

Warsaw, day 05

July

2022

Decision

DKE.561.27.2020

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (i.e. Journal of Laws of 2021, item 735, as amended) in connection with 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) and pursuant to art. 31 and Art. 58 sec. 2 lit. b) Regulation of the European Parliament and of 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 free movement of such data, and repealing Directive 95/46 / EC (general regulations on data protection ) (Journal of Laws UE L 119 of 04.05.2016, p. 1, as amended), after carrying out administrative proceedings to impose an administrative fine on A. sp. z o. o., President of the Office for Personal Data Protection

reprimands A. sp. z o. o. for violating the provisions of art. 31 and Art. 58 sec. 1 lit. a) Regulation of the European Parliament and of the EU Council 2016/679 and EU Council 2016/679 of 27 April 2016 on the protection of natural persons 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 data protection) (Official Journal UE L 119 of 04/05/2016, p. 1, as amended), consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and failure to provide information necessary to the President of the Office for Personal Data Protection to carry out its tasks in the proceedings under reference number [...].

Justification

In the proceedings conducted by the President of the UODO, reference number [...], taken on the basis of information about irregularities in the processing of personal data contained in the documentation of A. Sp. z o.o., consisting in leaving the above-mentioned documentation in the commercial premises previously occupied by the Company in W., in a letter of [...] June 2020, the President of the UODO called on the Company to provide explanations in the case. In the absence of receipt of the summons, it was considered delivered [...] on June 2020 on the basis of substitute delivery pursuant to Art. 44 of the Act of June 14, 1960, the Code of Administrative Procedure (i.e. Journal of Laws of 2020, item 256, as amended) (hereinafter "KPA")

- a shipment advised twice, not picked up on time. The company did not provide any explanations on the matter. The President of UODO, in a letter of [...] October 2020, again called on the Company to submit explanations. The letter contained an instruction that failure to provide explanations may result in the imposition of an administrative fine on the Company in accordance with Art. 83 sec. 5 lit. e) Regulation of the European Parliament and of the EU Council 2016/679 and EU Council 2016/679 of 27 April 2016 on the protection of natural persons 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 data protection) (Official Journal EU L 119 of 04.05.2016, p. 1, as amended) (hereinafter "GDPR"). In the absence of receipt of the summons, it was considered delivered on [...] October 2020, also on the basis of substituted delivery pursuant to Art. 44 kpa - the shipment was advised twice, not picked up on time. The company again did not provide any explanations on the matter. The above-described ignoring of the correspondence of the President of the UODO and the Company's failure to respond to the request for clarification in the proceedings with reference number [...] gave rise to the initiation of these administrative proceedings regarding the imposition of an administrative fine in connection with the violation of Art. 31 and Art. 58 sec. 1 lit. a) of the GDPR, consisting in the Company's failure to comply with the obligation to provide the President of the UODO with the information necessary to perform his tasks. The notification on the initiation of the administrative proceedings in question and the collection of evidence of [...] December 2020 was delivered to the Company again on the basis of substitute delivery pursuant to Art. 44 kpa - the shipment was advised twice, not picked up on time. The letter indicated that if the Company provided exhaustive explanations in the proceedings under reference number [...] requested by the President of the UODO, this circumstance may have a mitigating effect on the amount of the administrative fine imposed in these proceedings, or may result in abandoning its imposition. In the course of these proceedings, the President of the UODO questioned as witnesses: T. W., performing the function [...] at the time of the alleged breach of personal data protection, and [...], Mr. M. P. The testimonies contained exhaustive information. Witnesses testified, among others, which is important in the proceedings under reference number [...] that leaving the documentation containing the personal data of the Company's clients resulted from the Company's loss of possession of the premises in W., caused by the replacement of locks by the Lessor, i.e. M. In the course of these proceedings, the Company initiated contact with the Lessor, calling him to issue documents containing personal data of the Company's clients. Correspondence in this regard was forwarded by the Company to the President of the UODO and received a response from the Landlord, who formulated claims against the Company in exchange for the issuance of the

above-mentioned documents. Further actions of the President of the UODO in this context, both towards the Company and the Lessor, are the subject of proceedings with reference number [...].

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

In accordance with art. 57 sec. 1 lit. a) GDPR, the President of the UODO - as a supervisory authority within the meaning of art. 51 of the GDPR - monitors and enforces the application of this regulation on its territory. As part of his competence, the President of the UODO considers, among others: complaints by data subjects, conduct investigations into these complaints to the extent appropriate and inform the complainant of the progress and results of these investigations within a reasonable time (Article 57(1)(f)). In order to enable the implementation of such tasks, the President of the UODO is entitled to a number of tasks specified in art. 58 sec. 1 of the GDPR, the rights in the field of conducted proceedings, including the right to order the controller and the processing entity to provide all information necessary to perform its tasks (Article 58(1)(a)). It should also be pointed out that the controller and the processing entity are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in art. 31 GDPR. Violation of the provisions of Art. 31 and Art. 58 sec. 1 lit. a) and f) of the GDPR referred to above, consisting in the controller's or processor's failure to provide information, is subject to - in accordance with art. 83 section 5 letter e) in fine of the GDPR - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual global turnover from the previous financial year, with the higher amount applicable. The President of the UODO has a number of rights specified in art. 58 sec. 2 corrective powers, including issuing reminders to the administrator or processor in the event of violation of the provisions of the GDPR by processing operations. The President of the UODO, acting pursuant to art. 58 sec. 2 lit. b) of the GDPR may consider it justified to issue a warning to the Company regarding the identified violation of the provisions of art. 31 and Art. 58 sec. 1 lit. a) GDPR. Pursuant to Recital 148 of the GDPR, in order to make enforcement of the Regulation more effective, sanctions should be imposed for its violation, including administrative fines - in addition to or instead of appropriate measures imposed by the supervisory authority under this Regulation. If the infringement is minor, the fine may be replaced by a warning. However, due consideration should be given to the nature, gravity and duration of the infringement, whether the infringement was intentional, the actions taken to minimize the damage, the degree of responsibility or any significant previous infringements, the manner in which the supervisory authority became aware of the infringement, compliance with the measures imposed on the controller or

processor, the application of codes of conduct and any other aggravating or mitigating factors. Referring the above-mentioned provisions of the GDPR to the facts established in this case, it should be stated that the Company, as the administrator of personal data, by not responding to the calls addressed to it in the proceedings under reference number [...] has violated Art. 31 of the GDPR through lack of cooperation with the President of the UODO in the performance of his tasks, as well as art. 58 sec. 1 lit. a) and the GDPR by failing to provide the President of the UODO with the necessary information in the case. The President of the UODO twice called on the Company to provide explanations. The lack of receipt of these summons had a legal effect in the form of declaring them delivered in accordance with Art. 44 kpa. It is no surprise that none of the letters received a response within the specified time limits of 7 days from the date they were deemed delivered, since the addressee did not become familiar with their content. However, there is no doubt about the fact that the Company is responsible for organizing the collection of correspondence, sent in accordance with the address disclosed in the National Court Register. Resignation from the collection of correspondence may cause negative legal consequences. In this case, the lack of response to the requests in question resulted in the statement of lack of cooperation with the President of the UODO and the need to initiate these proceedings to impose an administrative fine on the Company. In the facts in question, apart from the lack of response to requests for explanations, no other indications were found indicating the Company's lack of will to cooperate with the President of the UODO. The circumstances of the case allow us to conclude that the Company's failure to respond to the requests of the President of the UODO in the proceedings with reference number [...] was not intentional, because in the course of these proceedings, the Company took steps to recover the documentation and secure the personal data of its clients, informing the President of the UODO about the steps taken. As already indicated, further actions of the President of the UODO, both towards the Company and the Lessor, are the subject of proceedings with reference number [...]. In connection with the above, acting pursuant to art. 58 sec. 2 lit. b) of the GDPR, according to which each supervisory authority has the right to issue a warning to the administrator or processor in the scope of the proceedings conducted, in the event of violation of the provisions of this regulation by processing operations, the President of the UODO considers it justified to issue a warning to the Company regarding the violation of the provisions of art. 31 and Art. 58 sec. 1 lit. a) GDPR. The admissibility of replacing a fine with a reminder is also justified by recital 148 of the GDPR, which states that sanctions, including administrative fines, should be imposed "to make the enforcement of the provisions of this regulation more effective". The President of the UODO decided that in the case in question, in the light of the criteria set out in Art. 83 sec. 2 of the GDPR, a reminder will be

sufficient. However, it should be noted that in the event of a similar event in the future, each reminder issued by the President of the UODO against the Company will be taken into account when assessing the grounds for a possible imposition of an administrative penalty, in accordance with the principles set out in Art. 83 sec. 2 GDPR.

In this factual and legal state, the President of the UODO 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 to the Provincial Administrative Court in Warsaw, 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). A permanent entry fee of PLN 200 should be made against the complaint, in accordance with Art. 231 in connection with art. 233 of the Act of August 30, 2002. Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, as amended). The party (natural person, legal person, other organizational unit without legal personality) has the right to apply for the right to assistance, which includes exemption from court costs and the appointment of a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

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