THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

November

2018

DECISION

ZSZZS.440.736.2018

DECISION

Based on Article. 138 § 1 point 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) in connection with Art. 160 sec. 1 and sec. 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) and art. 6 sec. 1 lit. c) and lit. e) Regulation (EU) 2016/679 of the European Parliament and of the Council 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 (Official Journal of the European Union European, L 119, May 4, 2016), after conducting administrative proceedings regarding the request of Mr. PK for reconsideration of the case ended with the decision of the Inspector General for Personal Data Protection of October 12, 2017 (ref .: DOLiS / DEC-1234/17 / 75783.75795), regarding a complaint against the processing of his personal data by S. with its registered office in W. , President of the Personal Data Protection Office

upholds the contested decision.

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. P.K., hereinafter referred to as the Complainant, about the processing of his personal data by S. based in W., hereinafter referred to as the University.

In the content of the complaint, the complainant asked the authority to quote :,,(...) ordering the Rector (...) to immediately execute the attached request to delete personal data (Annex 1) ”. It transpired from the letter attached to the complaint to the University that the Complainant had requested that his personal data be removed. The complainant emphasized that his request concerns the following quotation: "in particular (...) a private e-mail address: [...] collected during the performance of the" Request for Information "submitted (...) in December 2016 directly to the rector of the School in accordance with the procedure established in the Act of June 14, 1960 Code of Administrative Procedure (...) ”. [original spelling].

In the course of the administrative procedure conducted in the present case, the Inspector General for Personal Data Protection established the following factual circumstances.

The applicant was a student of the University.

The complainant, in a letter of [...] July 2017 addressed to the University authorities, entitled "Request to delete personal data", requested the deletion of his personal data in the form of an e-mail address: [...]. The university refused to comply with this request.

In a letter of [...] August 2017, the University indicated the legal basis (the Act of July 27, 2005, Law on Higher Education, the Act of July 14, 1983 on the national archival resource and archives, the Act of June 14, 1960) r. Code of Administrative Procedure) and the purposes of processing the complainant's personal data (purposes specified in the Act on Higher Education, archival purpose and the purpose of conducting administrative proceedings with the Complainant's participation).

The university in the above-mentioned of the letter stated that the quotation: “P.K. was a student of S. in W. and S. in W. pursuant to Art. 26 sec. 1 point 2 is the administrator of personal data collected and processed for the purposes specified in the Act on higher education ”. In the further part of the explanations, the University also noted that the quotation: "(...) The University maintains an archive, the activities of which are regulated by the provisions of the Act of July 14, 1983 on the national archival resource and archives (...). Therefore, the provisions of this Act apply to the processing of students' personal data after graduation, i.e. for archival purposes. " At the same time, the University emphasized that the quotation: "p. P.K. he is the author of many requests for information, requests for copies of documents and complaints to S. in W. sent by post and e-mail initiating administrative proceedings. Due to the necessity to reply to each of these letters, personal data are processed in the course of administrative proceedings. ”.

After conducting the administrative procedure in the case, the Inspector General for Personal Data Protection issued an administrative decision of October 12, 2017 (DOLIS / DEC-1234/17 / 75783,75795), which refused to accept the request in this case.

On [...] October 2017, the GIODO Bureau received a letter from the Complainant entitled "COMPLAINT AGAINST THE DECISION", in which the complainant indicated that in his opinion the quotation: "the position and opinion of S. cited in the decision is not sufficient to reject the request for deletion of personal data ". The complainant submitted that: "S.'s position is very general and the arguments cited, such as that: S.'s activity is regulated by the provisions of the Higher Education Act, the

provisions on the national archival resource are widely known and do not add anything new to the case at hand". As a consequence of the above, the complainant requested that the University be ordered to delete his personal data, which are still processed by the University and have not been archived, with the exception of personal data collected in the course of administrative proceedings.

Due to the doubts of the authority as to the nature of the above-mentioned of the letter, the Complainant on [...] November 2017 was requested by the Inspector General for Personal Data Protection to indicate whether his letter entitled "COMPLAINT ON A DECISION" constitutes a request for reconsideration by the Inspector General for Personal Data Protection of the case concluded with the decision of October 12, 2017 or is it a complaint to the Provincial Administrative Court against this decision.

In a letter of [...] November 2017, the complainant explained that he is requesting a reconsideration by the Inspector General for Personal Data Protection of the case ended with the decision of 12 October 2017 and the revocation of the decision in question. Moreover, the Complainant again requested that the University be ordered to delete his personal data, which are still processed by the University and have not been archived, with the exception of personal data collected in the course of administrative proceedings.

After reviewing all the evidence collected in this case, the President of the Office for Personal Data Protection, hereinafter also referred to as 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 should be noted that the President of the Personal Data Protection Office, when issuing an administrative

decision, is obliged to settle the case based on the facts existing 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., El / 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, GIODO 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 ".

It should be emphasized that the decisive factor for the decision that must be issued in the case at hand is the fact that the processing of the complainant's personal data began during the period when the Act of August 29, 1997 on the protection of personal data was in force and is currently 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 Office must assess whether the questioned process of personal data processing as at the date of the administrative decision is lawful.

It should be noted that the Act of August 29, 1997 on the protection of personal data defined the rules of conduct in the processing of personal data and the rights of natural persons whose data is or may be processed in data filing systems (Article 2 (1) of the Act on Personal Data Protection). The processing of personal data is a legal process when the data controller has at least one of the conditions listed in art. 23 sec. 1 u.o.d.o. Pursuant to Art. 23 sec. 1 PDA, the processing of personal data is permissible when: the data subject consents to it, unless it concerns the deletion of data concerning him (point 1), it is necessary to exercise the right or fulfill the obligation resulting from the law (point 2), it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract at the

request of the data subject (point 3), it is necessary to perform the tasks specified by law carried out for the public good (point 4), 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 (point 5).

Each of the conditions for data processing set out in art. 23 (1) u.o.d.o. was autonomous and independent, therefore meeting at least one of them constituted a lawful processing of personal data. At the same time, the consent of the data subject was not the only premise legalizing the processing of personal data. If there are legal provisions governing the processing of data, they constitute an independent legal basis for the processing of personal data referred to in art. 23 sec. 1 point 2 u.o.d.o.

As of the date of entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, the provision entitling data controllers to process ordinary data of natural persons is 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) or is necessary for the performance of a task carried out in the public interest or as part of the exercise of public authority entrusted to the controller (Article 6 (1) (e) of the GDPR).

As it has already been indicated in the justification of the appealed decision in the case at hand, the University processed the complainant's personal data, including his e-mail address, pursuant to art. 13b of the Act of 27 July 2005, Law on Higher Education (Journal of Laws of 2016, item 1842, i.e.) in order to monitor the professional careers of graduates. At this point it should be emphasized that pursuant to Art. 169 point 3 of the Act of July 3, 2018, introducing the Law on Higher Education and Science (Journal of Laws of 2018, item 1669), the Act of July 27, 2005, Law on Higher Education, expired. In the Act of July 20, 2018, Law on Higher Education and Science, effective from October 1, 2018 (Journal of Laws of 2018, item 1668), the monitoring of graduates' careers has been regulated in Art. 352. In connection with the above, from the date of entry into force of the above-mentioned of the Act, the University processes the complainant's personal data pursuant to art. 352 of the Act of

July 20, 2018, Law on Higher Education and Science. The above provision regarding one of the forms of processing personal data of university graduates. Therefore, it indicates the administrator of personal data, the purpose and scope of their processing, the rules for sharing and the period of data processing. In this way, it meets the content of the premise for the processing of personal data, which is the exercise of the right or the fulfillment of the obligation resulting from a legal provision, referred to in art. 23 sec. 1 point 2 of the AED, and currently Art. 6 sec. 1 lit. c) GDPR. This means that there is no need to obtain the consent of graduates to process data in the scope indicated above. recipe.

In addition, the University processed the complainant's personal data pursuant to art. 34a of the Act of 27 July 2005 Law on Higher Education in order to run the Information System on Higher Education as part of the Integrated Information System on Science and Higher Education "POL-on". In the current law, the above objective is based on Art. 342 in connection with joke. 344 of this act. According to Art. 342 above of the Act, the Minister runs the Integrated Information System on Higher Education and Science POL-on, which includes, inter alia, a database containing a list of students. The data in the above-mentioned System are processed in order to perform tasks related to the determination and implementation of the state's scientific policy, evaluation of the quality of education, evaluation of doctoral schools and evaluation of the quality of scientific activity, conducting proceedings for awarding the degree of doctor, post-doctoral degree and the title of professor, determining the amount of subsidies and subsidies, supervision over the higher education and science system, implementation of tasks by NAWA, NCBiR and NCN. The provision of art. 344 ab. of the Act, in turn, determines what scope of data is included in the list in question. The above list includes, inter alia, data such as: name and surname, PESEL number, date of commencement of studies, date of graduation and the name of the obtained professional title or the date of removal from the list of students. In connection with the above, the University, when processing personal data in the Integrated Information System on Science and Higher Education "POL-on, had the premise specified in Article 23 para. 1 point 4 u.o.d.o., and currently in art. 6 sec. 1 lit. e) GDPR.

Another purpose of processing the complainant's personal data by the University was to run a library and information system pursuant to Art. 88 sec. 4 of the Act of 27 July 2005, Law on Higher Education. According to Art. 88 sec. 6 above of the Act and the provisions of the Act of 14 July 1983 on the national archival resource and archives (Journal of Laws of 2016, item 1506, i.e. and archives. Currently, the above goals are based on Art. 49 sec. 2 and sec. 3 of the Act of July 20, 2018, Law on Higher Education and Science. In accordance with paragraph 2 of the above provision, the university has a library and

information system based on the library. The university may process personal data of persons using this system, as specified in its statute. Moreover, pursuant to Art. 49 sec. 3 above Act, the university has an archive.

As already indicated in the justification of the appealed decision, another legal basis for the processing of the complainant's personal data, as a person submitting letters and complaints to the University authorities, is the provisions of Art. 63 § 1, art. 223 § 1, art. 224, art. 254, art. 226 of the Labor Code in connection with the provisions of the Regulation of the Council of Ministers of January 8, 2002 on the organization of receiving and examining complaints and applications (Journal of Laws of 2002, No. 5, item 46) and Art. 5 sec. 1 point 1 of the act on the national archival resource and archives. The above provisions regulate, inter alia, issues of receiving and considering applications submitted to state bodies and other state organizational units and their archiving. It should be emphasized that the University, pursuant to art. 5 sec. 1 point 1 of the Act on the National Archival Resources and Archives, is obliged to keep the documentation prepared by it and the incoming documentation, including correspondence addressed to it by the Complainant, both by post and e-mail, and then to forward this documentation after 25 years to the appropriate state archives.

Taking all the above into account, it should be noted that the University is obliged to process the complainant's personal data, including his e-mail address, in order to fulfill the obligations imposed on it by the provisions of the above-mentioned acts, which is the fulfillment of the premise legalizing the processing of personal data, pursuant to Art. 23 sec. 1 point 2 u.o.d.o., and currently pursuant to Art. 6 sec. 1 lit. c) GDPR and in order to perform a task carried out in the public interest, which is the fulfillment of the premise legalizing the processing of personal data, pursuant to art. 23 sec. 1 point 4 u.o.d.o., and currently pursuant to Art. 6 sec. 1 lit. e) 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 conclude that the Complainant's personal data before May 25, 2018 were processed by the University in a manner inconsistent with the provisions of the Personal Data Protection Act. The appealed trial was based on the premise specified in Art. 23 sec. 1 point 2 and point 4 u.o.d.o. Currently, however, the University, when processing the complainant's personal data, has the premise specified in art. 6 sec. 1 lit. c) and lit. e) GDPR.

In this factual and legal state, the President of the Office for Personal Data Protection considered the correct decision contained in the decision of the Inspector General for Personal Data Protection of 12 October 2017 and upheld it.

The decision is final. Based on Article. 21 sec. 2 of the Act in connection with joke. 13 § 2, art. 53 § 1 and art. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2018, item 1302), the party dissatisfied with this decision has the right to lodge a complaint with the Provincial Administrative Court in Warsaw within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs or the right to assistance.

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