

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 26

September

2019

DECISION

ZKE.440.51.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and pursuant to Art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 6 sec. 1 letter f) and Art. 58 sec. 2 lit. c) 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 (general regulation on data protection) (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. MW, to order ASA , providing personal data including the IP number of the computer of the user of the internet forum under the name "[...]", which [...] in February 2016 placed on the portal [...], in the comments to the article MW "[...]", an entry violating the personal rights of Mr. MW , President of the Personal Data Protection Office

orders A. S.A. providing Mr. MW with personal data including the IP number of the computer of the user of the Internet forum under the name "[...]", which [...] on February 2016 posted on the portal [...], in the comments to the article by MW "[...]", an entry violating his personal rights .

Justification

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. M. W. [...] (hereinafter referred to as: "the Complainants") to order A. S.A. (hereinafter: the "Company") to provide personal data in the scope of the IP address of the user's internet forum under the name "[...]", including, if possible, the name and surname, address and e-mail addresses of the user who [...] February 2016, he posted on the portal [...] under the nickname "[...]", an entry under the MW article "[...]", with the text "[...]". This entry, as indicated by Mr. M. W., violates his

personal rights and he has a legitimate legal interest to take legal action against an Internet user who provides false information about him.

Mr. M. W. needs the personal data of the person infringing his personal rights in order to successfully bring a civil claim. In connection with the above, he requests that the computer's IP number be provided, including, if possible, the name, address and e-mail addresses of the person who [...] in February 2016 made [...] on the portal under the nickname "[...]" "Above. entry. In connection with the above, the Complainant applied for an administrative decision ordering the restoration to lawfulness by providing the computer's IP address, including, if possible, the name, address and e-mail addresses of the person who [...] on February 2016 on the portal "[...]" under the nickname "[...]" made an entry under the article MW "[...]" violating the personal rights of Mr. MW

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

1. By letter of [...] June 2016, the Complainant requested the Company to provide the IP address of the computer, including, if possible, the name, address and e-mail addresses of the person who [...] in February 2016 on the portal [...] under the Nick "[...]" she made an entry under the MW article "[...]" with the text "[...]".
2. By letter of [...] June 2016, the Company refused to disclose personal data to the Complainant, indicating, inter alia, that the request for disclosure of personal data, in order to be allowed, must be credible and justified. If such data were made available in the discussed situation, it would significantly violate the rights and freedoms of the internet user, in particular the right to privacy, peace, home comfort and a sense of family security. The request for internet user data constitutes a disproportionate violation of the rights and freedoms of internet users who justifiably exercise their freedom of expression, e.g. for the purpose of criticism. Moreover, the computer's IP address is related to telecommunications secrecy, which may be released only by the prosecutor or the court conducting the proceedings;
3. By letter of [...] November 2017, the Company informed the President of the Personal Data Protection Office that the practice so far indicates that the complainant should first file a civil claim and only when formally summoned by the court to indicate the address of the defendant (supplementing the deficiencies in the statement of claim) may return request the data controller to provide such an address by submitting a summons from a competent court in support of the request.
4. By letter of [...] November 2017, the Company also informed that it was processing the user's personal data under the name

"[...] in the scope of his IP address. This processing takes place as part of commenting on press articles by persons who are not logged in and as part of services provided to users of A. S.A. websites. User of the above-mentioned the entry was not logged in, introduced himself as "[...]" and made the entry [...] on February 2016 at 13: 25.06. On [...] March 2016 at 12:23 the site moderator deleted this post.

In this factual state, the President of the Personal Data Protection Office considered the following.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2019, item 1781), i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws 2019, item 1781) in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as: Kpa. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

On May 25, 2018, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 began to be applied in the national legal order and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2), hereinafter referred to as further:

Regulation 2016/679, the provisions of which regulate issues related to the processing of personal data of natural persons.

From that date, the President of the Office is obliged to apply the provisions of the above-mentioned of Regulation 2016/679 to all administrative proceedings that it conducts. When issuing a decision in a given case, the President of the Office takes into account the legal status in force at the time of issuing the decision.

At the time when the event described by the Complainant took place, the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) was in force; hereinafter also referred to as "the Act"). Above the act 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 files (Article 2 (1) of the Act). The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 of the Act. Pursuant to Art. 23 sec. 1 point 5 of the Act, data processing was allowed when it was necessary to fulfill legally justified purposes carried out by data administrators or data recipients, and the processing does not

violate the rights and freedoms of the data subject.

Above the premise for the processing of personal data in accordance with the law (equivalent to Art. 23 (1) (5) of the Act) is currently specified in Art. 6 sec. 1 (f) of Regulation 2016/679. Pursuant to this provision, processing is lawful only in cases where the processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by interests or fundamental rights and freedoms data subjects who require protection of personal data, in particular when the data subject is a child. As demonstrated by the conducted administrative proceedings, the Complainant has grounds to obtain the personal data of the user under the name "[...]", who posted the entry complained of, with regard to his IP address.

In the present case, the Company confirmed that it processes the user's personal data under the name "[...]" in the scope of his IP address.

Pursuant to the wording of Art. 18 sec. 6 of the Act of 18 July 2002 on the provision of electronic services (Journal of Laws of 2019, item 123), the service provider provides information about the data referred to in paragraph 1-5, to state authorities for the purposes of their proceedings. The above provision significantly shapes the obligation on the part of the service provider providing services by electronic means to disclose personal data of persons using these services to state authorities for the purposes of their proceedings. Thus, Art. 18 sec. 6 of the Act on the provision of electronic services is a legal provision referred to in art. 23 sec. 1 point 2 of the Act (currently Article 6 (1) (c) of Regulation 2016/679), directly imposing certain rights and obligations on certain entities in the field of personal data processing of recipients of services provided electronically. The authorities of the state referring to the purposes of the proceedings, are therefore entitled to obtain the personal data of persons using electronic services necessary for these purposes, and processed by entities providing these services - they have the condition that allows such processing, specified in Art. 23 sec. 1 point 2 of the Act (currently Article 6 (c) of Regulation 2016/679). The existence of the discussed Art. 18 sec. 6 of the Act on the provision of electronic services, however, does not in any way exclude the processing of personal data of users of services provided electronically in a situation where other conditions for the processing of such data specified in the provisions of the Act are met, independent and independent of the premises of Art. 23 sec. 1 point 2 of the Act (currently Art. 6 (c) of Regulation 2016/679) - e.g. the premise from Art. 23 sec. 1 point 5 of the Act (currently the equivalent of the above-mentioned condition is Article 6 (1) (f) of Regulation 2016/679).

Referring the above to the circumstances of the case under consideration, it should be noted that, in the opinion of the

President of the Personal Data Protection Office, the Complainant's request for disclosure of the computer's IP address, including, if possible, the name and surname, address and e-mail addresses of the user, which [...] February 2016 . on the portal [...] under the nickname "[...]" he made an entry under the article MW "[...]" being the subject of the complaint, he found legal grounds in art. 23 sec. 1 point 5 of the Act, and is currently justified in Art. 6 lit. f of the Regulation 2016/679, and as such should be taken into account by the entity. The complainant justified the application with the intention to take legal action against the authors of the entries and the necessity of the requested data from the point of view of the possibility of pursuing legal claims against that person for the protection of personal rights. Pursuant to Art. 24 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025), the person whose personal interests are endangered by someone else's action, may demand that such action be discontinued, unless it is not unlawful. In the event of an infringement, he may also require the person who committed the infringement to perform the actions necessary to remove its effects, in particular, to submit a declaration of appropriate content and in an appropriate form. On the terms provided for in the code, he may also demand monetary compensation or payment of an appropriate amount of money for a specified social purpose (§1). If, as a result of the breach of personal interest, property damage has been caused, the aggrieved party may demand its repair on general principles (§2).

Individualizing the author of the questioned entry is a necessary condition for pursuing a claim against them related to the alleged unlawful interference in the sphere of the complainant's personal rights. The provisions governing the civil procedure require that each pleading should contain the designation of the court to which it is addressed, the name and surname or the name of the parties, their statutory representatives and attorneys, designation of the type of the pleading, the basis of the application or declaration, and evidence in support of the circumstances cited, the signature of the party or its statutory representative or attorney, listing the attachments, and when the pleading is the first letter in the case, it should also include the place of residence or seat of the parties, their statutory representatives and attorneys, and the subject of the dispute, and further letters - the file reference number, which results from Art. . 126 § 1 and 2 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360).

There is no doubt that the Complainant must have individual information on the person against whom he intends to bring an action in connection with the allegation of unauthorized interference in the sphere of his personal rights. In a situation where the Complainant has essentially no information about the person who, using the IP address, posted the entry which is the

subject of the complaint, except only those that resulted from their publication (i.e. - apart from the date, time, content of the publication), which was used by that person, a person in order to conceal his identity, it is reasonable to assume that the actions taken by the Complainant serve to establish the identity of these persons in order to bring them to civil liability in relation to the content of the publication and fall within the concept of a legally justified purpose. It is obvious that the acquisition (processing) of personal data in the above-mentioned purpose, in each case, will be considered by the data subject to be contrary to their interests. This circumstance - especially taking into account the legal guarantees of defense against the claims of the opposing party - does not, however, prove that their rights and freedoms have been violated. Adopting the opposite position would result in unjustified protection of those who may have unlawfully interfered with the sphere of legally protected interests of another person (especially those convinced of the anonymity guaranteed by the Internet) against possible liability for their actions.

In the opinion of the President of the Personal Data Protection Office, the Company unjustifiably refused to disclose the requested data to the Complainant in the scope of the IP address of the author of the entries, thus preventing him from taking further actions to identify that person in order to initiate court proceedings. To confirm the correctness of the position presented in this case, it is worth citing the judgment of the Provincial Administrative Court in Warsaw of February 3, 2010 (file reference number II SA / Wa 1598/09), in which the following quotation was indicated in particular: "(...) the right to free, anonymous expression cannot protect people who infringe the rights of others from responsibility for the words they say. Nobody is and cannot be anonymous on the web. Although it may be difficult to determine the identity of a given person, due to the fact that every computer leaves a trace on the Internet - the IP address by means of which the computer from which the alert was made can be determined, it makes it possible to indirectly establish the identity of the person who made the alert (...) a participant in the proceedings has information about the login date, nicknames of persons performing this activity and the content of entries. In the opinion of the Court, the above information, combined with the IP numbers, makes it possible to unequivocally identify the persons who violated the personal rights of the participant in the proceedings. (...) the IP addresses requested by the participant in the proceedings constitute personal data in this case within the meaning of Art. 6 sec. 1 of the Act on the Protection of Personal Data, and ordering them to be made available constitutes the implementation of the instructions of para. 2 of this provision, i.e. it will enable the identification of a person or persons whose identity can be indirectly determined. (...) the computer's IP address alone is not enough to indicate the person who used it, but in combination with other information it

allows to assume that its identity can be established. In the opinion of the Court, the identification of this person does not have to be associated with excessive costs, time or activities (...). ”.

Moreover, the Supreme Administrative Court in the judgment of August 21, 2013 (file reference number I OSK 1666/12) emphasized that "(...) the person committing these violations must be aware that he cannot abuse his rights by violating the rights of others . This has nothing to do with restricting the principle of freedom of speech. The freedom to express one's views is related to taking responsibility for those views. Anyone who speaks in public, outside the Internet, is aware of the possible consequences of statements that violate the fundamental, statutorily protected rights of others. However, it is unjustified to say that someone speaking anonymously, in a way that violates the interests of other entities, is to be subject to special protection and that his personal data is a good that the legislator intended to protect in the first place ”.

To sum up, the President of the Personal Data Protection Office is of the opinion that the Company unjustifiably refused to disclose the requested data to the Complainant, thus preventing the Complainant from taking further actions that would allow for the effective initiation of court proceedings against that person.

Pursuant to Art. 18 sec. 1 point 2 of the Act, in the event of violation of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the disclosure of the requested personal data. Taking into account the circumstances of the case, the President of the Personal Data Protection Office is authorized to order the Company to disclose to the Complainant the personal data of the authors of the questioned entries to the extent to which the entity has these data - i.e. the user's personal data under the name "[...]" in the range of his IP address.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he 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 to the party. The complaint is lodged through the President of the Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-02-16