file a complaint against the above-mentioned administrative decision with the Provincial Administrative Court, therefore it became final on [...] August 2020.

In order to check whether the obligations imposed by the above decision were performed by the Company, the President of the Personal Data Protection Office initiated an examination procedure with reference number [...]

In a letter of [...] September 2020, the President of the Personal Data Protection Office called on the Company to provide explanations in the matter and provide evidence in the form of a copy of the personal data deletion protocol of Ms. how to do

this. At the same time, the Company was informed in the letter that the finding of non-compliance with the order imposed by the President of the Personal Data Protection Office may result in imposing an administrative fine on it, in accordance with Art. 83 sec. 6 of the Regulation 2016/679. The company did not collect the above-mentioned writings. On [...] October 2020, the Office for Personal Data Protection received the return of the above-mentioned writings. The letter was notified twice on [...] October 2020 and [...] October 2020, which was found on the basis of an annotation on the returned envelope from the above-mentioned by letter. Therefore, the letter was based on Art. 44 § 4 of the act of deemed served on [...] October 2020 and left in the case file.

No response from the Company to the call for explanations from the President of the Personal Data Protection Office (UODO) in the case with reference number [...], as well as the inspection of the page [...], which still contained the complainant's personal data, gave rise to the conclusion that the Company had not complied with the order contained in the administrative decision of [...] June 2020. , reference number [...].

In view of the above, the President of the Personal Data Protection Office (UODO), in a letter of [...] December 2020, initiated these administrative proceedings ex officio, with reference number [...] on the imposition of an administrative fine on the Company for failure to comply with an order issued by the supervisory authority pursuant to Art. 58 sec. 2 lit. g) Regulation 2016/679. In the letter, the Company was informed again that failure to comply with the order issued by the supervisory authority pursuant to Art. 58 sec. 2 is subject to an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount being applied (Article 83 (6) of Regulation 2016/679). With the above letter, the Company was, inter alia, requested to submit financial data in the form of a financial statement, and in its absence - a statement on the turnover and financial result for 2019, in order to determine the basis for the administrative fine. In addition, the letter indicated that if the Company presented evidence of the execution of the order of the decision of the President of the Personal Data Protection Office, this circumstance may have a mitigating effect on the amount of the administrative fine adjudicated in these proceedings or may result in withdrawal from its imposition. In 2021, the Office for Personal Data Protection received the return of the above-mentioned writings. The letter was notified twice on [...] December 2020 and [...] January 2021, which was found on the basis of an annotation on the returned envelope with the above-mentioned by letter. Therefore, the letter was based on Art. 44 § 4 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereinafter referred

to as "Kpa", deemed delivered by [...] January 2021 and left in the case file.

Due to the lack of contact from the Company, in a letter of [...] May 2021, the domain registrar of [...] Mr. Sz. P., running a business under the name of P., was requested to provide the personal data of a domain subscriber [...], ie name, address, telephone number and e-mail address. Mr. Sz. P. shared the above-mentioned data in e-mail correspondence of [...] July 2021. On [...] July 2021, the President of the Management Board of the Company, Mr. M. S., was informed by phone about the ongoing proceedings regarding the imposition of an administrative fine on the Company. The above information was also provided in an e-mail of [...] July 2021, the President of the Management Board of the Company, both by phone and in an e-mail of [...] July 2021, informed that the quotation [...] from 5 or 6 years has not been administered and the passwords to access the administration panel have been lost, so the Company will try to delete the data [covered by the decision order] from the software side on the server, which, however, is not technically quick to perform also because the Company does not have permanent cooperation with programmers ".

As a result, on [...] July 2021, the President of the Management Board of the Company informed about the execution of the order of the administrative decision. The examination of the website [...] carried out on [...] July 2021 showed that the complainant's personal data had been removed from the website.

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

Pursuant to Art. 57 sec. 1 of the Regulation 2016/679, without prejudice to other tasks specified under this regulation, each supervisory authority on its territory (including the President of the Personal Data Protection Office in the territory of the Republic of Poland), inter alia, monitors and enforces the application of the Regulation (Article 57 (1) (a)).)) and conducts proceedings on its application (Article 57 (1) (h)). The instruments for the implementation of the tasks referred to in Art. 57 sec. 1 of Regulation 2016/679, there are remedial powers granted to supervisory authorities (including the President of the Personal Data Protection Office) pursuant to art. 58 sec. 2 of Regulation 2016/679, including in particular the right to order the administrator to delete personal data (Article 58 (2) (g)), as well as the right to issue a reminder to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by operations processing. A breach consisting in non-compliance with an order issued by a supervisory authority pursuant to Art. 58 sec. 2 is subject to an administrative fine of up to EUR 20,000,000, and in the case of a company - up to 4% of its total annual worldwide turnover from the previous

financial year, with the higher amount being applied (Art. 83 (6)). Nevertheless, the President of the Personal Data Protection Office, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, it may also consider it justified to issue a reminder in the scope of the breach of the above-mentioned recipe. Pursuant to recital 148 of Regulation 2016/679, in order to make the enforcement of the Regulation more effective, sanctions, including administrative fines, should be imposed for its breach - in addition to or instead of the relevant measures imposed by the supervisory authority under this Regulation. If the infringement is minor, the fine may be replaced by an admonition. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was not intentional, the steps taken to minimize the harm, the degree of liability or any prior breach, how the supervisory authority became aware of on a breach, on compliance with the measures imposed on the controller or processor, on the application of codes of conduct, and on any other aggravating or mitigating factors.

Referring the above-mentioned provisions of Regulation 2016/679 to the factual state in this case, it should be stated that the Company, as the administrator of personal data and at the same time a party to the proceedings with reference number [...], breached the obligation to comply with the order issued by the supervisory authority pursuant to Art. 58 sec. 2 lit. g). The company did not execute the administrative decision until [...] July 2021, and the decision was final and therefore enforceable from [...] August 2020. Therefore, for the period of 11 months, the Company refused to execute the order issued by the supervisory authority.

The company initially did not receive the correspondence addressed to it, however, the President of the Management Board of the Company in an e-mail of [...] July 2021 informed about the obstacles that justified the impossibility of its efficient performance, i.e. the long-term lack of administration of the website [...] and the loss of access passwords to the administration panel. In the opinion of the President of the Personal Data Protection Office, all the circumstances of the case, considered jointly, allow the conclusion that the Company's failure to respond to the summons to execute the decision order, i.e. to delete personal data, was not intentional. In response to the information on the initiation of administrative proceedings to impose an administrative fine - file no. [...], the President of the Management Board of the Company in an e-mail of [...] July 2021, informed about the implementation of the decision. The provision of information on the initiation of proceedings to impose an administrative fine and the real prospect of imposing a financial penalty have become a clear signal for the Company that further avoidance of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the strictest provisions provided for by these provisions. sanctions.

In the opinion of the President of the Personal Data Protection Office, the Company has indisputably failed to fulfill its obligation under Art. 58 sec. 2 lit. g) in connection with Art. 17 sec. 1 lit. c) Regulation 2016/679, the obligation to delete data. The company finally - despite a significant delay - complied with the administrative decision of the President of the Personal Data Protection Office of [...] June 2020 (ref. [...]).

In connection with the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the case of violation of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office considers it justified to issue a reminder to the Company in the scope of the breach found art. 58 sec. 2 lit. g) Regulation 2016/679. The admissibility of replacing a financial penalty with a warning is also justified by recital 148 of Regulation 2016/679, which states that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective". It should be noted, however, that in the event of a similar event occurring in the future, each reminder issued by the President of the Personal Data Protection Office against the Company will be taken into account when assessing the premises for a possible administrative penalty.

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

The decision is final. The party 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, via the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200.

2021-11-03