

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

May

2021

DECISION

DKE.523.27.2019

Based on Article. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended), art. 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) in connection with joke. 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) and with Art. 57 sec. 1 points a) and 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 (Journal of Laws of the European Union L 119 of May 4, 2016, p. 1 and Journal of Laws of the European Union L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. S. H for the processing of by I. Sp. z o.o. (formerly: In. Sp. z o.o.) his personal data in the scope of name, surname and address for the purposes of debt collection, President of the Office for Personal Data Protection discontinues the proceedings.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. S. H., hereinafter referred to as "the Complainant", about the processing of his personal data by In. Sp. z o.o. (currently: I. Sp. z o.o.), hereinafter referred to as the "Company".

The content of the complaint shows that the Company disseminated his personal data in the scope of his name, surname and address in connection with reasonable suspicion of committing a crime, i.e. an act pursuant to Art. 116 sec. 1 of the Act of February 4, 1994 on copyright. In connection with the presented situation, the Complainant requested (quoted): "abandonment of actions" undertaken by the Company.

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the

following facts:

The complainant received a letter from the Company of [...] June 2015 requesting him to pay the amount of PLN [...] in connection with reasonable suspicion of committing a crime under Art. 116 sec. 1 of the Act of February 4, 1994 on copyright and related rights, i.e. that as the end user of the link, he disseminated on the Internet using the uTorrent 3.1.2 computer program, an audiovisual work entitled [...], to which exclusive property rights copyright is owned by F. Sp. z o.o. The summons contained the complainant's personal data in the scope of the first and last name and address of residence. In the request for payment, the Company informed that the Complainant's personal data had been obtained by F. Sp. z o.o. from the files of the proceedings conducted by the District Prosecutor in O., file no. [...] on suspicion of committing a crime under Art. 116 sec. 1 on copyright and related rights, which - on the basis of data such as, inter alia, the IP address from which the unlawful dissemination on the Internet took place, the above-mentioned the work (the name of the distributed link is: [...]) - it has established that the Complainant is the end user of the link.

In the explanations of [...] June 2020 submitted as part of these proceedings, the Company informed that:

F. Sp. z o.o. (when processing the complainant's personal data pursuant to art.23 sec. 1 point 5 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 the 1997 Act ., under the entrustment agreement of [...] July 2014, provided the Company with the Complainant's personal data regarding his name, surname, address and liability data. Sp. Z oo in connection with the liability provided for in Art. 79 of the Act of February 4, 1994 on Copyright and Related Rights, which is a tort liability for unlawful (without statutory or contractual basis) infringement of someone else's exclusive right. Therefore, the Complainant's personal data was Article 31 § 1 of the 1997 Act in conjunction with Article 95 § 1 and Article 734 § 1 of the Civil Code of 23 April 1964. After the Regulation of the European Parliament and of the Council entered into force (EU) 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 (Journal Of UE L 119 of 04/05/2016 p. 1 and Dz. Of UE L 127 of 23/05/2018, p. 2), hereinafter referred to as "Regulation 2016/17", the Company processed the complainant's personal data pursuant to art. 6 sec. 1 lit. c) and f) in connection with Art. 74 sec. 4 of the Accounting Act of September 29, 1994, in order to meet tax and accounting obligations. In connection with the repayment of [...] June 2015, the claim of F. Sp. z o.o. towards the Complainant, the Company currently does not process the Complainant's personal data (the Complainant's personal data was permanently deleted on [...] January 2020).

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

On the date of entry into force of 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. 2018 ", ie on May 25, 2018, the Office of the Inspector General for Personal Data Protection became 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 referred to as "kpa". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act on Personal Data Protection Act 2018).

Pursuant to Art. 57 sec. 1 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 personal 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), hereinafter referred to as "Regulation 2016/679", without prejudice to other tasks determined pursuant to this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and deals with complaints brought by the data subject or by a data subject empowered by him, in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. As the doctrine points out, "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 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). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 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 as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be stated that in the course of the investigation, the President of the Office for Personal Data Protection established that currently the complainant's personal data in the scope of his name, surname and address are not processed by the Company. They were permanently removed on [...] January 2020.

For the above reasons, the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Administrative Procedure, as it is irrelevant.

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the procedure is deemed groundless, the authority conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Civil Procedure means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority (B. Adamiak, J. Borkowski, Code of Administrative Procedure Comment ", 14th edition, CH Beck Publishing House, Warsaw 2016, p. 491). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

In the present case, this element of the substantive law relationship, which ceased to exist during the proceedings, is the fact that the Company processes the complainant's personal data (to the extent limited by the content of the complaint and the

demands made therein - name and surname and address of residence). The statement of the existence of this fact would only allow to decide on its legality (the existence of a legal basis for processing) and compliance with the provisions on the protection of personal data.

The determination by the public administration body of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

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 Civil Procedure of the decision, the party has the right to submit 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 Personal Data Protection 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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