

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 29

of December

2020

## DECISION

DKE.561.10.2020

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 7 sec. 1 and 2 and article. 60 of the Act of May 10, 2018 on the Protection of Personal Data (i.e. Journal of Laws of 2019, item 1781), following administrative proceedings to impose an administrative fine on the T. Foundation for violation of Art. 31 and art. 58 sec. 1 lit. a) and e) 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, 4 May 2016), consisting in the lack of cooperation with the President of the Personal Data Protection Office in the performance of his tasks and failure to provide information necessary for the performance of his tasks, President of the Office for Personal Data Protection discontinues the proceedings.

## JUSTIFICATION

The Office for Personal Data Protection received a complaint from Mr KB (hereinafter referred to as the "Complainant"), represented by the BO legal advisor, against the processing of his personal data by the T. Foundation (hereinafter also referred to as the "Foundation") in violation of Regulation 2016/679 as the website administrator internet [...]. On the basis of this complaint, the President of the Personal Data Protection Office initiated proceedings with reference number [...].

By letter of [...] March 2020, the President of the Personal Data Protection Office, acting pursuant to Art. 58 sec. 1 lit. a) and e) of the GDPR, asked the T. Foundation to comment on the content of the complaint, a copy of which was attached to the letter, and to provide explanations on the matter. The letter was notified twice and finally on [...] April 2020 it was returned to the sender due to the fact that it was not collected by the addressee on time.

By letter of [...] July 2020, the President of UODO again called on the Foundation to provide explanations in the matter. The letter was notified twice and finally on [...] July 2020 it was returned to the sender due to the fact that it was not collected by the

addressee on time.

On [...] August 2020, the President of the Personal Data Protection Office (UODO) initiated these administrative proceedings ex officio, reference number DKE.561.10.2020 on the imposition of an administrative fine on the T. Foundation for violation of Art. 31 and art. art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 in connection with the lack of cooperation with the President of the Personal Data Protection Office in the performance of his tasks and failure to provide the information necessary for the President of the Personal Data Protection Office to perform his tasks.

On [...] August 2020, the Office for Personal Data Protection received a letter from the representative of the T. Foundation, in which the reasons for the lack of receipt of letters from the President of UODO related to organizational difficulties due to the epidemic were indicated. Moreover, the letter noted the suspension of the deadlines of administrative proceedings in the period in which the President of the Personal Data Protection Office (UODO) sent the first letter regarding reference number [...].

In these facts, the President of the Personal Data Protection Office considered the following.

In art. 44 of the Act of June 14, 1960 of the Code of Administrative Procedure (i.e. Journal of Laws of 2020, item 256, as amended), a form of delivering letters was established in the event of inability to deliver them in the manner indicated in Art. 42 and 43 of this Act. The service provided for in this provision is known as substitute service. It creates a presumption of delivery of a letter in the event of failure to accept it after notifying the addressee twice that the letter has been left with information about the possibility of its collection.

The presence of an epidemic in the territory of the Republic of Poland, and earlier an epidemic threat as a result of the spread of an infectious disease caused by the SARS-CoV-2 virus ("COVID-19") meant that, by law, the time limits in administrative proceedings did not start, but the time limits commenced, was suspended, pursuant to the then applicable Art. 15zzs paragraph. 1. of the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws, item 374, as amended).

Pursuant to Art. 98 sec. 1 of the Act of April 16, 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (Journal of Laws, item 695, as amended), missed letters subject to delivery with acknowledgment of receipt by the postal operator within the meaning of the Act of 23 November 2012 - Postal Law, the date of receipt specified in the notice of leaving the letter together with the information about the possibility of its receipt falling within the period of an

epidemic threat or epidemic, cannot be considered delivered during the period of epidemic threat or the state of the epidemic and within 14 days from the date of lifting these states. The exception to this rule, concerning the delivery of letters from public administration bodies, provided for in para. 2 point 4) lit. d), was introduced by an amendment to this Act of July 24, 2020 (Journal of Laws, item 1423), announced on August 20, 2020.

Referring the above-mentioned provisions to the facts of the case, in the opinion of the President of the Personal Data Protection Office, there were grounds to discontinue this proceeding due to defects in the delivery of letters addressed to the T. Foundation in the proceedings [...]. The first letter was notified twice and then returned to the sender on [...] April 2020. The second letter in the case was notified twice and then returned to the sender on [...] July 2020. Thus, the attempts to deliver both letters took place at the time when the legal status excluding the application of the presumption of service under Art. 44 of the Code of Administrative Procedure (i.e. Journal of Laws of 2020, item 256, as amended), which presumed the conduct of these proceedings.

For the above reasons, the present administrative procedure became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

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 doctrine states that "The discontinuation of the proceedings is not dependent on the will of the administrative body, and even less left to the discretion of the body - this body is obliged to discontinue the proceedings if it is found to be irrelevant. (...) The irrelevance of the proceedings may also result from a change in the facts of the case. The proceedings must be deemed to be groundless as a result of the cessation of the facts subject to regulation by the administrative authority by way of a decision (cf. the justification of the judgment of the Supreme Administrative Court of 29 September 1987, IV SA 220/87, ONSA 1987, No. 2, item 67) "- Przybysz Piotr Marek. Art. 105. In: Code of Administrative Procedure. Comment updated. LEX Legal Information System, 2019.

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

2021-02-09