

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 27

June

2019

DECISION

ZSZZS.440.794.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 6 sec. 1 lit. c, art. 58 sec. 2 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 (Official Journal of the European Union , L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Mrs. hereinafter referred to as the Entrepreneur, consisting in the Entrepreneur providing the Complainant's personal data with the information on the amount of remuneration due to the Complainant under the contract of mandate, and the processing of the Complainant's personal data in the same scope without a legal basis by the Institution, the President of the Office for Personal Data Protection refuses to accept the request.

Justification

The Office for Personal Data Protection received a complaint from Mrs. AH about irregularities in the processing of her personal data by the Institution and the Entrepreneur, consisting in the Entrepreneur providing personal data to the Complaining Plant, in the scope of information on the amount of remuneration due to her under the contract of mandate, and the processing of the complainant's personal data to the same extent without a legal basis by the Department.

In the content of the complaint, the complainant indicated that the quotation "(...) does not consent to the transfer of her personal data in the scope of remuneration under the contract of mandate concluded with Mr. AM to the employer, nor does she consent to the transfer of such data to the employer by Mr. AM, or also by the pension authority in the content of the administrative decision, because it would be detrimental to the Insured (Applicant) and could result in claims for damages on the part of the Insured (Applicant). ". In connection with the above, the complainant requested that the President of the Personal Data Protection Office take action in accordance with his powers to prevent a breach of personal data protection and

that the President of the Personal Data Protection Office take a position and join the pending proceedings before the District Court in K.

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

As explained by the Department of [...] February 2019, the Complainant concluded a mandate contract with the Entrepreneur, pursuant to which she performed work for M. sp. Z o.o., hereinafter referred to as the Company. The applicant was at the same time an employee of the Company under a separate contract.

The plant inspected the Entrepreneur on [...] May 2018, [...] June 2018, [...] June 2018 and [...] June 2018. control, the Department obtained the complainant's personal data, among others in the scope of information on the amount of remuneration to which it is entitled under the mandate contract in order to determine the correct basis for the assessment of contributions. According to the Institute, obtaining this data was necessary to determine the amount of the basis for calculating social security contributions for the relevant contribution payer.

Zakład Ubezpieczeń Społecznych, Branch in K. issued [...] in October 2018, decision No. [...], from which it appears that the Institute recognized the Company as a payer of social insurance contributions also in terms of remuneration obtained under a civil law contract concluded by the complainant with Entrepreneur.

According to the explanations of the Institution of [...] February 2019, the Institution processes personal data in order to fulfill the legal obligation incumbent on the administrator, acting pursuant to the provisions of Art. 68 of the Act of 13 October 1998 on the social insurance system (Journal of Laws of 2017, item 1778), hereinafter referred to as u.s.u.s.

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

It should be noted that 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 Journal of the European Union, L 119, May 4, 2016), hereinafter referred to as the GDPR, defines the obligations of the data controller, including the processing of personal data, in compliance with the conditions set out in this 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, because 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 permitted, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR) (GDPR).

The Social Insurance Institution is a state organizational unit with legal personality. Pursuant to Art. 87 sec. 1 point 3 u.s.u.s. during the inspection, the inspection inspector of the Institution has the right to request information from the contribution payer and the insured person. Pursuant to Art. 88 sec. 1 u.s.u.s. contribution payers are obliged, inter alia, to provide all books, documents and other information carriers related to the scope of control, which are stored at the payer and at third parties in connection with entrusting these persons with certain activities on the basis of separate contracts (point 1), drawing up and issuing copies of documents related to the scope of control specified by the Plant's control inspector (point 3), providing explanations to the inspector (point 4). Moreover, pursuant to Art. 88 sec. 3 u.s.u.s. in matters covered by the control, the contribution payer is obliged to deliver the required documents to the Plant's control inspector within the prescribed period. When referring to the disclosure by the Entrepreneur of the Complainant's personal data in the scope of information on the amount of remuneration to which it is entitled under the contract of mandate, it should be indicated that in accordance with art. 68 sec. 1 point 6 u.s.u.s. The scope of activities of the Institute includes, inter alia, control of the performance of social security obligations by contribution payers and the insured, as well as other tasks assigned to the Institute. It should be noted that the Plant conducted on: [...] May 2018; [...] June 2018; [...] June 2018 and [...] June 2018, the Entrepreneur's control acted pursuant to Art. 68 sec. 1 point 6 and art. 87 sec. 1 point 3 u.s.u.s., which constitutes the fulfillment of the premise legalizing the processing of personal data, pursuant to art. 6 sec. 1 letter c of the GDPR. Bearing in mind the above-mentioned provisions, it should be stated that the Institute obtained the complainant's personal data in the scope of information on the amount of remuneration due to the complainant under the contract of mandate in order to perform the task of controlling the social security obligations performed by payers and insured persons. In turn, the Entrepreneur was obliged to provide the Complaining Plant's personal data in the above-mentioned within the scope of art. 88 sec. 1 paragraphs 1,3 and 4 and article. 88 sec. 3 u.s.u.s., which means that the above-mentioned the processing of personal data was also based on art. 6 sec. 1 lit. c

GDPR.

Regarding the issue of the ongoing processing of the complainant's data by the Institute, it should be noted that pursuant to art. 68 sec. 1 point 1 lit. a u.s.u.s. The scope of activities of the Institute includes, inter alia, the implementation of the provisions on social insurance, and in particular the determination and determination of social security obligations. Personal data in the scope of information on the amount of remuneration under the contract of mandate are needed for the proper implementation of the obligation incumbent on the Company. The above means that the processing of the complainant's personal data by the Institute in the scope of information on the amount of remuneration under the mandate contract is based on the premise specified in art. 6 sec. 1 lit. c GDPR.

One of the elements of the complaint of [...] November 2018 is the complainant's questioning of the decision of the Institute, based on the line of case law considered by the complainant to be outdated. It should be noted that the President of the Personal Data Protection Office may not resolve issues falling within the competence of other bodies granted to them on the basis of separate provisions of law, i.e. Art. 83 sec. 1 point 3 u.s.u.s. according to which the Institute issues decisions on individual matters concerning in particular: determining the amount of contributions and their collection, as well as the cancellation of contributions. In this matter, the competent court was the district court to which the applicant could appeal against the above-mentioned decisions. The President of the Personal Data Protection Office does not consider complaints against administrative decisions of the Institution, but only conducts explanatory proceedings regarding the processing of personal data.

The assessment made by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of sending a warrant to a specific subject corresponding to the disposition of art. 58 sec. 2 of the GDPR aimed at restoring a legal state in the data processing process - it is therefore 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 such irregularities exist in this case, because the disclosure of the Complainant's personal data by the Entrepreneur was based on the premise specified in Art. 6 sec. 1 lit. c of the GDPR, in turn, the processing of this data by the Department is also based on the premise specified in art. 6 sec. 1 lit. c of the GDPR, therefore the grant of the complainant's requests should be considered unfounded.

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

The decision is final. Based on Article. 7 sec. 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. 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 entry 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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