

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 24

of August

2020

DECISION

DKN.5112.13.2020

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DECISION

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), art. 7 sec. 1, art. 60, art. 102 paragraph 1 point 1 and sec. 3 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) and Art. 57 sec. 1 lit. a, art. 58 sec. 2 lit. d and lit. and in connection with joke. 5 sec. 1 lit. a, art. 6 sec. 1, as well as art. 83 sec. 1-3 and art. 83 sec. 5 lit. a 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 the protection of data) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding violation of the provisions on the protection of personal data in connection with the processing of personal data by the Chief National Surveyor, President Personal Data Protection Office,

I. Noting a breach by the Chief Surveyor of the Country, the provisions of: Art. 5 sec. 1 lit. a Regulation of the European Parliament and of the EU Council 2016/679 and 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, p. 1, as amended), hereinafter referred to as "Regulation 2016/679", i.e. the principles of lawfulness of the processing of personal data and art. . 6 sec. 1 of Regulation 2016/679, by making available on the portal called "GEOPORTAL2" ("geoportal.gov.pl") without a legal basis, personal data in the field of land and mortgage register numbers obtained from the land and building register (kept by starosts), orders the Chief National Surveyor to adjust the processing of personal data to the provisions of Regulation 2016/679, within

14 days from the date of delivery of this decision, by: ceasing to provide personal data on the portal called "GEOPORTAL2" ("geoportal.gov.pl") in the scope of land and mortgage register numbers obtained from the land and building register (kept by starosts).

II. For violation of the provisions of art. 5 sec. 1 lit. a and art. 6 sec. 1 of the Regulation 2016/679, imposes an administrative fine on the Chief Surveyor of the country in the amount of PLN 100,000 (in words: one hundred thousand zlotys).

III. In the remaining scope, the proceedings are discontinued.

JUSTIFICATION

On [...] March 2020, pursuant to Art. 78 sec. 1, art. 79 sec. 1 point 1 and art. 84 sec. 1 points 1-4 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), hereinafter referred to as the "Act", in connection with joke. 57 sec. 1 lit. a and lit. h, art. 58 sec. 1 lit. b, lit. e and lit. f of the Regulation 2016/679, in order to control the compliance of personal data processing with the provisions on the protection of personal data, control activities were carried out at the Chief Surveyor of the Country (place of inspection - the Head Office of Geodesy and Cartography with its seat in Warsaw at ul. Wspólna 2).

In accordance with the scope indicated in the personal authorizations, the planned inspection was aimed at examining the process of making available by the Chief Surveyor of the Country via the GEOPORTAL2 internet portal (geoportal.gov.pl), personal data from the land and building records. The Chief Surveyor of the country, however, frustrated the carrying out of control activities in the planned scope. He refused to submit any statements regarding the legality of publishing information on the land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl), and did not allow the inspectors to examine the IT systems used in the process of publishing data on GEOPORTAL2. The resulting circumstances meant that the President of the Office for Personal Data Protection, by a decision of [...] July 2020 (reference number [...]), imposed an administrative fine on the Chief Surveyor of the Country in connection with the violation of Art. 31 and art. 58 sec. 1 lit. e and lit. f of the Regulation 2016/679.

Ultimately, in the course of the inspection, only documentation was obtained specifying organizational measures used by the Chief Surveyor of the country to ensure data security and evidence confirming the appointment of a data protection officer. The facts established during the inspection (carried out to a limited extent) were described in the inspection report, which was signed [...] in March 2020 by the Chief Surveyor of the country without any reservations.

In this case, it is important that the President of the Personal Data Protection Office on [...] February 2020 carried out control activities (reference number [...]) in the Poviast Starosty in J. J. via the Internet portal called "GEOPORTAL2" (geoportal.gov.pl) personal data from the land and building register. In the course of the above-mentioned inspection, it was found that Starosta J. does not publish on the above-mentioned portal of personal data from the land and building records, but the data from the records (including land and mortgage register numbers) on the basis of the concluded agreement is provided to the Chief Surveyor of the Country, who makes the information obtained in this way available on the GEOPORTAL2 portal. Due to the above, the President of the Office for Personal Data Protection decided to carry out an inspection at the Chief National Surveyor.

During the inspection, the Chief Surveyor of the Country testified that "in the case of 90 poviast starosties that do not yet have their own technical infrastructure, the Chief Surveyor of the Country, on the basis of concluded agreements (concluded pursuant to Article 5 of the Geodetic and Cartographic Law), after receiving relevant geodetic data from these starosties publish the data on the GEOPORTAL2 website" - the witness interview protocol is attached as Appendix 1 to the inspection protocol, reference number DKN.5112.13.2020.

In connection with the above, it should be stated that the Chief National Surveyor publishes on GEOPORTAL2 (geoportal.gov.pl) information obtained from the land and building register (including land and mortgage register numbers) kept by Starost J. and by other poviast starosts who do not have the technical infrastructure to publish this information on GEOPORTAL2.

On the basis of the evidence collected in the case, it was found that in the processing of personal data, the Chief Surveyor of the Country violated the provisions on the protection of personal data. These violations consisted of:

- 1) making available on the GEOPORTAL2 website (geoportal.gov.pl) without legal basis data obtained from the land and building register (kept by starosts) regarding land and mortgage register numbers (violation of Article 5 paragraph 1 letter a and Article 6 paragraph 1 of Regulation 2016/679);
- 2) failure to indicate in the register of data processing activities, for activities with the names: "Registration of Geoportal website forum users", "Registration of project repository users", "Registration of Geoportal training participants" related to the Geoportal, information on the planned dates of data deletion (violation Article 30 (1) (f) of Regulation 2016/679);
- 3) failure to indicate in the register of personal data processing activities for activities named: "Registration of users of the

Geoportal system and GUGiK domain systems", "Registration of users of the Geoportal website forum", "Registration of users of the project repository" and "Registration of Geoportal training participants" of the required security measures for a given processing activity (violation of Article 30 (1) (g) of Regulation 2016/679).

In connection with the above, by a letter of [...] March 2020 (ref.: DKN.5112.13.2020), the President of the Office for Personal Data Protection initiated ex officio administrative proceedings in the field of identified deficiencies in order to clarify the circumstances of the case.

In addition, by the decision of [...] April 2020 (ref.: DKN.5112.13.2020), the President of the Office for Personal Data Protection obliged the Chief National Surveyor to limit the processing of personal data in the field of land and mortgage register numbers, ordering to cease publishing them on the website GEOPORTAL2 (geoportal.gov.pl) until an administrative decision concluding the proceedings in this case is issued. On [...] April 2020, the Office for Personal Data Protection received a letter (ref.: [...]), in which the Chief Surveyor of the Country demanded, inter alia, suspending the execution of the decision with an indication that the issued decision poses a threat to the stability of the state's spatial information systems, but did not justify this request in any way, focusing only on the lack of justification for issuing the decision.

On [...] April 2020, the Office for Personal Data Protection received a complaint from the Chief National Surveyor, represented by the attorney SK and attorney PT (power of attorney in the case files), addressed to the Provincial Administrative Court in Warsaw, against the decision of the President of the Office for Personal Data Protection from on [...] April 2020 (ref.: DKN.5112.13.2020).

In response to the notification about the initiation of administrative proceedings, the Representative of the Chief Surveyor of the Country, in a letter of [...] May 2020, submitted explanations in which he indicated, inter alia, that the initiation and conduct of the proceedings by the President of the Office for Personal Data Protection in this case is pointless and therefore these proceedings should be discontinued in full. Justifying his position on the matter, the Representative of the Chief Surveyor of the Country indicated that:

1. No obligatory prior control procedure has been carried out against the Chief Surveyor of the Country, which constitutes a gross violation of Art. 90 of the Act on the Protection of Personal Data, because the control of the President of the Office for Personal Data Protection was carried out at the Head Office of Geodesy and Cartography, and not at the Chief National Surveyor, which, from the point of view of the provisions of Regulation 2016/679, is a separate data administrator.

2. The President of the Personal Data Protection Office groundlessly considered that the data from the land and building register, including in particular the land and mortgage register numbers processed on the website www.geoportal.gov.pl, constitute personal data, and thus that the President of UODO is authorized to undertake activities regarding their processing.
3. The President of the Personal Data Protection Office groundlessly considered that the administrator of data from the land and building register published on the website www.geoportal.gov.pl is the Chief National Surveyor.
4. The inspection preceding the initiation of the procedure concerned the disclosure of data from the land and building records, including, in particular, land and mortgage register numbers. On the other hand, the allegation of violation of Art. 30 sec. 1 lit. f and lit. g of Regulation 2016/679 applies to processing activities in which these data are not used at all. Therefore, the President of the Personal Data Protection Office could not carry out any checks on these processes. Therefore, the initiation of proceedings in this respect is groundless, as it was not preceded by an obligatory inspection.
5. The President of the Personal Data Protection Office groundlessly stated that in the register of personal data processing activities kept by the Chief Surveyor of the Country pursuant to Art. 30 of Regulation 2016/679, the planned dates for the removal of data from the land and building records published on the website www.geoportal.gov.pl should be specified and a general description of technical and organizational security measures for the processing of this data should be provided. Regardless of that, in the opinion of the GGK Representative, a violation of Art. 30 sec. 1 lit. f and lit. g of Regulation 2016/679 to the extent indicated by the President of the Personal Data Protection Office, it did not take place because the register in question was kept in accordance with the legal requirements.
6. The Chief Surveyor of the Country considers that he is not the addressee of the obligations under Art. 5 sec. 1 lit. a, art. 6 sec. 1 and art. 30 sec. 1 lit. f and lit. g of the Regulation 2016/679, in relation to data from the land and building records (in particular, land and mortgage register numbers) published on the website www.geoportal.gov.pl and therefore may not infringe the above-mentioned regulations.
7. Pursuant to Art. 15z of the Act of March 2, 2020 on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and emergencies caused by them, the authority, during an epidemic threat or state of an epidemic announced due to COVID, may issue a decision fully taking into account page request. Therefore, despite the suspension of procedural time limits in administrative proceedings pursuant to Art. 15z of the Act, the Plenipotentiary of the Chief Surveyor of the Country applied for the entire

procedure to be discontinued by the President of the Personal Data Protection Office, without the need to continue the administrative procedure.

To the above-mentioned The following documents were attached in the reply to the notice of initiation of the procedure: an extract from the inspection documentation, a copy of the Agreement No. [...] of [...] February 2018 with Annex No. [...] of [...] May 2019 and an annex No. [...] of [...] March 2020

In addition, it should be noted that in point 5 of the letter of [...] May 2020, the Plenipotentiary of the Chief Surveyor of the Country explained that "on the day of the inspection, it was not possible to define the planned dates of data deletion, because an analysis was ongoing in this respect (after the completion of the analysis process, which took place after receiving the inspection report, the dates were indicated in the register). Due to the fact that the submitted explanations did not constitute grounds for concluding that the Chief National Surveyor did not violate Art. 30 sec. 1 lit. f of the regulation, in a letter of [...] June 2020, the President of the Office for Personal Data Protection requested the Chief Plenipotentiary of the National Surveyor to send evidence confirming the inclusion of information on the planned dates of data deletion in the register of data processing activities.

In a letter of [...] July 2020, the Representative of the Chief Surveyor of the Country provided explanations in which he indicated that:

- in the register of personal data processing activities for activities with the names: "Registration of project repository users", "Registration of Geoportal training participants", which are related to the Geoportal, currently there is information on the planned dates of data deletion referred to in Art. 30 sec. 1 lit. f of the Regulation 2016/679,
- in the register of personal data processing activities for activities with the names: "Registration of users of the Geoportal system and GUGiK domain systems", "Registration of users of the project repository" and "Registration of Geoportal training participants" there is already a description of the technical and organizational security measures referred to in art. 32 sec. 1 of Regulation 2016/679,
- currently, the Chief Surveyor of the Country does not perform the activities called "Registration of users of the Geoportal website forum" and therefore does not process personal data as part of this activity. The above activity was deleted from the register of data processing activities.

In addition, to the letter of [...] July 2020, the Plenipotentiary of the Chief Surveyor of the Country attached a printout of the

register of processing activities along with an electronic medium containing an electronic record of this register.

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

The President of the Personal Data Protection Office is the competent authority for the protection of personal data (Article 34 of the Act) and the supervisory authority within the meaning of Regulation 2016/679 (Article 34 (2) of the Act).

I. Referring to the position of the Chief National Surveyor in response to the initiation of the procedure, which shows that the President of the Personal Data Protection Office violated Art. 90 of the Act, because the inspection was carried out at the Head Office of Geodesy and Cartography, and not at the Chief Surveyor of the Country, which is a separate administrator of personal data, it should be indicated that, in accordance with Art. 81 sec. 2 point 5 of the Act, the personal authorization to carry out the inspection contains the designation of the inspected entity. Moreover, it should be noted that pursuant to Art. 90 of the Act, if, on the basis of information collected in the control proceedings, the President of the Personal Data Protection Office decides that there may have been a breach of the provisions on the protection of personal data, he is obliged to initiate proceedings immediately.

It is undisputed that in the content of the personal authorizations to carry out the inspection, as well as in the inspection report, the Chief National Surveyor was indicated as the inspected entity. First of all, when assessing the personal authorizations to carry out the inspection, it should be noted that the part defining the scope of the inspection clearly shows that the inspection concerned the provision of personal data from the land and building register by the Chief Surveyor of the country via the GEOPORTAL2 internet portal. It should be mentioned here that the provisions of the Act on the Protection of Personal Data do not specify or contain a delegation for the minister competent for internal affairs (or any other) to define the template of a personal authorization to carry out the inspection, in which the place intended for the inspection would be precisely indicated. designation of the controlled entity. As a consequence, the indication of the controlled entity in the personal authorization is in the most appropriate place for this purpose, in the opinion of the President of the Personal Data Protection Office. With regard to the personal authorizations issued in connection with the inspection planned at the Chief National Surveyor, it took place in part of the authorization, where the detailed scope of the inspection was indicated, along with the indication of the inspected entity, ie the Chief National Surveyor.

In addition, referring to the information contained in the authorizations to carry out the inspection of information about the name

and address of the Central Office of Geodesy and Cartography, it should be indicated that this information relates only to the indication of the organizational unit with which the Chief National Surveyor performs his tasks, including activities included in the scope of the audit. Joke. 6 of the Act of May 17, 1989, Geodetic and Cartographic Law (Journal of Laws of 2020, item 276) shows that the central government administration body competent in matters of geodesy and cartography is the Chief Surveyor of the Country, who performs his tasks with the help of the Chief Office of Geodesy and Cartography. Therefore, the indication of the Main Office of Geodesy and Cartography was only intended to indicate by the President of the Office for Personal Data Protection the actual place of the inspection.

Moreover, the scope of the control included in the personal authorizations relates only to the activities of the Chief National Surveyor, and not to the activities of the Head Office of Geodesy and Cartography. Therefore, it is undisputed that the subject under control was the Chief National Surveyor.

It should also be noted that the Chief National Surveyor during the inspection questioned the scope of the inspection, but he had no doubts that he was an inspected entity as a body of the geodetic and cartographic service. This is confirmed both by the declarations made by the Chief Surveyor of the Country regarding the refusal to carry out the inspection in the planned scope, as well as by his testimony given in the course of the inspection.

It is also impossible to agree with the position of the GPK Representative, who believes that it is unacceptable to initiate administrative proceedings by the President of the Personal Data Protection Office in a situation where no inspection has been carried out. Recognition of such a position would in practice mean that it would not be possible to initiate proceedings in each case when the controlled entity would frustrate the inspection. This is the actual state of affairs in the present case, because the Chief National Surveyor prevented the full planned scope of the inspection. There is no doubt that the consequence of the deliberate breach of the law by the Chief National Surveyor may not be an omission on the part of the President of the Office for Personal Data Protection. In this situation, the President of the Personal Data Protection Office is obliged to take appropriate actions in the light of the provisions of the General Data Protection Regulation and the Personal Data Protection Act.

Regardless of the above, it is also necessary to question the incorrect interpretation of Art. 90 of the Act made by the GPK Representative. It should be pointed out that the mentioned provision does not define the list of entities against which the President of the Personal Data Protection Office may initiate administrative proceedings, and in particular, it does not restrict

this catalog only to controlled entities. This means that the supervisory authority may initiate administrative proceedings against any entity, as long as the information collected during the inspection procedure indicates that there has been a breach of the provisions on the protection of personal data.

In the case in question, the Chief National Surveyor prevented the possibility of the personal data protection authority examining such an important matter as the legality of publishing information on land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl).

In the course of the inspection, it only disclosed documentation specifying organizational measures applied to ensure data security and evidence confirming the appointment of a data protection officer. Nevertheless, on the fact of refusal to carry out the inspection, the Chief Surveyor of the Country gave testimony that "in the case of 90 poviats, which do not yet have their own technical infrastructure, the Chief Surveyor of the Country on the basis of concluded agreements (concluded pursuant to Article 5 of the Geodetic Law and cartographic), after receiving relevant geodetic data from these poviats, it publishes these data on the GEOPORTAL2 website ". Therefore, in the case in question, despite the fact that the Chief Surveyor of the Country prevented the full scope of the inspection, the President of the Personal Data Protection Office (UODO), on the basis of the evidence collected in this case, undoubtedly found irregularities in the processing of personal data by the Chief National Surveyor in connection with the disclosure of data by him without legal basis. personal (in terms of land and mortgage register numbers) on the Geoportal2 portal (geoportal.gov.pl). The Chief Surveyor of the Country in the entire proceedings did not indicate any legal provision that would constitute the legal basis for his activities in the scope referred to above. Consequently, it should be considered that pursuant to Art. 90 of the Act, the President of the Office for Personal Data Protection had the basis to initiate administrative proceedings against the Chief Surveyor of the country regarding the violation of the provisions on the protection of personal data.

It is also impossible to agree with the position of the GGK Representative in the response to the initiation of the procedure, which shows that the President of the Office for Personal Data Protection unjustified that the data from the land and building records, including in particular land and mortgage register numbers processed on the website. geoportal.gov.pl constitute personal data and therefore the President of the Personal Data Protection Office is not authorized to take action with regard to their processing.

It should be pointed out that pursuant to Art. 4 point 1 of Regulation 2016/679 "personal data" shall mean any information

relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be directly or indirectly identified, in particular on the basis of an identifier such as name and surname, identification number, location data, internet identifier or one or more specific physical, physiological, genetic, mental factors, the economic, cultural or social identity of a natural person.

It is indisputable in the present case that the entities affected by the various rights and obligations disclosed in the land and mortgage registers are also natural persons. The scope of data disclosed in the land and mortgage register of natural persons includes, inter alia, names, surnames, parents' names, PESEL number, real estate address. On this basis, it should be stated that the numbers of the land and mortgage registers made available to the public (on the GEOPORTAL2 portal) allow for the identification of persons whose data are included in the land and mortgage register. Due to the above, there is no doubt that having information about the number of the land and mortgage register allows easy and simple access to the personal data of persons disclosed in the land and mortgage register. Obtaining access to personal data contained in the content of the land and mortgage register does not require that people who have this number have access to a dedicated IT system or have special rights. All you need is a computer connected to the Internet. Moreover, the Chief National Surveyor allowed the users of the portal to have direct access to the content of land and mortgage registers, as the numbers of land and mortgage registers placed on Geoportal2 (geoportal.gov.pl) are also links redirecting the user to the website of the Ministry of Justice to electronic land and mortgage registers. This functionality of Geoportal2 (geoportal.gov.pl) meant that the user of this portal did not even have to enter the land and mortgage register number in order to access the information contained therein, including the personal data of the owner of a given property. Consequently, it should be pointed out that the number of the land and mortgage register is information that allows the indirect identification of a natural person (ie the owner of a given real estate). Therefore, it should be considered that the number of the land and mortgage register constitutes personal data within the meaning of art. 4 sec. 1 of Regulation 2016/679.

The position of the Chief Plenipotentiary of the National Surveyor, who in response to the initiation of the proceedings, indicated that the President of the Office for Personal Data Protection groundlessly found that the administrator of data from the land and building records published on the website www.geoportal.gov.pl is the Chief National Surveyor.

It should be pointed out that pursuant to Art. 4 point 7 of Regulation 2016/679 "controller" means a natural or legal person, public authority, unit or other entity that alone or jointly with others sets the purposes and means of processing personal data; if

the purposes and means of such processing are determined by Union law or the law of a Member State, the controller may also be designated by Union law or by the law of a Member State or specific criteria for his appointment may be laid down. ' It is indisputable in this case that it is the Chief National Surveyor who publishes on Geoportal2 (www.geoportal.gov.pl) the numbers of land and mortgage registers obtained from the land and building records kept by starosts. At this point, it should be pointed out that the planned inspection was primarily aimed at determining the role of the Chief Surveyor of the Country in the process of publishing the land and mortgage register numbers on Geoportal2. Unfortunately, also in this respect, the Chief National Surveyor prevented the President of the Personal Data Protection Office from finding this issue. Nevertheless, it should be noted that in the Regulations of the SERVICE www.geoportal.gov.pl (posted on the website www.geoportal.gov.pl.) There is information which shows that "The administrator of your personal data is the Chief Surveyor Kraju with its seat in Warsaw, ul. Wspólna 2, 00-926 Warsaw ".

Referring to the position of the Plenipotentiary of GGK, contained in the response to the initiation of the procedure, from which it follows, inter alia, that the Chief Surveyor of the Country in connection with publishing the numbers of land and mortgage registers on the website www.geoportal.gov.pl does not violate the provisions of Art. 5 sec. 1 lit. a and art. 6 sec. 1 of Regulation 2016/679, as it is not the addressee of these provisions, the following should be indicated:

Pursuant to Art. 5 sec. 1 lit. and Regulation 2016/679, personal data must be processed in accordance with the law, fairly and in a transparent manner for the data subject.

According to Art. 6 sec. 1 of Regulation 2016/679, processing is lawful only in cases where - and to the extent that - at least one of the following conditions is met: a) the data subject has consented to the processing of his personal data in one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

During the inspection, the Chief Surveyor of the Country testified that "in the case of 90 poviats that do not yet have their own technical infrastructure, the Chief Surveyor of the Country, on the basis of concluded agreements (concluded pursuant to Article 5 of the Geodetic and Cartographic Law), after receiving relevant geodetic data from these starosts

publish these data on the GEOPORTAL2 website ”.

In connection with the above, it should be stated that the Chief National Surveyor publishes on GEOPORTAL2 information obtained from the land and building records (including land and mortgage register numbers) kept by powiat starosts who do not have the technical infrastructure enabling the publication of this information on GEOPORTAL2.

It is indisputable in the present case that the functionality of GEOPORTAL2 allows, on the basis of the number of the land and mortgage register made available by the Chief Surveyor of the country, to the persons using this portal to familiarize themselves with the scope of information contained in a given land and mortgage register. According to Art. 364 paragraph. 6 of the Act of 6 July 1982 on land and mortgage registers and mortgage (Journal of Laws of 2019, item 2204), anyone who knows the land and mortgage register number may view the land and mortgage register free of charge via the ICT system. Therefore, due to the inclusion of the number of the land and mortgage register in GEOPORTAL2, anyone can see its contents, even if they did not have the number before.

It should be pointed out that pursuant to Art. 25 sec. 1 of the Act on land and mortgage registers and mortgage, the land and mortgage register contains four sections, of which: 1) the first includes the designation of real estate and entries of rights related to its ownership; 2) the second includes entries on ownership and perpetual usufruct; 3) the third one is intended for entries on limited rights in rem, except for mortgages, for entries of restrictions on the disposal of real estate or perpetual usufruct, and for entries of other rights and claims, except for claims relating to mortgages; 4) the fourth is intended for mortgage entries.

Therefore, it should be emphasized once again that the entities to which particular rights and obligations are disclosed in the land and mortgage registers relate to, among others, physical people. The scope of data disclosed in the land and mortgage register of these persons includes, inter alia, names, surnames, parents' names, PESEL number, real estate address. On this basis, it should be stated (as has already been demonstrated in the earlier part of this decision) that the numbers of land and mortgage registers made available to the public (on GEOPORTAL2) allow for indirect identification of natural persons, and thus constitute personal data within the meaning of Art. 4 sec. 1 of Regulation 2016/679. As indicated by the Supreme Administrative Court in the justification of the judgment of September 26, 2018, file ref. Act I OSK 11/17, “the receipt of information on the designation of the land and mortgage register allows easy and simple access to the content of the entire land and mortgage register, ie all IV sections, including the subject data contained therein. Applying for obtaining data from the

land and building register regarding the designation of the land and mortgage register is not intended to obtain "a set of marked numbers and signs", but is aimed at obtaining subjective data about the owner of the property, which can be easily obtained with "a set of marked numbers and characters ", that is, the marking of the land and mortgage register."

Consequently, it should be considered that the disclosure of land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl) violates the protection of the data of the persons concerned.

It should be noted here that pursuant to Art. 364 paragraph. 16 of the act on land and mortgage registers and mortgage, the Central Information allows the authorities managing real estate cadastre, for real estate from a specific town, commune or powiat, in order to verify the compliance of the data of land and building records with the data contained in the land and mortgage register, free of charge, via an ICT system, data contained in the first and second sections of the land and mortgage register, without the right to disclose to third parties.

It should be noted that the GEOPORTAL2 project was developed as part of the establishment of an infrastructure for spatial information in the European Community (INSPIRE). The project of developing such infrastructure is governed by the provisions of Directive 2007/2 / EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE). The scope of data contained in spatial data sets is specified in the annexes to Directive 2007/2 / EC. The indicated scope does not include data on the ownership or legal status of real estate, which are included in the collection.

Pursuant to recital 24 of Directive 2007/2 / EC, the provision of network services (such as data sharing within Geoportal2) should comply with the principles of personal data processing. Additionally, Art. 13 sec. 1 lit. f of the Directive stipulates that Member States may restrict public access to spatial data sets and services if their disclosure would have an adverse impact on the confidentiality of personal data, if the data subject has not consented to the public disclosure of this information, and if data confidentiality is foreseen in national or EU regulations.

It is also necessary to refer to Art. 5a paragraph. 4 of the Geodetic and Cartographic Law, which imposes on the Chief Surveyor of the Country the obligation to apply security measures to prevent abuse or unlawful access or transfer of personal data processed, inter alia, in connection with running the state geodetic and cartographic resource as well as creating and maintaining an integrated real estate information system.

It should be noted that the content of the agreement No. [...] of [...] November 2018 (concluded by the Chief Surveyor of the

Country with Starost J.) that the agreement was concluded pursuant to Art. 5 of the Act of May 17, 1989 Geodetic and Cartographic Law in connection with Art. 7 and art. 9 sec. 1 of the Act of 4 March 2010 on spatial information infrastructure (Journal of Laws of 2018, item 1472). The content of this agreement defines the purpose of the cooperation, i.e. supplementing and improving the functioning of the elements of the national information system on the area, which is a component of the spatial information infrastructure. The scope of information provided by Starost J. (and then published by the Chief Surveyor of the Country on GEOPORTAL2), in accordance with the above-mentioned agreement, includes, inter alia, numbers of land and mortgage registers for real estate located in the J.

It should be pointed out that pursuant to Art. 11 of the act on spatial information infrastructure, access to data sets and spatial services is subject to restrictions on the basis of, inter alia, provisions on the protection of personal data.

The protection of personal data is currently regulated in the provisions of Regulation 2016/679. These provisions established the basic rules for the processing of personal data, including the principle of lawfulness, as set out in Art. 5 sec. 1 lit. a regulation 2016/679. The principle of lawfulness, "also referred to as the lawfulness of data processing, means the requirement to comply with the norms established by law. The principle of lawfulness of data processing has a wide substantive scope, not only the provisions of the discussed regulation, but also provisions contained in other normative acts. (...) Among the provisions on data processing, a special role is played by the requirements relating to the lawfulness of processing (also referred to as the so-called grounds for admissibility of data processing or premises for the lawfulness of data processing), specified in the provisions of Art. 6, 9 and 10 of the discussed regulation. These provisions indicate cases where data processing is legally permissible (to put it simply: when personal data can be lawfully processed) "(Fajgielski Paweł, Commentary to Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and in on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation), [in:] General Data Protection Regulation. Personal Data Protection Act. Comment). Therefore, the Chief Surveyor of the Country, as a public administration body, should have a condition allowing not only the collection of land and mortgage register numbers, but also their public disclosure under the spatial information infrastructure (GEOPORTAL2). Meanwhile, in the present case, the Chief National Surveyor may not rely on any of the premises listed in Art. 6 sec. 1 of the Regulation 2016/679, and in particular to the one referred to in Art. 6 sec. 1 lit. c, according to which data processing is necessary to fulfill the legal obligation incumbent on the administrator.

As shown above, none of the provisions regulating the issues related to the activities of the Chief National Surveyor allows him to share this type of data under GEOPORTAL2 (geoportal.gov.pl), and even in accordance with Art. 364 paragraph. 16 of the Land and Mortgage Register Act and Art. 5a paragraph. 4 of the Geodetic and Cartographic Law Act, it is forbidden to make them available to third parties. On this basis, it should also be stated that the condition referred to in Art. 6 sec. 1 lit. e of the Regulation 2016/679 may not be applied. Other conditions for the admissibility of personal data processing listed in art. 6 sec. 1 of Regulation 2016/679, due to their nature, cannot constitute the basis for the processing of personal data in this case.

At the same time, it should be noted that the Chief National Surveyor was aware of the lack of legal provisions that would constitute the legal basis for publishing the land and mortgage register number on Geoportal2 (geoportal.gov.pl). This is clearly evidenced by the fact of concluding agreements with poviats in this regard. These agreements, pursuant to Art. 5 sec. 2 of the Geodetic and Cartographic Law, however, they are to apply to the creation and maintenance of common elements of technical infrastructure intended for the storage and sharing of specific data sets, and not to constitute the legal basis for sharing (publishing) data, including the number of land and mortgage registers. Such a basis, as already shown above, must result from generally applicable provisions of law.

Moreover, it should be pointed out that the Chief National Surveyor, as a public administration body, cannot hide behind the fact that he does not decide what information is disclosed in the land and mortgage register.

It should be noted that the Chief National Surveyor, by placing the land and mortgage register number on Geoportal2 (geoportal.gov.pl) with a link to the website of the Ministry of Justice with the Electronic Land Registry system, was intended to enable geoportal.gov.pl users to quickly and easily gain access to the content of the land and mortgage register, the number of which has been disclosed, including the personal data of the property owner.

Consequently, it should be considered that the provision of land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl) without a legal basis results in a breach by the Chief National Surveyor of Art. 5 sec. 1 lit. a and art. 6 sec. 1 of Regulation 2016/679. It should also be pointed out that the legal doctrine represents the position that disclosing personal data from public filing systems, in the absence of an explicit legal basis relating to the sharing operation, is unlawful. In order for the processing (including making public) of personal data to be lawful, it is necessary to indicate the legal basis for processing. It is indisputable in the present case that no legal provision authorizes the Chief National Surveyor to publish on GEOPORTAL2 (geoportal.gov.pl) information about land and mortgage register numbers, and moreover, the Chief National

Surveyor himself is not able to indicate the legal basis of his action.

It should also be pointed out that the Act on land and mortgage registers and mortgage contains regulations that ensure the implementation of the principle of open land and mortgage registers. These are, in particular, the provisions of Art. 364 paragraph. 5 and 6 of this Act. As it results from these provisions, the Central Land Registry Information enables viewing the land and mortgage registers via the ICT system, and anyone who knows the land and mortgage register number can view the land and mortgage register free of charge via the ICT system. Thus, the legislator indicated how the openness of land and mortgage registers is ensured and which entities are responsible for it. None of these provisions, as well as other provisions of the Act on land and mortgage registers and mortgage, do not confer competence in this respect on the Chief Surveyor of the country. Moreover, no provision of generally applicable law indicates the task of the Chief National Surveyor to ensure universal availability of land and mortgage registers and the information contained therein. Assigning this task to himself by the Chief Surveyor of the Country is not only a violation of Art. 7, but also art. 47 and 51 sec. 2 of the Polish Constitution, since it leads to a breach of the protection of personal data disclosed in the land and mortgage register. At this point, it is necessary to recall the above-mentioned judgment of the Supreme Administrative Court of September 26, 2018, file ref. Act I OSK 11/17, in the justification of which the Supreme Administrative Court stated that "openness of the land and building register means that the information contained in the register is not classified information within the meaning of the law, but it does not mean universal access to it." The above statement obviously also applies to the land and mortgage register numbers.

II. Based on Article. 58 sec. 2 lit. and Regulation 2016/679, each supervisory authority has the power to apply, in addition to or instead of other remedial measures provided for in Art. 58 sec. 2 lit. a - h and lit. j of this Regulation, an administrative fine under Art. 83 of the Regulation 2016/679, depending on the circumstances of the specific case. Taking into account the findings of the facts, the President of the Office for Personal Data Protection, using his right specified in the above-mentioned provision of Regulation 2016/679, stated that in the case under consideration there were premises justifying the imposition of an administrative fine on the Chief Surveyor of the Country.

When determining the amount of the fine, the President of the Personal Data Protection Office took into account the following circumstances of the case that had an aggravating effect on the amount of the imposed financial penalty:

1. Severity and nature of the violation - the Chief National Surveyor, by his actions in the process of making available on the GEOPORTAL2 website (geoportal.gov.pl) without a legal basis, data obtained from the land and building register (kept by

starosts) regarding land and mortgage register numbers violates the principle of compliance with the law data processing referred to in art. 5 sec. 1 lit. a regulation 2016/679. The findings made by the President of the Personal Data Protection Office allow for the conclusion that the violation in question concerns a very large number of people. The mass scale of such a phenomenon was confirmed by the Chief National Surveyor himself, who in the justification of the refusal to conduct the inspection indicated that such a situation applies to at least 90 poviats starosties. Undoubtedly, publishing on the GEOPORTAL2 website (geoportal.gov.pl) the numbers of land and mortgage registers along with a link that allows anyone to read personal data (in the scope of: name and surname, address, PESEL number and often information about debt) contained in the books perpetual mortgage loans exposes a very large number of people (data subjects) to identity theft.

2. Duration of infringements - the findings made by the President of the Personal Data Protection Office indicate that the publication of the land and mortgage register numbers on the portal in question is carried out by the Chief National Surveyor at least from 2019.

3. Intentional nature of the infringement - the Chief National Surveyor as a public administration entity should act solely on the basis of legal provisions. In the opinion of the President of the Personal Data Protection Office, due to the lack of legal grounds that would authorize the Chief Surveyor of the country to obtain information from land and building records (including land and mortgage register numbers) kept by starosts for publication on GEOPORTAL2 (geoportal.gov.pl) The Chief Surveyor of the Country decided to conclude agreements with the starosts. Unfortunately, the concluded agreements, in the opinion of the President of the Personal Data Protection Office, do not constitute a legal basis for this type of activities carried out by the Chief National Surveyor. It should be emphasized that when deciding to publish on GEOPORTAL2 (geoportal.gov.pl) information on land and mortgage register numbers, he realized that, in the opinion of the supervisory authority, the number of the land and mortgage register is subject to the provisions on the protection of personal data and therefore their processing should comply with these regulations. It is indisputable from the circumstances of the present case that the Chief Surveyor of the Country, despite the fact that he knew about the position of the supervisory body in this case, decided, contrary to this position, to publish the land and mortgage register numbers on GEOPORTAL2. On this basis, it should be stated that the breach by the Chief Surveyor of the Country of the data protection provisions in the above scope is intentional.

4. The high degree of responsibility of the Chief Surveyor of the Country as an entity of public administration, which should undoubtedly uphold the rule of law, and whose activity (in the field of publishing land and mortgage register numbers on

GEOPORTAL2) violates applicable law, which results in unauthorized access to personal data of an unlimited number of people, because from the access to this source of information about, inter alia, land and mortgage register numbers can be used by any interested Internet user.

In addition, it should be noted that:

1. Undoubtedly, publishing the numbers of land and mortgage registers on GEOPORTAL2 (geoportal.gov.pl) exposes a very large number of people to theft of their identity. The activities of the Chief National Surveyor in terms of preventing the full scope of the inspection did not allow obtaining evidence that would directly prove that the consequence of the breach was damage to the data subjects. Nevertheless, there is no doubt that the further publication of information about the number of land and mortgage registers on GEOPORTAL2 poses the risk of exposing a significant number of natural persons to interference with their privacy (measures taken to minimize the damage).
2. It has not been found that the Chief Surveyor of the Country previously violated the provisions of Regulation 2016/679, which would be significant for the present proceedings.
3. The President of the Office for Personal Data Protection obtained information about the provision of personal data on the portal called "GEOPORTAL2" ("geoportal.gov.pl") without a legal basis for personal data in the field of land and mortgage register numbers in the course of another inspection, which was carried out at Starost J. (how the supervisory authority became aware of the breach).
4. In the same case, the President of the Personal Data Protection Office, pursuant to Art. 70 paragraph. 1 and 2 of the Act on the Protection of Personal Data, issued [...] April 2020, a decision (ref .: DKN.5112.13.2020), which obliged the Chief Surveyor of the country to limit the processing of personal data in terms of land and mortgage register numbers, ordering to cease publishing them on the GEOPORTAL2 internet portal until an administrative decision is issued ending the proceedings in this case.

When determining the amount of the administrative fine, the President of the Personal Data Protection Office found no grounds to recognize that there were any mitigating circumstances affecting the final penalty.

In the case at hand, the authority did not consider the circumstances referred to in Art. 83 sec. 2 lit. j of the General Data Protection Regulation, due to the fact that the administrator does not apply codes of conduct and approved certification mechanisms.

When deciding whether to impose an administrative fine, as well as determining its amount, the President of the Personal Data Protection Office recognized the serious nature of the breach resulting from the disclosure of personal data without a legal basis to persons other than the data subjects.

Moreover, the President of the Personal Data Protection Office took into account that the assessed body is a public sector entity.

At this point, the content of Art. 102 of the Act on the Protection of Personal Data, which limits the amount (up to PLN 100,000) of the fine that may be imposed on a public sector entity.

The President of the Personal Data Protection Office, while imposing the maximum fine, took into account the seriousness of the infringement. In the opinion of the President of the Personal Data Protection Office, the administrative fine in the amount of PLN 100,000 under the established circumstances of this case performs the functions referred to in Art. 83 sec. 1 of the General Data Protection Regulation, i.e. it is effective, proportionate and dissuasive in this individual case.

It should be considered that the penalty will be effective if its imposition leads to the fact that the Chief Surveyor of the Country complies with the applicable provisions of law and ceases to permanently violate the protection of personal data by disclosing land and mortgage register numbers on GEOPORTAL2 (geoportal.gov.pl).

In the opinion of the President of the Personal Data Protection Office, the applied fine is proportional to the breach found, in particular due to the seriousness of the breach, the mass nature of the breach and the duration of the breach.

The dissuasive nature of a financial penalty is related to the prevention of future infringements and the greater importance attached to the performance of the administrator's tasks. The penalty is intended to deter both the administrator from repeated violations and other entities. By imposing an administrative fine for violating the provisions on the protection of personal data by this decision, the President of the Personal Data Protection Office took into account both aspects: firstly - repressive nature, the Chief Surveyor of the Country violated the provisions of the General Data Protection Regulation, The country and other administrators will be effectively discouraged from violating the personal data protection law in the future, while exercising greater diligence in fulfilling their obligations under the General Data Protection Regulation.

The purpose of the penalty is to ensure that the Chief National Surveyor performs the duties provided for in Art. 5 sec. 1 lit. a and art. 6 sec. 1 of the General Data Protection Regulation, and consequently to conduct data processing processes in accordance with applicable law.

III. At the same time, on the basis of the explanations submitted by the Representative of the Chief Surveyor of the Country contained in the letters of [...] May 2020 and of [...] July 2020 and the attached other evidence, it should be stated that the remaining shortcomings constituting the subject of these proceedings were by the Chief Surveyor Country removed.

Currently, the register of personal data processing activities for activities with the names: "Registration of project repository users", "Registration of Geoportal training participants", which are related to the Geoportal, contains information on the planned dates of data deletion referred to in Art. 30 sec. 1 lit. f of the Regulation 2016/679.

In addition, in the register of personal data processing activities for activities named: "Registration of users of the Geoportal system and GUGiK domain systems", "Registration of users of the project repository" and "Registration of Geoportal training participants", a description of the technical and organizational security measures referred to in in art. 32 sec. 1 of Regulation 2016/679.

The explanations of the Chief Plenipotentiary of the Surveyor of the Country contained in the letter of [...] July 2020 also show that currently the Chief Surveyor of the Country does not perform activities called "Registration of users of the Geoportal website forum" and therefore does not process personal data as part of this activity . The above activity was deleted from the register of data processing activities.

Bearing in mind the above, 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 Office for Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw). A proportional fee should be filed against the complaint, in accordance with Art. 231 in connection with Art. 233 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302, as amended). A party (natural person, legal person, other organizational unit without legal personality) has the right to apply for the right to 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.

Pursuant to Art. 105 paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the administrative fine must be paid within 14 days from the date of expiry of the deadline for lodging a complaint to the

Provincial Administrative Court, or from on the day the ruling of the administrative court becomes legally binding, to the bank account of the Personal Data Protection Office at NBP O / O Warsaw no. 28 1010 1010 0028 8622 3100 0000. Moreover, pursuant to Art. 105 paragraph. 2 above of the Act, the President of the Personal Data Protection Office may, at the justified request of the punished entity, postpone the date of payment of the administrative fine or divide it into installments. In the event of postponing the payment of the administrative fine or dividing it into installments, the President of the Personal Data Protection Office shall charge interest on the unpaid amount on an annual basis, using a reduced rate of late payment interest, announced pursuant to Art. 56d of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2019, item 900, as amended), from the day following the date of submitting the application.

Pursuant to Art. 74 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the submission of a complaint by a party to the administrative court suspends the execution of the decision on the administrative fine.

They receive:

1. adv. S. K.

adv. P. T.

[...]

Agents

Chief Surveyor of the Country

ul. Common 2

00-926 Warsaw

2. A / a

2020-08-31