

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 29

October

2018

DECISION

ZSZZS.440.717.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) in connection with joke. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922) and Art. 6 sec. 1 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 (Official Journal of the European Union European, L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Mr. KP, for the publication of his personal data, including a scan of his signature on the website at [...] contained in the application and self-report by the Central Committee for Degrees and Titles with headquarters in Warsaw at ul. Pi. Defilad 1 (PKiN), 00-901 Warsaw, President of the Office for Personal Data Protection refuses to accept the request.

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. KP, hereinafter referred to as the Complainant, about the processing of his personal data published on the website at [...], including the signature scan contained in the application and self-report by the Central Committee for Degrees and Titles with its seat in Warsaw at Pi. Defilad 1 (PKiN), 00-901 Warsaw, hereinafter also referred to as the Central Commission.

The complainant questioned the lawfulness of the processing of his personal data by the Commission's Headquarters. In the justification of the complaint, the Complainant indicated that he had submitted an application for the habilitation procedure to the Central Commission, which was published by the Central Commission on the Central Commission website as well as the self-presentation with a scan of the signature on the website at [...]. In the Complainant's opinion, the publication of the above-mentioned the website of the scan of the Complainant's signature may result in suffering damage, as the scan may be

used by unauthorized persons.

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following facts.

On [...] July 2017, the applicant submitted an application to the Central Commission for Degrees and Titles with its seat in Warsaw for habilitation proceedings [...]. The Central Commission has published on its website at [...] the above-mentioned the complainant's application together with the report containing a scan of the complainant's signature.

The Central Commission, in a letter of [...] October 2017, explained that it had placed on its website at [...] the Complainant's request for habilitation proceedings along with a self-report containing a scan of the Complainant's signature pursuant to Art. 36 sec. 1 point 5 in connection with joke. 33 paragraph 1 lit. b of the Act of March 14, 2003 on academic degrees and academic title as well as degrees and title in art (Journal of Laws of 2017, item 1789), hereinafter also referred to as the Act on Academic Degrees. Moreover, the Central Commission indicated that the Complainant, in a telephone conversation with an employee of the Commission Office, coordinating the application submitted by the Complainant on [...] July 2017, requested that his personal data be deleted with regard to the submitted application and self review of the signature. On the other hand, the complainant did not submit a request to the Commission to delete his personal data as mentioned above. in writing or in electronic form. Therefore, due to the lack of submission of the application meeting the formal requirements and containing the complainant's request, the Commission did not respond to the complainant's request for deletion of his personal data made only by telephone.

In this factual state of the case, the President of the Office considered the following.

First of all, it should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) pursuant to Art. 166 paragraph. 1 of this Act, the Inspector General for Personal Data Protection became the President of the Personal Data Protection Office, and pursuant to Art. 167 paragraph. 1 of the same act, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. On the other hand, pursuant to Art. 160 of the same Act, 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 (section 1) on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922), hereinafter also referred to as the PDA, in accordance with the principles set out in the Act of June 14, 1960, Code of

Administrative Procedure (Journal of Laws of 2017, item 1257) (section 2), hereinafter also referred to as Kpa The activities performed in the proceedings referred to in para. 1 remain effective (section 3).

In addition, it is necessary to emphasize that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, "a public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A. Wróbel, Lex., EI / 2012). Moreover, 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 personal data processing, GODO is obliged to determine whether, as at the date of issuing the decision in the case, the data of a specific entity are processed and whether it is done in a lawful manner ".

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the present case is the fact that the processing of the complainant's personal data began during the period when the Act of August 29, 1997 on data protection was in force. personnel, but is now being continued. Therefore, it should be stated that the relevant provisions in this case are the application of the provisions in force at the time of issuing the decision on the case, i.e. 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 the repeal of Directive 95/46 / EC (Official Journal of the European Union, L 119, 4 May 2016), hereinafter also referred to as the GDPR, because the President of the Personal Data Protection Office must assess whether the questioned process of personal data processing as at the date of issue the administrative decision complies with the law.

It should be noted that Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 defines the obligations of the data controller, which include the processing of personal data, in compliance with the conditions set out in

the Regulation. Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permissible, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (a) of the GDPR). c) GDPR.).

It needs to be indicated that the Central Commission, acting as a central government administration body, operates on the basis of the provisions of the Act of March 14, 2003 on academic degrees and academic titles as well as degrees and titles in the field of arts. In carrying out its tasks, the Central Commission is guided by all its works, resulting from Art. 33 paragraph. 1b above of the Act, the principle of fairness, impartiality and transparency of the activities carried out. It should be emphasized here that on the basis of the Act of July 3, 2018, introducing the Act on Higher Education and Science (Journal of Laws of 2018, item 1669), the Act of March 14, 2003 on academic degrees and title as well as degrees and title in arts. However, under Art. 189 of the Act of July 3, 2018, introducing the Law on Higher Education and Science, the Central Commission operates until the end of the term of office that started before the date of entry into force of this Act, i.e. until December 31, 2020, in the scope of tasks specified in this Act under the existing rules , except that it works with the minister for higher education and science. Moreover, pursuant to Art. 179 paragraph. 1 above Acts incl. habilitation proceedings initiated and not completed before the date of entry into force of the above-mentioned Acts are carried out on the basis of the existing rules, however, if the degree is awarded after April 30, 2019, it will be awarded in accordance with the classification set out in the Regulation of the Minister of Science and Higher Education of September 20, 2018 on fields of science and scientific disciplines, and artistic disciplines (Journal of Laws of 2018, item 1818). It follows from the above that the Act on academic degrees and academic title as well as on degrees and title in the field of arts is still applicable to the habilitation proceedings conducted at the request of the complainant. Pursuant to Art. 36 sec. 1 point 5 of the Act in question, the Central Commission keeps, updates and publishes on its website, inter alia, information on ongoing habilitation proceedings, including: application to initiate habilitation

proceedings along with the postdoctoral review of the postdoctoral researcher, composition of the habilitation commission with the names and surnames of the organizational units in which the commission members are employed, and reviews. The above provision clearly indicates which documents and to what extent the Central Commission is obliged to publish on its website, in connection with the fulfillment of the information obligation in the framework of habilitation proceedings.

However, referring to the complainant's claims that the quotation quoted "placing a scan of the documents submitted with the signature removed or redacted would satisfy the provisions of law, forcing the habilitation process to be open, and would not expose the candidate to making his / her signature public", this requires that the provisions of the Act on academic scientific research do not directly regulate the requirements that should be met by an application for conducting habilitation proceedings. However, according to Art. 29 sec. 1 above of the Act, the provisions of the Code of Administrative Procedure shall apply accordingly to proceedings concerning the award of the degree of doctor and habilitated doctor or the title of professor as well as the award, limitation, suspension and deprivation of the right to award these degrees in the scope not regulated in the Act. The principle of writing expressed in art. 14 § 1 of the Code of Civil Procedure, orders that administrative matters be dealt with in writing. The concept of settling a case primarily refers to resolving a case in the form of a decision, therefore administrative decisions (settlements) should be made in writing. In accordance with the provisions of the Code of Administrative Procedure, other procedural activities of the authority and the parties (participants) to the proceedings should also be recorded in writing or in a written form, e.g. applications (Art. matters of circumstances in the documents of the case "(Art. 69 § 1 of the Code of Administrative Procedure in conjunction with Art. 86 of the Code of Administrative Procedure) (judgment of the Supreme Administrative Court in Warsaw of June 4, 1982, I SA 212/82, ONSA 1982/1, item 51). At this point, reference should be made to Art. 63 sec. 3 of the Code of Civil Procedure, according to which the application (application) should be signed. The above means that the application for the habilitation procedure, in order to have certain legal effects, should meet certain formal requirements, i.e. it should be submitted in writing and should be signed.

Therefore, it should be pointed out that the Commission is obliged to process the complainant's personal data, including a scan of his signature, contained in the application for habilitation proceedings and the self-report on its website in order to fulfill the obligation specified in Art. 36 sec. 1 point 5 of the Act on Academic Degrees in connection with joke. 33 paragraph 1 b of this Act, which is the fulfillment of the premise legalizing the processing of personal data, pursuant to art. 6 sec. 1 lit. c) GDPR.

The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the

legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 18 sec. 1 u.o.d.o. for the purpose of restoring a lawful state in the process of data processing - so it is justified and necessary only insofar as there are irregularities in the processing of personal data. In the opinion of the President of the Personal Data Protection Office, there are no grounds to state that the Complainant's personal data before May 25, 2018 were processed by the Commission in a manner inconsistent with the provisions of the Personal Data Protection Act. The accused trial was based on the premise specified in Art. 23 sec. 1 point 2 u.o.d.o. At present, however, the Commission, when processing the Complainant's personal data, uses the premise set out in Art. 6 sec. 1 lit. c) GDPR.

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 Act of 14 June 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257), the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of this decision. If a party does not want to exercise the right to submit an application for reconsideration, 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 delivery of the decision to the party. The complaint is lodged through the President of the Personal Data Protection Office. The fee for the complaint is PLN 200 (say: two hundred zlotys). The party has the right to apply for the right to assistance, including exemption from court costs.

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