THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 08

May

2020

DECISION

ZKE.440.30.2019

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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 2019, item 1781) and art. 12 point 2 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), after conducting administrative proceedings regarding the request of Mr. MK, for reconsideration of the case ended with the decision of the Inspector General for Protection Personal Data of April 20, 2016 (reference number DOLiS / DEC-295/16 / 32477,32453) regarding the complaint of Mr. MK for disclosure of his personal data contained in the application for the allowance and information about the union allowance paid by Mr. TM, the Chairman of the Commission Zakładowa [...] at W. Sp. z o.o.,

upholds the contested decision.

Justification

The Inspector General for Personal Data Protection (currently the President of the Personal Data Protection Office) received a complaint from Mr. M. K. (hereinafter referred to as the "Complainant") that Mr. T. M., Chairman of the Company Committee [...] at W. Sp. z o.o. (hereinafter referred to as the "President of the Union"), his personal data contained in the application for the allowance and information about the allowance paid.

The complainant indicated in his complaint that through the intermediary of the former Deputy Chairman of the Association - Mr. M. J. - he had obtained information about the dissemination by the Chairman of the Association and by an employee of W. Sp. z o.o., who is not a member of the trade union, Mr. Z. R., false information about the appropriation of money by applying for and obtaining a union allowance. The complainant pointed out that "the information about the decision granted to the previous Works Committee was only available on the application submitted and reviewed by members of the Works Committee, located at the seat of KZ [...] at W.". The complainant also pointed out that after the election for a new term of

office and before the election results became final (their approval by the Regional Electoral Commission), “T. M. together with the employer arbitrarily entered the union premises in my absence - the official exit of the union, and unlawfully seized all union documents, as well as my documents, private belongings without handing them over ”. In the Complainant's opinion, there was a breach of the principles of personal data protection through the disclosure and dissemination of data concerning his health, family and legal situation from the application for trade union allowance, which, in the complainant's opinion, violates the provisions of the Act on the Protection of Personal Data and his personal rights. In connection with the above, the complainant requested "restoration of lawfulness by removing deficiencies, non-disclosure of personal data, application of additional security measures for the collected personal data, data protection in accordance with Art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data ”.

In the course of the proceedings with reference number [...], initiated by the Complainant's complaint, the Inspector General for Personal Data Protection made the following findings.

The President of the Association indicated that the Works Committee [...] at W. Sp. z o.o. obtained the Complainant's personal data in the form of a declaration of affiliation to [...] completed and signed by the Complainant.

The chairman of the union indicated that the complainant's personal data were not and are not disclosed to third parties, but only used in the ongoing activities of the union.

The President of the Association also pointed out that the complainant's application for assistance did not include his address and PESEL number. The application does not contain any data concerning the applicant's health condition, let alone a description of his family and legal situation, and there is no information about the grant. The above is confirmed by the evidence provided by the President of the Association and included in the files of the case conducted by the Inspector General for Personal Data Protection.

The president of the Union also pointed out that the Works Committee [...] at W. Sp. z o.o. he stores the complainant's personal data in a locked cabinet in a room also locked. The President of the Association has access to the above-mentioned room.

On the basis of the evidence collected in the case, the Inspector General for Personal Data Protection concluded that there was no evidence that the complainant's personal data had been disclosed without a legal basis in the case. In view of the above, by the administrative decision of April 20, 2016 (reference number DOLiS / DEC-295/16 / 32447,32453), the Inspector

General for Personal Data Protection refused to consider the Complainant's request for protection of his personal data, violated - in the Complainant's opinion - acting by the President of the Union. The decision was delivered to both the Complainant and the President of the Association on [...] April 2016.

Within the statutory deadline, the complainant filed a request for reconsideration of the case ended with the above-mentioned decision. In support of his request, the Complainant alleged that the decision “was based on a statement by the perpetrator of the breach of my personal data, the Chairman […] T. M.”. The complainant also stated that the Inspector General for Personal Data Protection “is limited only to the Chairman's statement in breach of the Personal Data Protection Act and on the document presented by him. However, it does not interview witnesses, does not collect evidence that would unambiguously allow to determine the origin of the information on the source of information about the Complainant, or documents that clearly indicate that the information presented by the Chairman is false and incomplete ”. The applicant also pointed out that:

It is not true that the President of the Union obtained the complainant's personal data "in the form of a declaration of affiliation to [...]", "because the declaration of joining the association does not contain information on the health condition, as well as the allowances obtained in connection with it, and the personal situation".

In accordance with his findings, his personal data concerning the state of health and the union allowance obtained were made available to Mr. MJ (who, as the Complainant indicated in the complaint, obtained the data from Mr. ZR), Ms. MZ - Deputy Chairman [...] and delegates [...]. In his opinion, "all this type of information can only come from one source, i.e. from [...] T. M., who was in possession of the aid application."

Chairman T. M. had two documents concerning the allowance. The grant document had signatures of members of the Works Committee [...] - Mr. M. J. and M. R.

It is not true that "the documents containing his personal data were kept in a closed room, to which the Chairman of TM had access. As the Complainant pointed out, the union room - as a result of the" unlawful arbitrary "entry of the Union President together with the employer's representatives -" was in at the discretion of W. until […] May 2014 ”.

In the conclusion of his application for the reconsideration of the case, the Complainant requested "a summons to present the aid document with the signatures of the members of the Works Committee, as well as to obtain from the above-mentioned persons any information on how to obtain and have information on the Complainant's personal data, and only on this basis to examine issues".

In the course of the proceedings initiated by the complainant's request for reconsideration of the case, the Inspector General for Personal Data Protection supplemented the evidence, obtaining:

additional explanations from the Chairman of the Association that, by the Resolution of [...] at W. Sp. z o.o. no. [...] of [...] October 2016, the applicant was struck off the list of members of that trade union organization due to arrears in the payment of union dues to it. The President of the Association again stated that the Complainant's personal data "were not and are not disclosed to third parties, but were only used in the daily activities of the Association", and in particular "the Complainant's personal data covered by his application for assistance are not disclosed to third parties as in the application form. Mr. ZR ";

explanations of the [...] Chairman of the CC and the Deputy Chairman of the Ministry of Health, which show that this territorial unit [...] processes the Complainant's personal data obtained only in connection with the performance of various union functions (Member and Chairman of the Works Committee [...] at W. Sp. Z oo, delegate to [...], delegate to [...], member [...]). [...] does not have any data on the applicant's state of health, therefore “they could not be processed by […] any data in this regard”;

explanations of Mr. ZR, who stated that he was not aware of "any facts concerning the case and its conclusion" and that he did not remember the situations concerning disclosure of any personal data of the Complainant to him, "in particular personal data concerning the state of health related to the Complainant's membership in the Association ";

explanations by Mr. M. J. - Deputy Chairman of the Works Committee [...] at W. Sp. z o.o. participating in the examination of the Complainant's application for union allowance - who mentioned the following circumstances of his conversation with Mr. ZR, which took place during the period covered by the complaint: "Mr. , in a form that asks about MK's health condition, provide me with information that could be read in the aid letter submitted by MK ". Mr. M. J. stipulated that this information cannot be supported by evidence, the facts are only recalled from memory.

After reconsidering the case, the President of the Personal Data Protection Office states as follows.

On May 25, 2018, the provisions of the Regulation of the European Parliament and the EU Council 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the protection of personal data began to apply in the Member States of the European Union. 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, with the amendment announced in the Journal of Laws UE L 127 of on 23/05/2018, p. 2), hereinafter referred to as "Regulation 2016/679". Also on May 25, 2018, the

Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o., entered into force on the territory of the Republic of Poland. 2018 ", implementing Regulation 2016/679 on the territory of the Republic of Poland and supplementing the regulations provided for in this legal act.

Pursuant to Art. 160 sec. 1 and 2 u.o.d.o. 2018, 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 Personal Data Protection Office 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 referred to as "uodo 1997 ", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), hereinafter referred to as" k.p.a. ". At the same time, pursuant to Art. 160 sec. 3 u.o.d.o. 2018, activities performed in proceedings initiated and not completed before the date of entry into force of its provisions, remain effective.

Taking into account the above legal regulations, it should be stated at the outset that this procedure, initiated and not completed before May 25, 2018, is conducted - in the scope covering the provisions governing the procedure procedure - on the basis of the provisions of u.o.d.o. 1997 and k.p.a. On the other hand, the substantive assessment of the legality and lawfulness of the processing of personal data should be based on the provisions of Regulation 2016/679. The above statement is consistent with the well-established position of the doctrine, according to which “the 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 the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance ”(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., El / 2012).

In the present case, it should be considered as proven and undisputed that [...] at W. Sp. z o.o. legally obtained and processed personal data in the scope of data related to the Complainant's membership in this trade union organization and acting in it as a member and chairman of the Works Committee. The legal basis for the processing of this data is Art. 23 sec. 1 point 5 u.o.d.o. 1997 stating that the processing of personal data is permissible when "it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not violate the rights and freedoms of the data subject" (currently Article 6 par. 1 (f) of Regulation 2016/679). This legally justified goal was and is currently the representation and defense of the rights and professional and social interests of working people - the goal indicated in the definition of a trade

union specified in Art. 1 clause 1 of the Act of 23 May 1991 on trade unions (Journal of Laws of 2019, item 263, as amended), hereinafter referred to as "u.z.z.". The same legal basis had the processing of the Complainant's personal data contained in his application for a union allowance and related to the allowance granted to him. The legitimate purpose of processing these data was the implementation of the statutory task of the trade union [...] - providing material assistance to union members.

The subject matter of the present proceedings as outlined by the Complainant concerns the determination of the fact that the data controller performed a narrowly defined operation on the Complainant's personal data (those contained in the application for granting the union allowance and related to the fact of granting him the allowance) - making them available to third parties, and in the event that such an event took place - determining whether the disclosure of the Complainant's personal data had a legal basis and justification for a legally justified purpose carried out by the administrator or another basis from among those indicated in art. 23 sec. 1 u.o.d. to 1997.

After re-examining the evidence gathered in the case, taking into account the evidence obtained in the proceedings on the request for reconsideration, the President of the Personal Data Protection Office states that the decision contained in the appealed decision is correct - the Complainant's request to restore the legal status may not be accepted .

First of all, it should be noted that the additional evidence in this proceeding from the explanations of Mr. KK and Mrs. MZ (the Chairman [...] and his Deputy), Mr. ZR (an employee of W. Sp. z oo, to whom Mr. ZR allegedly transferred the Complainant's personal data) and Mr. MJ (Deputy Chairman of the Plant Committee [...] at W. Sp. personal information contained in the aid application and the fact of granting it. Mr. Z. R. explained that he did not remember such a fact. Such an event was not confirmed by Ms M. Z., the interview with which the complainant mentioned in his complaint. On the other hand, from the explanations of Mr. MJ, who confirmed the fact of his conversation with Mr. information identical to that contained in this letter, and not information derived from this letter. Considering the high degree of generality of the information contained in the Complainant's letter for assistance (boiled down to the statement that "[...]" and because of "[...]", the applicant was forced to "borrow current expenses", which he wanted to repay from the union allowance), it should be considered highly probable that the information mentioned both in the conversation between Mr. ZR and Mr. MJ, as well as probably in many other conversations between the applicant's associates, had the form of assumptions, guesses and inquiries, provoked, for example, by a long (according to the applicant, a 9-month period) his absence from work due to illness.

The analysis of the entire evidence material, taking into account in particular the explanations submitted in the course of the

proceedings by persons who, in the opinion of the Complainant, obtained the information contained in his application for assistance, performed in accordance with the principles of logical reasoning and life experience, does not give grounds for a conclusion that they came from this very source, and that they had been made available to them by the President of the Union. When issuing an administrative decision, the President of the Personal Data Protection Office, as well as any public administration body deciding on an administrative case, may consider the actual state of the case under consideration to be established solely on the basis of clear and unambiguous evidence. Supreme Administrative Court in the judgment of July 9, 1999, file ref. III SA 5417/98 (LEX No. 39706), stated that: “Art. 80 of the Code of Civil Procedure stipulates that the administration authority assesses whether a given circumstance has been proven on the basis of all the evidence. This provision expresses both the principle of objective truth and the principle of free evaluation of evidence. The authority conducting the proceedings must strive to establish the material truth and, according to its knowledge, experience and internal conviction, assess the probative value of individual evidence, the impact of proving one circumstance on other circumstances. ”. After exhausting the possibilities of making the factual findings necessary to make a decision, the authority conducting the proceedings is entitled and even obliged to accept such a version of the events that logically corresponds to the collected evidence. This principle was followed by the President of the Personal Data Protection Office when re-examining this case. At this point, it should be stated that the President of the Personal Data Protection Office considered the complainant's requests for evidence to be taken from the explanations of the delegates [...] and from the "aid document signed by members of the Works Committee" as groundless and pointless. In the opinion of the President of the Office for Personal Data Protection, personal evidence sources from the circle not belonging to the Complainant's close circle, the President of the Union and the workplace in which they both were employed, will not bring anything more than what was obtained from the explanations submitted in the proceedings, and will be burdened with an even greater dose of uncertainty. On the other hand, the existence and content of the "allowance document" (the document confirming the award of the allowance to the complainant) are not relevant to the case; the Complainant's personal data concerning his health and personal situation - if they are included therein - are necessarily only derivative of the content of the Complainant's application document, contained in the evidence. The refusal to take into account the applicant's evidence requests due to their ineffectiveness is admissible, which is confirmed by the jurisprudence of administrative courts. As indicated by the Supreme Administrative Court in the justification of the judgment of July 1, 2016, file ref. no. II GSK 470/15 (LEX no. 2142302): “The bench of the Supreme

Administrative Court shares the view that although a party - pursuant to Art. 78 of the Code of Administrative Procedure - has the right to request the taking of evidence, but this right is subject to limitations which, in terms of purposefulness and the need to ensure the speed of proceedings, the authority should always consider, especially in a situation where there are no sufficient arguments to question the existing findings. "

Summarizing the above, it should be stated that in the opinion of the President of the Personal Data Protection Office, the Inspector General for Personal Data Protection in the proceedings initiated by the Complainant's complaint correctly determined the facts of the case, finding that there was no breach of the provisions on the protection of personal data consisting in processing by the President of the Union (consisting in disclosure to third parties) of the complainant's personal data without a legal basis.

The President of the Office for Personal Data Protection additionally notes that even if it was established in the present case that the above-mentioned violation had occurred, the outcome of the case could not have been different - the President of the Office for Personal Data Protection would be obliged to refuse to take into account the Complainant's request. Based on the description of the event which was the basis of his complaint provided by the Complainant, it should be considered incidental, lasting relatively shortly after the conflict taking place in connection with the change in the position of the Chairman of the Works Commission [...] at W. Sp. z o.o. (and therefore the conflict). Even if it is assumed that the new President of the Union disclosed the Complainant's personal data in order to somehow discredit the Complainant in an environment interested in the conflict (in the workplace, in the company structure [...] and in the higher-level structures of this trade union), then at the moment of achieving this goal, the sense and need for further dissemination of the Complainant's personal data (hypothetically existing on the part of the President of the Union) would cease to exist. In the course of the proceedings (also in the application for reconsideration of the case), the complainant did not indicate any further (occurring after those described in the complaint) signs of violation.

Due to the fact that the infringement would be of an incidental nature, not continued on the date of this decision, and due to the fact that - as indicated at the beginning of the justification of this decision - the President of the Personal Data Protection Office adjudicates in this case on the basis of u.o.d.o. 1997 (having at its disposal only the means indicated in Art. 18 (1) of this Act), the personal data protection authority would not have had the basis for a decision in accordance with the complainant's demands. As indicated by the Supreme Administrative Court in the judgment of 17 July 2015, I OSK 2464/13 (LEX no.

2091094): “According to this provision [Art. 18 sec. 1 u.o.d.o. 1997], in a situation where there is a breach of the provisions of the Act on the Protection of Personal Data, the Inspector General, if such breach is found, by way of an administrative decision, orders the restoration of the legal status by issuing specific orders listed in this provision. The literature on the subject emphasizes that the decision of the Inspector General issued on the basis of the above provision is to restore the legal status. ... Importantly, the breach of the provisions on the protection of personal data identified by the authority should exist on the date of the decision. " As it follows from the above, the President of the Personal Data Protection Office, in cases initiated before May 25, 2018, i.e. before the date of application of the provisions of Regulation 2016/679, it is not possible to assess past violations, not continued at the time of the ruling, e.g. in repressive purposes - aimed at obtaining consequences in connection with such violations. Such a possibility (the power to impose an administrative fine) was received by the President of the Personal Data Protection Office only on the basis of the provisions of Regulation 2016/679 - in cases initiated after the date of its application.

Finally, referring to the Complainant's request to "apply additional measures to secure the collected personal data, data protection pursuant to Art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data ”, the President of the Office for Personal Data Protection deems correct the refusal to accept this request contained in the challenged decision. The collected evidence shows that after the event constituting the basis for the complaint (the takeover of the trade union premises together with the documentation therein by the newly elected President of the Union), the data controller applied security measures adequate to the threats, in particular legal and organizational (new trade union premises lease agreement concluded z oo on [...] February 2015) and technical (premises and cabinet for documents containing personal data, locked, available to the President of the Association). Such security measures are deemed by the President of the Personal Data Protection Office to be correct and sufficient in the situation of the proper, day-to-day operation of [...] at W. Sp. z o.o., when the election of a new President of the Association was legally sanctioned in accordance with the statutory solutions in force in [...], and the conflict being the source and basis of the complaint has ceased to exist.

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

The decision is final. Pursuant to Art. 53 § 1 of the Act of August 30, 2002 - Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, as amended), the party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, in within 30 days from the date of its delivery, via the President of the Office for

Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw). However, due to the state of epidemic in force on the date of the decision, pursuant to Art. 15zzr paragraph. 1 point 1 of the Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374), hereinafter referred to as " the COVID-19 Act ", this deadline will not start to run at present; it will run: - on the day following the last day of the state of epidemic or immediately following it, a possible state of epidemic threat, or - on the day following the last day of the validity of the provision of Art. 15zzr paragraph. 1 point 1 of the COVID-19 Act, in the event of its repeal before the end of the epidemic or epidemic threat.

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.

2021-05-13