THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

March

2019

DECISION

ZSPR.440.195.2019

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 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 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), 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) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal EU L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mrs. J.Ż., residing in [...], against the refusal of the portal administrator [...] to provide Mr. A.W. running a business under the name of [...] with its registered office in P., personal data in the field of computer IP number, first and last name, e-mail address of users using nicknames: (...) and (...), President of the Office for Personal Data Protection

orders Mr. A.W. running a business under the name of [...] based in P., providing for Ms J.Ż., residing in [...], personal data regarding the computer's IP number, e-mail address of users using nicknames: (...) and (...),

in the remaining scope, it discontinues the proceedings.

Justification

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Ms J.Ż., residing in [...] (hereinafter: the Complainant) for the refusal to provide by the administrator of the portal [...] running a business under the name of [...] based in P. (hereinafter: [...]), personal data regarding the computer's IP number, first name and surnames and e-mail addresses of users using nicknames: (...) and (...).

In the content of her application, the complainant stated that: “in connection with the notice filed on [...] August 2016 with the District Police Headquarters of stalking, to my detriment and detriment, and directed to the District Court [...] a private

indictment for committing a crime under Art. 212 of the Criminal Code, I would like to ask you to contact the internet portal: [...] [...], Editorial office: [...] P., Editor-in-chief: [...] to provide the IP address of the computer used for logging in, e-mail address and name and the name of the user under the Nickname: (...) and (...) to be presented as evidence in the above cases ". In the justification of her request, she also indicated that the quotation: "Entries also appear under the news on the portal [...] under the news posted on this portal. They are posted by users under Nickname (...) and (...) (print screen of comments attached). Due to the fact that they are in the same, literal wording as the comments posted by the Central Commission against which I brought the indictment, there is a high probability (bordering on certainty) that they come from the Central Commission. the fact that now after the amendment to the Code of Criminal Procedure, which entered into force on 1 July 2015, the general rule is that the initiative to take evidence lies with the party, I submit as at the beginning. " The applicant submitted copies of the indictment to the case file with attachments containing printouts of print screens of comments from [...] .08.2016, [...] .08.2016, [...] .08.2016

In connection with the above, the complainant applied for an administrative decision ordering the restoration to legal status by providing the above-mentioned data regarding the computer's IP number, first and last name, e-mail address of users using nicknames: (...) and (...).

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

On [...] August 2016, the applicant filed a notification of stalking to her detriment and detriment to her closest relatives and sent to the District Court [...] a private bill of indictment for committing a crime under Art. 212 of the Criminal Code. In connection with the above, she turned to the website: [...] [...], Editorial address: [...], Editor-in-chief: A.W. for disclosure of the IP address of the computer from which the logins are made, as well as the e-mail and first name and surname of the user under the Nickname: (...) and (...) in order to present as evidence in the above cases (copy of the private indictment of [...] August 2016 with attachments and a copy of the correspondence addressed to the above-mentioned entity in the case files).

On [...] October 2016, the complainant asked the administrator of the above-mentioned service of Mr. A.W. the editor-in-chief of the portal [...] with a request for disclosure of personal data regarding the computer name, surname and IP address, e-mail address of users using nicknames: (...) and (...) who, in the opinion of the complainant, committed crimes under Art. 190a of the Criminal Code and Art. 212 of the Criminal Code to her detriment in order to present this information as evidence in the

above cases pending before the Court. At the same time, the complainant mentioned that the request for disclosure of the personal data of the authors of entries with the nickname (...) and (...) is also motivated by the intention to pursue their rights before the court for infringement of personal rights in the scope of entries made by these persons, quoted. that the entries could have come from a person accused of an offense under Art. 190a § 1 of the CC against which criminal proceedings are pending before the District Court [...], case no. file [...], in which I am the aggrieved person. " She indicated that the above-mentioned personal data of the indicated users makes it impossible for her to pursue her rights for infringement of personal rights in court.

Above the entity [...] refused to disclose the data requested by the complainant, indicating to the Inspector General for Personal Data Protection in a letter of [...] April 2017 that it had not received any correspondence from Ms J.Ż. of […] .10.2016. He referred to the fact that the website referred to by the applicant is not a gainful activity. In addition, he indicated that disclosure of personal data in the form of a computer's IP number would only be made available by him at the express request of the Prosecutor's Office.

The applicant, in a letter of […] .06.2017, informed that the District Prosecutor of the Prosecutor's Office […] had directed the Court against C.K. indictment for a crime under Art. 190a of the Penal Code The case is pending before the District Court [...] and is pending under file no. Act […]. The applicant appeared in this case as an auxiliary prosecutor. The case of a private defamation indictment, ref. No. the act [...] was connected with the case no. act [...] due to the identity of the perpetrator and the fact that defamatory entries on the Internet are part of persistent harassment, i.e. they are part of the alleged act of C.K. in the case with reference number Act […].

According to the regulations of using the website […], the digital subscription of the website is a service provided electronically by […] upon the users' request. As part of the digital subscription service of the […] […] portal, the user obtains access to the digital content covered by a given subscription period. Digital subscription service for the above-mentioned The portal is provided only to users who have a user account. In order to gain access to digital content, it is necessary to log in to the user's account, place an order in the portal [...] (by clicking the "order and pay" icon) and pay the price indicated there. [...] reserves the right to remove content and block the possibility of posting comments under articles in relation to persons who have violated these regulations (regulations for using the website in the case file).

In the course of the proceedings, it was necessary to carry out control activities at Mr. A.W. running a business under the

name of [...] with the place of performance in P., during which it was found that the above-mentioned the address is the residence address of Mr. A.W. and there is no office there. The portal [...] of Mr. A.W. manages remotely. According to the entry in CEIDG (REGON number [...], NIP number [...]), the entrepreneur carries out economic activity, inter alia, in the field of artistic and literary creative activities, Internet portal activities, data processing and website management (hosting) and similar activities. The domain [...] was registered by Mr. A.W. running a business under the name of (...) with a place of business in P. in [...] S.A. based in S.

During the inspection, Mr. A.W. he explained that he had not received a request directly from Mrs. J.Ż., residing in [...], of [...] October 2016, for the disclosure of personal data of portal users (...) using nicknames (...) and (...). Mr. A.W. he explained that he did not confirm the receipt of the parcel in question. With a copy of the above-mentioned he familiarized himself with the application when he received a copy of the application from GIODO.

As explained by Mr. AW, he processes the data of portal users [...] using nicknames (...) and (...) in the scope of e-mail addresses (these addresses are provided during registration) and IP numbers of the computer from which comments were added to the articles published in portal [...] Above. he explained that there is only one user with the nickname (...) and one user with the nickname (...) in the database.

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

At the outset, it should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2018, item 1000, as amended), i.e. May 25, 2018, the Office of the Inspector General for Data Protection Personal Data has become 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 of 2016, item 922, as amended) 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, 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, and repealing Directive 95 / 46 / WE (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:

Regulation 2016/679, the provisions of which regulate issues related to with 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 2016, item 922, as amended), hereinafter also referred to as the Act, was in force. 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 data on the computer's IP number, e-mail address of users using nicknames: (...) and (...).

The President of the Personal Data Protection Office does not share the position [...] which shows that this entity, at the time the complainant submitted the request for access to data, was not subject to the provisions of the Personal Data Protection Act pursuant to Art. 3a, because Mr. A.W. as a natural person, he processed data solely for personal or domestic purposes (thus he was not engaged in any commercial activity). This is contradicted by the terms and conditions of using the services of the website […], which state that the digital subscription of the portal is a service provided electronically by […] upon the users' request. As part of the digital subscription service of the […] portal, the user obtains access to digital content covered by a given subscription period. Digital subscription service for the above-mentioned The portal is provided only to users who have a user account. In order to gain access to digital content, it is necessary to log in to the user's account, place an order in the

portal (...) (by clicking the "order and pay" icon) and pay the price indicated there.

In addition, the President of the Personal Data Protection Office does not share the position (...), which shows that the request for access to the personal data of persons using these services, sent to the entity providing electronic services, comes from entities other than state authorities and is justified on other grounds than the needs of their proceedings cannot be taken into account.

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, i.e.), the service provider provides information on the data referred to in para. 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).

Pursuant to the wording of art. 16 sec. 1 of the Act on the provision of electronic services, the provisions of this Act shall apply to the processing of personal data within the meaning of the Act on the Protection of Personal Data, in connection with the provision of electronic services, unless the provisions of this chapter provide otherwise. Against the background of the provisions of the Act on the provision of electronic services, an application to exclude the application - in the processing of personal data of persons using services provided electronically - in the process of processing personal data - art. 23 sec. 1 point 5 of the Act (currently Article 6 (1) (f) of Regulation 2016/679), or the existence of any special secrecy concerning the

personal data of such persons. On the position that the wording of Art. 18 sec. 6 of the Act on Providing Services by Electronic Means, only the obligation to provide information about data to state authorities for the purposes of their proceedings, does not result from the prohibition of disclosing these data to persons whose rights have been violated, the Supreme Administrative Court also faced the judgment of 21 August 2013. . in the case with reference number no. I OSK 1666/12.

Referring the above to the circumstances of the case under examination, it should be noted that, in the opinion of the President of the Personal Data Protection Office, the complainant's request for disclosure of personal data to the above-mentioned users with nicknames (...) and (...), including the number of their IP addresses and e-mail addresses, 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 author of this entry and the necessity of the requested data from the point of view of the possibility of pursuing legal claims against that person for defamation and protection of personal rights. Pursuant to Art. 212 § 1 of the Act of 6 June 1997 - Penal Code (Journal of Laws of 2018, 1600, i.e.) who slanders another person, group of persons, institution, legal person or organizational unit without legal personality for such proceedings or properties that may degrade it in the public opinion or expose it to the loss of confidence needed for a given position, profession or type of activity, shall be subject to a fine or the penalty of restriction of liberty. § 2 If the perpetrator commits the act specified in § 1 by means of mass communication, , the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year. Moreover, the applicant had already taken legal steps and on [...] August 2016 she filed a notification of stalking to her detriment and to the detriment of her closest relatives and sent to the District Court [...] a private bill of indictment for committing the offense under Art. . 212 of the Criminal Code to its detriment. At the same time, 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 authors of the questioned entries 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).

Here it is necessary to clarify what an IP address is and whether it constitutes personal data within the meaning of Regulation 2016/679. Pursuant to Art. 4 pts 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.

Information that is associated with a specific person - even indirectly - carries a certain message about him. Therefore, information about a person is both information relating directly to him, and one that relates directly to objects or devices, but due to the possibility of linking these objects or devices with a specific person, it also indirectly constitutes information about himself. An IP address (Internet Protocol Address) is a unique number assigned to devices in computer networks. Therefore, it is information about a computer and not a specific natural person, especially when it is possible to share one IP address by many users within a local network. Therefore, the IP address may not always be treated as personal data within the meaning of Regulation 2016/679. However, where the IP address is for a longer period of time or permanently assigned to a specific device, and the device is assigned to a specific user, it should be considered that it constitutes personal data, because it is information that allows the identification of a specific natural person [judgment of the Supreme Administrative Court of May 19, 2011, file ref. no. I OSK 1079/10].

Considering the above, the necessity for the complainant to have individual information identifying the persons against whom she intends to bring an action in connection with the allegation of unauthorized interference in the sphere of her goods does

not raise any doubts. In a situation where the Complainant has essentially no information about the persons who, using the usernames (...) and (...) posted on the website (...), entries violating her personal rights, except for those that resulted from their publication (i.e. - apart from the date, time, content of the publication) used by these persons to conceal their identity, it is reasonable to assume that the actions taken by the applicant serve to establish the identity of these persons in order to bring them to civil and criminal liability in relation to the content publication and fall within the concept of a legitimate 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 subjects 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 [...], it unjustifiably refused to disclose the requested data to the Complainant in the field of e-mail addresses and IP numbers of devices on which the entries were made, thus preventing her from taking further actions to identify these persons in order to initiate court proceedings. To confirm the correctness of the position presented in this case, it is worth reiterating the judgment of the Provincial Administrative Court in Warsaw of February 3, 2010 (file reference number II SA / Wa 1598/09), in which in particular the quotation was indicated: "(.. .) 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 21 August 2013 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 [...] unjustifiably refused to disclose the IP numbers and e-mail addresses of the authors of entries with nicknames: (...) and (...), thus preventing the complainant from taking further actions that would allow effective initiation of court proceedings against these persons.

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 Office for Personal Data Protection is authorized to order (...) disclosure to the Complainant of the personal data of the authors of the entries in question to the extent to which the entity has these data - i.e. information on the IP numbers of the devices from which the entries and e-mail addresses of users with nicknames: (...) and (...).

However, referring to the complainant's request to provide him by [...] personal data of users with nicknames: (...) and (...) in terms of their names and surnames, it should be noted that the above-mentioned the entity does not process these data, therefore the ordering by the President of the Personal Data Protection Office (UODO) to disclose them should be considered as pointless. Pursuant to the provisions of Art. 105 § 1 of the Code of Administrative Procedure, when the proceedings for any reason have become redundant, the administrative authority issues a decision to discontinue the proceedings. The subject of the proceedings is related to the application of the substantive administrative law by the public authority. The doctrine indicates that the quotation: "the objectivity of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative

Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before the administrative authority ". [B. Adamiak, J. Borkowski, Code of Administrative Procedure. Commentary, C.H. Beck, Warsaw 2006, p. 489]. The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges it, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because if this condition arises, there are no grounds for resolving the matter on the merits, and continuing the proceedings in such a case would constitute its defective impact on the outcome of the case.

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.

2019-06-14