

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

September

2020

DECISION

DKE.561.6.2020

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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. 1 lit. e) and art. 58 sec. 2 lit. b) Regulation of the European Parliament and of the EU Council 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 (general data protection regulations) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding the processing of personal data by S. Sp. z o.o., President of the Personal Data Protection Office, gives a reminder for infringement by S. Sp. z o.o. 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 of the EU Council 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 (general regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, page 1, as amended), hereinafter referred to as "Regulation 2016/679", due to the lack of cooperation with the President of the Personal Data Protection Office in the exercise by this authority its tasks and failure to provide the information necessary for the President of the Personal Data Protection Office to perform the tasks of this authority.

Justification

The Office for Personal Data Protection received a complaint from Ms K. K. (hereinafter referred to as "the Complainant") about irregularities in the processing of her personal data by S. Sp. z o.o. (hereinafter referred to as the "Company"). The President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office"), as part of the administrative procedure initiated to consider the complaint (under the reference number [...]), asked the Company in a letter of [...] February 2019 to comment on the content of the complaint and to answer the following specific questions about

the case:

1) whether the Company processes or processed the complainant's personal data, and if so, for what purpose and on what legal basis,

2) whether, and if so, on what legal basis and for what purpose, the Company provided the complainant's personal data with the name, surname and information about the disciplinary dismissal received by it to third parties.

The above letter was delivered to the Company on [...] February 2019. In a letter of [...] February 2019, the President of the Management Board of the Company provided the President of the Personal Data Protection Office with explanations, which were incomplete, and therefore did not provide grounds for consideration by the data protection authority of the above-mentioned complaints.

Considering the above explanations of the Company as insufficient, the President of the Personal Data Protection Office, in a letter of [...] March 2019, asked the Company to provide additional explanations on the matter, in particular to explain:

1) whether Mr. M. C. is an employee of the Company, and if so, in what position and what is the scope of his duties,

2) whether Mr. M. C. had access to the complainant's personal data in terms of her name and surname and information about the receipt of a disciplinary release by her,

3) whether Mr. M. C. is authorized to process personal data of the Company's employees, if so, please send a copy of the authorization,

4) whether the Company has the address of residence of Mr. M. C., if so, please send it.

The Company did not reply to the above letter, properly delivered to the Company on [...] March 2019. Therefore, on [...] May 2019, another letter was sent to the Company with another summons to provide immediate explanations. On [...] June 2019, this letter was returned to the sender with the annotation "the return was not received on time". In connection with the above, on [...] November 2019, another letter was sent to the Company, summoning it to provide immediate explanations. The letter was duly delivered to the Company on [...] November 2019. The Company did not reply to this letter either.

By letter [...] of November 2019, the Company was informed that failure to respond to the requests of the President of the Personal Data Protection Office may result - in accordance with Art. 83 sec. 5 lit. e) in connection with joke. 58 sec. 1 lit. a) Regulation 2016/679 - imposing an administrative fine on the Company.

Due to the failure by the Company to provide full information necessary to resolve the case No. [...], initiated by the

complainant's complaint, the President of the Personal Data Protection Office initiated ex officio against the Company - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679, due to the breach by the Company of art. 31 and art. 58 sec. 1 letter a) of the Regulation 2016/679 - administrative proceedings to impose an administrative fine on the Company (reference number [...]). The Company was informed about the initiation of the procedure by letter of [...] June 2020, properly delivered to the Company on [...] July 2020. This letter was also requested by the Company - in order to establish the basis for the penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to present the Company's financial statements for 2019 or - in the absence thereof - a statement on the amount of turnover and financial result achieved by the Company in 2019

In response to the letter informing about the initiation of proceedings to impose an administrative fine on the Company, the President of the Management Board of the Company sent a letter to the President of UODO of [...] July 2020, in which he submitted explanations regarding the case No. [...] allowing the President of UODO to continue proceedings in case no. [...] at the same time pointing out that in this case ("last year") the Company has already answered the questions asked by the Office for Personal Data Protection.

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

Pursuant to Art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of Regulation 2016/679 - monitors and enforces the application of this regulation on its territory. As part of his competences, the President of the Personal Data Protection Office examines, inter alia, Complaints brought by data subjects shall investigate these complaints to the appropriate extent and inform the complainant of the progress and the outcome of these proceedings within a reasonable time (Article 57 (1) (f)). In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office has a number of specified in Art. 58 sec. 1 of Regulation 2016/679, the rights in the scope of conducted proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the administrator and the processor to all personal data and all information necessary for the performance of its tasks (Article 58 (1) (e)).

Moreover, the President of the Personal Data Protection Office is entitled to a number of provisions specified in Art. 58 sec. 2

corrective powers, including reminders to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by processing operations.

Violation of the provisions of Regulation 2016/679, consisting in the failure of the controller or the processor to provide access to the data and information referred to above, resulting in the violation of the authority's rights specified in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks), and is subject - in accordance with art. 83 section 5 letter e) in fine of Regulation 2016/679 - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount applicable . It should also be indicated that the controller and the processor are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679.

The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679, it may also consider it justified to provide the Company with a reminder regarding the infringement of the provision of art. 31 in connection with Art. 58 sec. 1 lit. e) Regulation 2016/679.

Pursuant to recital 148 of Regulation 2016/679, for more effective enforcement of the provisions of the Regulation, sanctions, including administrative fines, should be imposed for breaches of the Regulation, 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 an admonition. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was not intentional, the steps taken to minimize the harm, the degree of liability or any previous relevant breach, how the supervisory authority became aware of on a breach, on compliance with the measures imposed on the controller or processor, on the application of codes of conduct, and on any other aggravating or mitigating factors.

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, and described at the beginning of this decision, it should be stated that the Company - the administrator of personal data of the complainant K. K. - as a party to the proceedings conducted by the President of the Personal Data Protection Office (UODO) No. [...] undoubtedly breached the obligation to provide the President of the Personal Data Protection Office with access to additional information necessary for the performance of his tasks - in this case, to the substantive resolution of the case.

It should also be pointed out here that preventing the access to additional information requested by the President of the Personal Data Protection Office from the Company, prevented a thorough examination of the case and resulted in the

prolongation of the proceedings, which is contrary to the basic rules governing administrative proceedings - specified in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), the principles of insight and speed of proceedings.

However, in response to the information on the initiation of administrative proceedings in the case No. DKE.561.6.2020 [...], the President of the Management Board of the Company, in a letter of [...] July 2020, provided explanations allowing the President of the Personal Data Protection Office to conduct further proceedings in the case No. [...].

When deciding to impose sanctions on the Company in this case, the President of the Personal Data Protection Office took into account the following circumstances affecting the assessment of the violation:

1. Nature, gravity and duration of the infringement (Article 83 (2) (a) of Regulation 2016/679).

The breach sanctioned in the present case undermines the system intended to protect one of the fundamental rights of an individual, which is the right to the protection of his personal data, or more broadly, to the protection of his privacy. An important element of this system, the framework of which is set out in Regulation 2016/679, are supervisory authorities with tasks related to the protection and enforcement of the rights of natural persons in this respect. In order to enable the performance of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and remedial powers. On the other hand, administrators and processors have been imposed specific obligations, correlated with the powers of supervisory authorities, including the obligation to cooperate with supervisory authorities and the obligation to provide these authorities with access to personal data and other information necessary to perform their tasks.

In the opinion of the President of the Personal Data Protection Office, the activities of the Company resulting in a short-term lack of access to evidence indicating the legality and lawfulness of the processing of the complainant's personal data by the Company cannot be considered as harmful to the entire personal data protection system.

2. Intentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679).

The Article 29 Working Party in the Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679 adopted on 3 October 2017 with reference to the intentional or unintentional nature of an infringement indicated that, in principle, "intention" encompasses both knowledge and intent. due to the characteristics of a prohibited act, while "inadvertent" means no intention to cause an infringement, despite the controller or processor's failure to fulfill the legally

required duty of care. Intentional violations are more serious than unintentional violations and, consequently, more often involve the imposition of an administrative fine. In the opinion of the President of the Personal Data Protection Office, the above-mentioned the breach was unintentional. On the part of the Company, there was a will to cooperate in providing the authority with all information (evidence) necessary for the continuation of the complaint procedure with reference number [...].

3. Lack of cooperation with the supervisory authority to remove the breach and mitigate its possible negative effects (Article 83 (2) (f) of Regulation 2016/679).

In the course of these proceedings, the Company expressed its willingness to cooperate with the President of the Personal Data Protection Office (UODO) in order to remedy the violation consisting, in particular, in providing explanations in the scope in which the conduct of the proceedings with reference number [...].

The other conditions set out in Art. 83 sec. 2 of Regulation 2016/679 did not affect (aggravating or mitigating) the assessment of the infringement made by the President of the Personal Data Protection Office (including: any relevant prior infringements by the controller, the manner in which the supervisory authority learned about the infringement, compliance with the measures previously applied in the same case , the use of approved codes of conduct or approved certification mechanisms) or, due to the specific nature of the breach (relating to the controller's relationship with the supervisory authority and not the controller's relationship with the data subject), could not be taken into account in the present case (in including: the number of injured persons and the extent of the damage suffered by them, actions taken by the administrator to minimize the damage suffered by data subjects, the degree of administrator's liability, taking into account the technical and organizational measures implemented by him, categories of personal data affected by the infringement zenie).

In connection with the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the event of violation of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office deems it justified to provide the Company with a reminder regarding the breach of the provision art. 31 in connection with Art. 58 sec. 1 lit. e) Regulation 2016/679.

The admissibility of replacing a financial penalty with a warning is also justified by recital 148 of the GDPR, which states that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective".

The President of the Personal Data Protection Office decided that in this case, in the light of the criteria specified in Art. 83 sec. 2 GDPR will be sufficient and at least as “effective, proportionate and dissuasive” as imposing a fine (see Art. 83 (1) GDPR).

It should also be noted that in the event of a similar event occurring in the future, each reminder issued by the President of the Personal Data Protection Office against the Company will be taken into account when assessing the premises for a possible administrative penalty, in accordance with the principles set out in Art. 83 sec. 2 of the Regulation 2016/679.

In this factual and legal state, the President of the Personal Data Protection Office 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 with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200.

In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted prior to the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

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