

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 31

May

2022

DECISION

DKN.5131.51.2021

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, 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) and h), art. 58 sec. 2 lit. i) in connection with joke. 5 sec. 1 lit. a), art. 6 sec. 1, as well as art. 83 sec. 1 - 2 and art. 83 sec. 5 lit. a) Regulation of the European Parliament and of the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Official Journal of the European Union L 119 of 04/05/2016, p. 1, Official Journal of the European Union L 127 of 23/05/2018, p. 2 and the Official Journal of the European Union L 74 of 04/03/2021, p. 35) , hereinafter referred to as "Regulation 2016/679", after conducting the administrative procedure initiated ex officio on the processing of personal data by the Capital Center for Drunk Persons with its seat in Warsaw (address: ul. Kolska 2/4, 01-045 Warsaw), President of the Office Personal Data Protection, finding a violation by the Capital Center for Drunken Persons with its seat in Warsaw (address: ul. Kolska 2/4, 01-045 Warsaw), the provisions of Art. 6 sec. 1 in connection with Art. 5 sec. 1 lit. a) Regulation 2016/679 consisting in recording and saving sound (voice) in the installed in the above-mentioned The center of the monitoring system, i.e. processing personal data without a legal basis in this regard, imposes an administrative fine in the amount of PLN 10,000 on the Capital Center for Drunken Persons with its seat in Warsaw (address: ul. Kolska 2/4, 01-045 Warsaw) (in words: ten thousand zlotys).

JUSTIFICATION

The President of the Personal Data Protection Office (hereinafter referred to as the "President of the Personal Data Protection Office" or the "supervisory authority") has been informed about the practices applied by the Capital Center for Drunken Persons with its seat in Warsaw (address: ul. Kolska 2/4, 01-045 Warsaw), hereinafter referred to as hereinafter: "Center" or "Administrator", related to the monitoring system used by the Center. As part of the above-mentioned the information provided

to the local information office was accused of the Center (quoted): "(...) recording the sound in the premises of the facility without a legal basis through the installed monitoring system". This center was created, inter alia, based on Article 39 sec. 1 of the Act of October 26, 1982 on Upbringing in Sobriety and Counteracting Alcoholism (Journal of Laws of 2021, item 1119, as amended), hereinafter referred to as: "the Act on Upbringing in Sobriety and Counteracting Alcoholism", in accordance with which local government authorities in cities with more than 50,000 inhabitants and poviata authorities may organize and run sobering-up stations. Pursuant to the statute of the Capital Center for Drunk Persons (hereinafter referred to as the "Statute") constituting an appendix to Resolution No. LXVII / 2101/2009 of the Council of the Capital City of Warsaw of November 26, 2009 on the change of the name and statute of the Sobering-up Chamber in the capital city of Warsaw, the Center is a budgetary unit within the meaning of the Public Finance Act - in accordance with Art. 9 point 2 of the Act of 27 August 2009 on public finance (Journal of Laws of 2021, item 305, as amended), the public finance sector consists of local government units and their associations. Its basic tasks include in particular: taking care of intoxicated people by running the Sobering-Up Chamber Department, conducting therapeutic and outpatient activities by the Department of Breaking Alcohol Routes for people declaring their willingness to stop drinking alcohol and undertake further treatment, as well as providing hygienic and sanitary services and medical and emergency first aid. The statute also stipulates that the activities of the Center are managed by the Director, who ensures its proper functioning. The center is entitled (pursuant to Article 391 (2) of the Act on Upbringing in Sobriety and Counteracting Alcoholism) to process, as part of the documentation kept, the personal data of persons brought in in the scope of: information allowing to determine their identity (including: name, surname, parents' names, name and number of the identity document, date and place of birth or age, PESEL number, if any, marital status, address of residence or place of stay), as well as health status (including health benefits provided to them), addictions and social and family situation. In connection with the above, on [...] February 2021, the President of the Personal Data Protection Office (UODO) asked the Administrator pursuant to Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 with a request to refer to the above-mentioned information on the practice of sound recording used by the Administrator as part of the monitoring system, and in the case of confirmation that such activities take place, to indicate an unambiguous legal basis authorizing the Administrator to obtain the above-mentioned categories of personal data, the specific purpose of data processing, demonstration of the necessity of the above-mentioned categories of data from the point of view of the declared purpose of their processing, the storage period of the above-mentioned information and legal basis from which this period results.

In response to the above-mentioned request, the Administrator provided explanations in a letter of [...] February 2021, in which it was indicated that in (quoted): "(...) the above-mentioned the system registers both image and sound ", that" The time in which the discussed monitoring system operates is 24 hours a day - in accordance with the disposition of § 8 sec. 1 and § 6 sec. 2 point 4 of the Regulation of the Minister of Health of 8 December 2014 on sobering-up stations and facilities indicated or established by a local government unit in connection with joke. 39 sec. 2 points 1 and 3 of the Act of October 26, 1982 on Upbringing in Sobriety and Counteracting Alcoholism ", and that:" The obligation to register an audio / video signal in the Capital Center results from the following legal grounds: - Art. 423 paragraph. 1 of the Act of October 26, 1982 on Upbringing in Sobriety and Counteracting Alcoholism (Journal of Laws of 2019, item 2277, as amended); - Art. 42 sec. 12 of the Act of October 26, 1982 on upbringing in sobriety and counteracting alcoholism; - § 6 sec. 2 point 4 of the Regulation of the Minister of Health of 8 December 2014 on sobering-up stations and facilities indicated or established by a local government unit (Journal of Laws, item 1850, as amended); - Art. 6 sec. 1 in conjunction joke. 9 sec. 2 lit. b, c and art. 3 sec. 2 lit. b and art. 4 point 2 of Regulation (...) 2016/679 (...) ".

In the above-mentioned letter, the Center also indicated that (quoted): "The purpose of processing the audio / video signal in the monitoring system is: - exercising constant supervision over people brought to sobering up in order to ensure their safety; - constant supervision over a person placed in a closed room intended for insulation and control of activities related to the application of insulation ".

In addition, the Administrator, in the above-mentioned letter, provided explanations regarding the period of storage of recordings from sound recordings - (quoted): "The monitoring record covering rooms in which the audio / video signal is recorded is stored for a period of at least 30 days, not longer than 60 days from the day of its registration, unless it is secured as evidence in the case in the event of pending proceedings. After the expiry of the storage period, the record is deleted by automatically overwriting it in a way that prevents its recovery. The period of storage of the monitoring record results from art. 42 sec. 15 of the Act of October 26, 1982 on Upbringing in Sobriety and Counteracting Alcoholism and § 6 sec. 3 and 4 of the Regulation of the Minister of Health of 8 December 2014 on sobering-up stations and facilities indicated or established by a local government unit ".

Administrator for the above-mentioned letters of [...] February 2021 were joined, inter alia, by Regulation No. [...] of the Director of the Capital Center for Drunken Persons of [...] July 2019 on the amendment to the Instructions specifying the rules for the

use of CCTV and Full HD closed-circuit television systems, image recording and storage, and issuing authorizations for people who have access to these systems in the Capital Center for Drunken Persons (with attachments - including the Instructions). In § 1 point 3 of the Instruction defining the rules of using the FULL HD closed-circuit television system, image recording and storage, and issuing authorizations for people who have access to this system in the Capital Center for Drunk Persons (hereinafter referred to as the "Instruction"), the word " monitoring ", which shows that it is (quoted): " FULL HD CCTV system recording image and sound ". In § 2 sec. 1 of this Instruction, it was stated that the premises of the Center and the area adjacent to the building are monitored, and paragraph 3 of this paragraph indicates where the cameras with microphones are installed: these are eight places located on the ground floor of the building (one from these places, i.e. in the corridor at the entrance door to the Department of Sobering-up at the main entrance to the Center building, as many as two microphones were installed) and on the first floor (four microphones in total). Importantly, in the context of the Administrator's statements regarding the storage period of recordings, § 3 para. 4 of the Instruction states that (quoted): "The monitoring record covering the rooms listed in § 2 sec. 3 and 4 and the area adjacent to the Center is stored on the recorder's hard disk for a period of at least 60 days from the date of its registration. After the expiry of the storage period, the record is deleted by its automatic overwriting in a way that prevents its recovery. "

In a letter of [...] February 2021, the Administrator also stated that (quoted): "(...) the main entrances to the building of the Warsaw Center for Drunk Persons were marked with information boards informing about the type of monitoring installed in it and about legal grounds regulating its application "(it should only be noted in the margins that the information provided to the President of the Personal Data Protection Office by the Administrator in a later letter of [...] February 2022 shows that the boards contain, among others, the following information: - "The scope of data processed in the filing system. Biometric data, i.e. image", - "Monitoring records are stored for 60 days", and the places of activity of sound recording microphones are marked only with signs saying: "OBJECT MONITORED, IMAGE AND SOUND IS REGISTERED") .

On the basis of the evidence collected in the case, it was found that in the process of personal data processing the Center violated the provision of Art. 5 sec. 1 lit. a) Regulation 2016/679, i.e. the principle of lawfulness of the processing of personal data and art. 6 sec. 1 of Regulation 2016/679 by recording sound as part of the installed monitoring system, i.e. processing personal data without a legal basis in the field of sound recordings made in the Capital Center for Drunken Persons based in Warsaw. In connection with the above-mentioned arrangements, the President of the Personal Data Protection Office (UODO)

on [...] November 2021 initiated ex officio administrative proceedings regarding violation of the provisions on the protection of personal data in connection with the processing of personal data within the meaning of Regulation 2016/679 by the Warsaw Center for Intoxicated Persons based in Warsaw, and the subject of the proceedings was a breach by the Center, as a data controller, of the provisions of Art. 5 sec. 1 lit. a) and art. 6 sec. 1 of Regulation 2016/679 against the processing by the Center of personal data related to recording sound as part of the installed monitoring system (letter reference: [...]).

In response to the notification about the initiation of administrative proceedings, the Administrator, in a letter received by the local Office on [...] November 2021, requested (quoted): "(...) clarification of the charges against the Warsaw Center for Drunken Persons and to provide evidence on which these allegations are based ", and also pointed out that (quoted):" It should be noted that except for a general indication of the provisions that, in the opinion of the Authority, would be violated by the activities of the Center (i.e. Article 5 par. 1 letter a (...) and art.6 par. 1 (...) of Regulation 2016/679) and a general statement, as cited: processing by the Center of personal data related to recording sound as part of the installed monitoring system (as permitted by applicable regulations, indicated to the Authority in the letter of [...] February 2021 (...) contained in the files of the present case), in the above-mentioned The notification did not specify when, where and how the Center would breach the above-mentioned provisions, and the files of the present case do not contain any information on this matter ”.

In response to the above request, the supervisory authority (in a letter of [...] November 2021) summarized the above-described correspondence, noting that the Administrator confirmed in his explanations that the sound was recorded in the Center via the installed monitoring system and that he indicated the provisions which, in the Administrator's opinion, constitute the obligation (quoted): "recording audio / video signal". The administrator, despite very clear explanations from the supervisory authority as to the subject matter of the proceedings, sent another letter to the President of the Personal Data Protection Office on [...] December 2021, containing, inter alia, requesting clarification of the allegations against the Center (in terms of the date, place and circumstances of the alleged violation of the rules of personal data protection) and presentation of the evidence in the possession of the supervisory authority on which these allegations are based.

Then, on [...] December 2021, the local Office received another letter (dated [...] December 2021), in which the Administrator attempted to demonstrate his right to process personal data in connection with sound recording as part of the installed monitoring , he cited, inter alia, on art. 6 sec. 1 lit. c), d) and e) of Regulation 2016/679. In addition to these provisions, the Administrator also indicated the regulations contained in: - the Act on Upbringing in Sobriety and Counteracting Alcoholism, -

the Regulation of the Minister of Health of 8 December 2014 on sobering-up stations and facilities indicated or established by a local government unit (Journal of Laws of 2014, No. of 2014, item 1850, as amended), hereinafter referred to as: "the Regulation of December 8, 2014" (issued on the basis of Article 423 (5) of the Act on Upbringing in Sobriety and Counteracting Alcoholism), - the Statute.

The administrator stated, inter alia, that (quoted): "The provisions of the Act and the ordinance distinguish between the monitoring installed in isolation rooms, which enables constant supervision of persons placed in isolation and control of the performance of activities related to this direct coercion measure (Article 42 (2) of the Act) and a system enabling the observation of people staying in any premises of the sobering-up center in order to ensure the safety of these people (Art. 423 (1) of the above-mentioned Act). Moreover, the provision of § 6 sec. 2 point 4 of the ordinance indicates that the rooms for people whose behavior poses a serious threat to their health or life or health or life of other people admitted to the sobering-up center, are additionally equipped with a monitoring installation protected against damage, enabling constant supervision over such people ". The administrator also noted in this letter that (quoted): »Importantly, the legislator did not define in any way what should be understood by the terms" constant supervision "and" observation ", did not exclude from the scope the terms" constant supervision "and "Observation" of any of their types, which means that, according to the rules of interpretation, the above-mentioned use their common dictionary understanding of terms. For this reason, it should be recognized that "constant supervision" and "observation" cover all phenomena, observable with the senses, occurring in rooms where persons brought to sobering up and persons admitted to the sobering-up center are statutory duties: caring for people under the influence of alcohol (Article 39 (2) (1) of the Act; § 4 (1) of the Statute), providing first aid to drunk persons (Article 39 (2) (3) of the Act; § 4 (3)) Of the Articles of Association). This means that the safety and health status of persons brought to or placed in a sobering-up center can be verified on the basis of both visual and audible information ". The administrator also stated that (quoted): "It should be borne in mind that both during the admission of persons brought to the sobering-up center and during their stay in individual dormitories, there is a constant, significant risk of acts of aggression or a situation of sudden deterioration of health in the above-mentioned . people. Importantly, there is no physical possibility of permanent presence of the personnel of the sobering-up center in all rooms where persons brought or admitted to the sobering-up center are present, so in many cases the above-described states of emergency can be identified only on the basis of sounds made by people in the emergency room. sobering up (or on the basis of sudden cessation of noise ...). In such a situation, the failure to cover the

rooms in question with sound monitoring should be considered as having a significant negative impact on the possibility of immediate reaction of the staff of the center to sudden events with the risk of deterioration of health or death of people staying in the center, and consequently poses a significant risk of violating the duties of the sobering-up center, as defined in the above-mentioned provisions, as well as the risk of violation of the fundamental right of persons staying in the sobering-up center, ie the right to safe sobering up ". The administrator also noted that (quoted): "It is appropriate to emphasize at this point that in the Center, boards were displayed in places visible to people staying in the monitored area, clearly informing about the form, purpose and scope of monitoring), which excludes the possibility of recognition, that the monitoring in question is carried out without the knowledge of the people who are subject to it ". Summarizing his arguments, the Administrator also indicated that (quoted):

"In the context of the above, it should be stated that the regulations governing the operation of sobering-up stations, specifying the minimum standards for the equipment of the sobering-up center, do not exclude the admissibility of using sound monitoring, and the inclusion of such monitoring in some of the rooms of the center is necessary to ensure an adequate level of safety for people and property in the Center and is justified on the grounds cited and discussed above ";

"Regardless of the above, it should be noted that the Warsaw Center for Drunk Persons is subject to visits by the" National Preventive Mechanism "Team of the Human Rights Defender. analysis of the correctness of the functioning of the Center - he has never accused the Center of violating the rights of people staying in the sobering-up center in any way. has not suffered any damage - on the contrary: thanks to the above-mentioned technical solutions, e.g. in the event of the need to start resuscitation, the caregiver can immediately call the doctor and paramedic for professional resuscitation, or the person on duty at the monitoring station can distinguish between neutral a conversation from verbal aggression (usually preceding physical aggression) and intervene in time not to allow fights (with a threat to health and life) between people led, etc. ".

Importantly, the Administrator also informed the supervisory authority in the same letter that on [...] December 2021, the Director of the Center issued a preventive order to disable sound monitoring in the Center, valid until the final and final conclusion of this case.

Due to the fact that the Administrator did not send the above-mentioned protocols from the visit of the "National Preventive Mechanism" Team of the Human Rights Defender and the need to obtain additional information on the case, the President of the Personal Data Protection Office called on the Administrator on [...] February 2022 to submit further explanations (while also

providing him with information about the subject of the proceedings). From the letter of [...] February 2022, being a reply to the above-mentioned the call, it follows, inter alia, that the shutdown of sound recording monitoring took place on [...] December 2021 and from that day no data containing sound are recorded in the Center as part of the monitoring. In addition, the Administrator informed the supervisory body that personal data related to sound recording as part of the installed monitoring system were processed by the Administrator from [...] November 2016 (with indicated places where before [...] July 2019 were placed sound recording microphones) and declared that he had already deleted all the data recorded up to the day the sound monitoring in the Center was turned off. Importantly, in the context of the Administrator's previous arguments regarding, inter alia, the need to record sound in order to prevent the effects of aggression of people in the Center and to ensure immediate reaction of the staff to a sudden deterioration of the health of sobering persons, the Administrator indicated that the rooms on the 1st floor of the Center for isolation (referred to in Article 42 par. 12 of the Act on Upbringing in Sobriety and Counteracting Alcoholism), sound was never recorded, despite the existence of such a technical possibility. As a side note, it should also be noted that the Reports of the National Preventive Mechanism (Torture) from the visits of the Center carried out in June 2012 and July 2017, attached to the above-mentioned explanations, turned out not to contain information on sound recording as part of the monitoring conducted in the Center.

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

Joke. 34 sec. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) (hereinafter: the Personal Data Protection Act), it follows that the President of the Personal Data Protection Office is the competent authority for the protection of personal data and pursuant to art. 34 sec. 2 of this Act is a supervisory authority within the meaning of Regulation 2016/679.

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

On the other hand, Art. 6 sec. 1 of Regulation 2016/679, stipulates that the 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 for 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 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;

f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular when the data subject is a child.

This paragraph also states that point (a) of the first subparagraph f) does not apply to processing carried out by public authorities in the performance of their tasks.

In this case, the key is not so much to prove that the Administrator recorded the sound on the premises of his facility via the installed monitoring system (because this fact was confirmed by the Administrator himself and in the light of his explanations and the documents attached to them is indisputable), but to determine whether the processing personal data in this regard took place without a legal basis. This is especially important as pursuant to Art. 47 of the Constitution of the Republic of Poland of April 2, 1997, everyone has the right to legal protection of private and family life, honor and good name and to decide about their personal life. Article 51 of the Constitution, in turn, provides for the right to personal data protection. According to Art. 31 sec. 3 of the Constitution, restrictions on the exercise of constitutional rights and freedoms may be established only by statute and only if they are necessary in a democratic state for its safety or public order, or for the protection of the environment, public health and morality, or the freedoms and rights of others persons, and these restrictions may not violate the essence of freedoms and rights. Due to the above, the scope of data recorded as part of the monitoring used in places such as the Center where people are under duress - often unable to consciously make any decisions and control what they do and say, should not be defined with reference to questionable grounds.

As already mentioned, the Center, in a letter of [...] February 2021, indicated the provisions from which in its opinion (quoted) "the obligation to register an audio / video signal":

1) art. 423 paragraph. 1 of the Act on Upbringing in Sobriety and Counteracting Alcoholism, according to which the rooms and devices of the sobering-up center or facility meet the requirements appropriate to the tasks performed, including a system

enabling observation of people placed in them in order to ensure the safety of these people,

2) art. 42 sec. 12 of the Act on Upbringing in Sobriety and Counteracting Alcoholism, which stipulates that a closed room intended for isolation is equipped with a monitoring installation that enables constant supervision over the person placed in it and control of the implementation of activities related to this measure of direct coercion,

3) art. 6 sec. 2 point 4 of the regulation of 8 December 2014, which shows that in the rooms of the sobering-up center or facility there is direct access to daylight, electric lighting and a paging system that allows, if necessary, to summon an employee referred to in art. 42 sec. 10 of the Act, and the premises for the persons referred to in para. 1 point 2 (i.e. people whose behavior poses a serious threat to their health or life, or the health or life of other people admitted to the sobering-up center or facility), are additionally equipped with a monitoring installation protected against damage, enabling constant supervision over the person referred to in paragraph 1 point 2,

4) art. 6 sec. 1 in conjunction joke. 9 sec. 2 lit. b), c) and art. 3 sec. 2 lit. b) and art. 4 point 2 of Regulation 2016/679.

The last of the above-mentioned legal grounds for the processing of personal data by the Administrator in this case requires a more extensive description. As already indicated above, in accordance with 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 conditions listed in point (a) is met. a) - f). Art. 9 sec. 2 of Regulation 2016/679 introduces exceptions to the prohibition of processing personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership and the processing of genetic data, biometric data in order to uniquely identify a person provided for in paragraph 1 of this article. physical or data relating to that person's health, sexuality or sexual orientation. This provision in the above-mentioned points indicated by the Administrator states that this prohibition does not apply if one of the following conditions is met:

b) processing is necessary for the performance of the obligations and the exercise of specific rights by the controller or the data subject in the field of labor law, social security and social protection, insofar as this is permitted by Union or Member State law or by collective agreement by law Member States with adequate safeguards for the fundamental rights and interests of the data subject;

c) processing is necessary to protect the vital interests of the data subject or another natural person and the data subject is physically or legally incapable of giving consent.

In turn, art. 3 sec. 2 lit. b) of Regulation 2016/679 indicates that this regulation applies to the processing of personal data of

data subjects residing in the Union by a controller or processor not established in the Union, if the processing activities involve the monitoring of their behavior, provided that this behavior is taking place in the Union.

Article 4 (2) of Regulation 2016/679 (the last of the provisions referred to in the above-mentioned point 4) contains the definition of "processing", which under this regulation means an operation or a set of operations performed on personal data or sets of personal data in an automated or non-automated manner, such as collecting, recording, organizing, organizing, storing, adapting or modifying, downloading, viewing, using, disclosing by sending, distributing or otherwise sharing, adjusting or combining, limiting, deleting or destroying.

It is difficult to determine what the Administrator meant by pointing to the provisions listed in the above-mentioned provisions as the legal basis for the obligation to register audio / video signals. point 4. It should be assumed that the legal definition of "processing" was most likely only used to illustrate what operations, in his opinion, the Administrator may carry out on personal data collected in connection with recording by him, inter alia, sound as part of the installed monitoring. However, when the Administrator invokes art. 3 sec. 2 lit. b) of Regulation 2016/679 can no longer be easily justified. The center is not an administrator or a processor that does not have organizational units in the European Union. Easier to logically justify, although still completely wrong, seem to be attempts by the Administrator to refer to the remaining provisions of Regulation 2016/679 indicated in the above-mentioned point 4. In order to maintain the consistency of the reasoning of this decision and a certain chronology (as Article 6 (1) of Regulation 2016/679 was also referred to in the subsequent argumentation of the Administrator contained in the letter of [...] December 2021 - in the scope of letter c , d and e), the supervisory authority will however first refer to the provisions set out in the above-mentioned points 1-3 above, which are part of the Administrator's letter of [...] February 2021. Next, the analysis will concern the other provisions indicated by the Administrator in the letters of [...] February and [...] December 2021.

The provisions of the Act on Upbringing in Sobriety and Counteracting Alcoholism may, at first glance, seem unobvious as regards the admissibility of sound recording under monitoring used in sobering-up stations - they do not explicitly specify whether the rooms indicated in these regulations should be equipped with video monitoring only, or image and sound at the same time. Therefore, in this explanatory memorandum, the supervisory authority indicated the relevant rules of interpretation and, on the basis of individual types of interpretation, successively conducted its arguments concerning the admissibility of sound recording and the processing of personal data in this respect.

First, by analyzing the provisions indicated in the above-mentioned points 1-2 (i.e. Article 423 (1) and Article 42 (12) of the Act on Upbringing in Sobriety and Counteracting Alcoholism), the President of the Personal Data Protection Office provided a linguistic interpretation. He did so due to the fact that the result of the application of this interpretation by the Administrator (presented in his letter dated [...] December 2021) should be considered illogical - the Administrator indicated (without citing any footnotes) that (quoted) : "(...)" constant supervision "and" observation "cover the entirety of phenomena observable with the senses taking place in rooms (...)".

Art. 423 sec. 1 above of the Act (concerning the rooms of the sobering-up center in general) stipulates that the rooms and devices of the sobering-up center or facility meet the requirements relevant to the tasks performed, including a system enabling observation of persons placed in them in order to ensure the safety of these people. "Observation" is (according to the meaning appropriate to the context, as indicated in: <https://sjp.pwn.pl/szukaj/Observacja.html>): "carefully observing something or someone for a long time".

However, with Art. 42 sec. 12 above of the Act (concerning only the monitoring of rooms intended for isolation) - it follows that a closed room intended for isolation is equipped with a monitoring installation enabling constant supervision over the person placed in it and control of the implementation of activities related to this measure of direct coercion. "Monitoring" (as defined in: <https://sjp.pwn.pl/slowniki/monitoring.html>) means "constant observation and control of some processes or phenomena", as well as "constant supervision over some protected object".

Due to the fact that in Art. 6 sec. 2 point 4 of the regulation of 8 December 2014, there is also a monitoring installation (enabling constant supervision over the person referred to in paragraph 1 point 2), the above conclusions can also be applied to this provision (indicated in the above-mentioned point 3).

Due to the fact that the term "observation" refers to perception with only one sense (sight) and bearing in mind the provisions of Art. 47, 51 and 31 sec. 3 of the Constitution, in this case, one should refrain from an unjustified broadening interpretation that allows the registration of anything beyond the image during the monitoring.

In the present case, it will also be helpful to use a comparative interpretation. Within its framework, it is necessary to analyze, for example, the relevant provisions of the Regulation of the Minister of the Interior of 4 June 2012 on rooms intended for detainees or persons brought to sober up, transition rooms, temporary transition rooms and police emergency rooms for children, rules of stay in these rooms, rooms and chambers and the manner of handling the pictures from these rooms, rooms

and chambers (Journal of Laws of 2012, item 638, as amended), hereinafter: "the ordinance of 4 June 2012", issued on the basis of art. 15 sec. 10 of the Act of April 6, 1990 on the Police (Journal of Laws of 2021, item 1882, as amended), hereinafter referred to as the "Police Act". The comparison made in this respect is particularly justified due to the same goals pursued by local government units creating sobering-up stations and the Police - Art. 1 clause 1 of the Act on Upbringing in Sobriety and Counteracting Alcoholism provides that both government administration bodies and local government units are obliged to undertake actions aimed at, inter alia, to remove the consequences of alcohol abuse. In terms of services provided to the intoxicated persons, the above-mentioned entities perform the same role, because drunk persons who cause scandal in a public place or in a workplace with their behavior, are in circumstances that threaten their life or health, or endanger the life or health of other people, may be brought to a sobering-up center. or a facility, healthcare facility or place of residence or stay, and in the absence of a sobering-up center or facility, these persons may be brought to the Police unit (Article 40 (1) and (2) of the Act on Upbringing in Sobriety and Counteracting Alcoholism). Pursuant to Art. 15 sec. 7b of the Act on the Police, premises of, inter alia, for persons brought to sober up, the provincial commanders of the Police and the Warsaw Commander of the Capital City of Police may create and bring down, and in these rooms the Police officers have the right to observe and record images using technical means (Article 15 (1) (4a) of the Police Act).

By making the above-mentioned comparisons should indicate that § 14 and 15 par. 1 of the ordinance of 4 June 2012 on the conditions to be met by rooms in Police organizational units for detained persons or persons brought for sobering up, stipulate accordingly that: - the room may be equipped with monitoring devices, including those for observing and recording the image, operating in a 24-hour system, - the closed-circuit television system can be used to transmit, reproduce and record the image in the room.

Moreover, chapter 7 of the ordinance of 4 June 2012 regulating the manner of storing and destroying image records, e.g. from the premises for detained persons or persons brought to sober up, as well as the conditions for proper protection of the captured image against loss, distortion or unauthorized disclosure, applies (as its title indicates) only to the recording of the image. In this case, the legislator did not provide for the possibility of recording sound (see also: Article 15 (1) (4a) of the above-mentioned Police Act). If such a solution has been adopted in the case of rooms in Police organizational units where persons brought to sober up are present, what would be the rational grounds for inferring a wider range of data that could be recorded as part of monitoring in sobering-up stations indicated or established by local government units? Referred to in the

Regulation of 8 December 2014.

In his arguments, the administrator argued, *inter alia*, that registration as part of sound monitoring would be justified on the grounds of safety and the desire to protect the health of people in the Center. When verifying the validity of these claims, it is worth paying attention to where the Administrator has placed the microphones - not all places seem "appropriate" in this context. According to § 2 sec. 3 of the Instructions in the Center, microphones are installed in cameras:

1) on the ground floor: - at the entrance to the Center from the parking lot for municipal services, - in the breathalyzer room, - in the waiting room for escorted persons, - in the deposit room, - in the changing room, - in the doctor's room in the part intended for escorted persons to the Center of Sobering up the Center, - in the corridor by the entrance door to the Department, Sobering-up Center at the main entrance to the building of the Center (2 microphones), - in the depository room above the desk.

2) On the first floor - at the beginning and at the end of the corridors on the right and left sides of the building (four microphones in total). to the Center, it seems to be exaggerated to say the least. This does not mean, however, that in the case of other rooms, recording sound as part of monitoring is justified.

However, to avoid the impression that recording the sound even in places such as the above-mentioned rooms for isolation, could be allowed, the content of § 6 sec. 3 and 4 of the Regulation of 8 December 2014. These provisions show, respectively, that:

- the installation referred to in sec. 2 point 4 (i.e. a monitoring installation protected against damage, enabling constant supervision over the person referred to in section 1 point 2), enables the recording of the image and its storage for a period of at least 30 days, but not longer than 60 days from the date of its storage. registration, and access to this installation and image recording is controlled, possible only for the director of the sobering-up center, head of the facility or a person authorized by them,
- after the expiry of the storage period referred to in paragraph 3, the recording of the image is deleted in a way that prevents its recovery.

Above Therefore, the regulations clearly indicate that only the image can be recorded in such rooms. Contrary to appearances, the legislator did not ignore the specific situation of people against whom direct coercion in the form of isolation was applied - for their safety and care for their health, in the Act on Upbringing in Sobriety and Counteracting Alcoholism, Art. 42 sec. 10.

Pursuant to this provision, an employee appointed by the director of the sobering-up center or the head of the facility, or a Police officer appointed by the commanding officer of the Police unit or a person authorized by him, and in their absence - the duty officer of the Police unit, is obliged to monitor the health of the person against whom compulsion was imposed. direct in the form of immobilization or isolation, at least every 15 minutes, also during the person's sleep and immediately after ceasing the use of direct coercion.

Taking into account the above arguments of the President of the Personal Data Protection Office, it should be stated that in this case, sound recording is a redundant activity, which is not justified by the above-mentioned provisions of the Act on Upbringing in Sobriety and Counteracting Alcoholism and the Regulation of 8 December 2014 (referred to in point 1-3 on page 10 of this justification). This argumentation should also be taken into account when assessing the legitimacy of the Administrator indicating other provisions justifying, in his opinion, sound recording under monitoring.

Referring to the remaining arguments provided by the Administrator in the letter of [...] February 2021 and in the letter received by the local Office on [...] December 2021, it is also worth making some comparisons. When determining the scope of personal data that may be processed by the Administrator in the given situation, it may be helpful to analyze the provisions on monitoring carried out in other places where people whose life and health are at risk or people whose stay in a given place is forced.

And so, the Administrator's justification of recording as part of the monitoring also of sound with reference to (quoted): "(...) the state of safety and health of people brought or placed in a sobering-up center (...)" is, in the opinion of the supervisory body, flawed, attention to the way of monitoring the condition of people staying in hospitals or medical facilities. When considering the relevant regulations introduced in this regard, it should be remembered that the legislator in Art. 20 paragraph 1 of the Act of November 6, 2008 on the rights of the patient and the Patient's Rights Ombudsman (Journal of Laws of 2020, item 849, as amended) clearly indicated that the patient has the right to respect for intimacy and dignity, in particular in during the provision of health services. Consequently, the legislator, in the content of Art. 23a paragraph. 1 of the Act of April 15, 2011 on medical activities (Journal of Laws of 2022, item 633, as amended) indicated that the manager of the entity performing medical activities may specify in the organizational regulations the manner of observing the premises:

- 1) generally accessible, if it is necessary to ensure the safety of patients or employees of the premises,
- 2) in which health services and patient stay are provided, in particular bed rooms, hygienic and sanitary rooms, changing

rooms, cloakrooms, if it results from separate provisions

- with the use of devices that enable image recording (monitoring).

Taking into account the above-mentioned regulations, it is difficult to assume that the "state of safety and health" of intoxicated people justifies recording sound as part of monitoring carried out in the Center, since the legislator did not adopt such a solution in the case of patients, e.g. hospitals - often in a state of direct threat to their lives .

While continuing the comparison of regulations, it is worth pointing to the legal grounds for sound recording in other places where people stay on a voluntary basis. And so in Art. 73a § 1 of the Act of 6 June 1997 Executive Penal Code (Journal of Laws of 2021, item 53, as amended) - hereinafter referred to as the Executive Penal Code, the legislator directly indicated that prisons may be monitored by the internal system video or sound recording devices, including closed-circuit television systems.

In addition, in the context of the above-described care for the health and safety of persons whose data is processed, it is worth noting that in art. 116 § 5a of the Executive Penal Code, it was clearly indicated that in cases justified by medical reasons or the need to ensure the safety of the convict, his behavior may be monitored, and the monitored image or sound is recorded.

Similar regulations were introduced by the legislator in Art. 212b § 2 of the Executive Penal Code (concerning the conditions of detention in the detention of particularly dangerous perpetrators), in which it was indicated that the behavior of a pre-trial detainee posing a serious social threat or a serious threat to the security of the detention center is subject to constant monitoring, monitoring is carried out in residential cells along with a part intended for sanitary purposes - hygienic and in places and rooms referred to in § 1 point 1 of this article, and in addition that the monitored image or sound is recorded.

As can be seen from the above-mentioned examples, the legislator directly pointed to the possibility of recording not only images, but also sound as part of the monitoring carried out in such places. The justification for sound recording in such circumstances (such as those listed in the relevant provisions of the Executive Penal Code) is also definitely more convincing than in the case of people admitted to the Center to sober up. Therefore, the failure of the legislator to indicate in the relevant provisions the possibility of recording the sound by entities such as the Administrator seems logical and does not provide reasonable grounds for drawing conclusions with greater than explicit rights.

When considering the above-mentioned issues, it should also be emphasized that sound recording is a right reserved in national law primarily to services. Cases in which there is an entitlement to such registration have been explicitly specified in specific legal provisions, which additionally suggests that the provisions of the Act on Upbringing in Sobriety and Counteracting

Alcoholism should not be interpreted extensively. Examples of national provisions regulating the rights of services and other entities to record sound include:

- 1) art. 23 sec. 1 point 6) of the Act of May 24, 2002 on the Internal Security Agency and the Foreign Intelligence Agency (Journal of Laws of 2022, item 557), according to which ABW officers performing activities aimed at the implementation of the tasks referred to in Art. . 5 sec. 1 of this Act, have the right to observe and record, using technical means, the image of events in public places and the sound accompanying these events during operational and reconnaissance activities undertaken on the basis of the Act;
- 2) art. 14 sec. 1 point 6) of the Act of June 9, 2006 on the Central Anticorruption Bureau (Journal of Laws of 2021, item 1671, as amended), from which it follows that CBA officers, when performing activities aimed at the implementation of tasks, referred to in Art. 2 clause 1 point 1 of this Act, have the right to observe and record, using technical means, the image of events in public places and the sound accompanying these events during operational and reconnaissance activities undertaken on the basis of the Act;
- 3) art. 15 sec. 1 point 5a of the Police Act, pursuant to which police officers performing the activities referred to in Art. 14 of this Act, have the right to observe and record, using technical means, the image of events in public places, and in the case of operational-exploratory and administrative-order activities undertaken on the basis of the Act - also the sound accompanying these events.

The fact that the above regulations directly indicate the right to record not only image but also sound is not a coincidence. The legislator is consistent in this respect, an additional manifestation of which is the wording of Art. 11 sec. 1 of the Act of March 20, 2009 on the safety of mass events (Journal of Laws of 2019, item 2171, as amended), which provides that the organizer is entitled to record the course of a mass event, in particular the behavior of people participating in it, using video and sound recording devices.

In this case, it should also not be forgotten that a person brought to the Center usually has a smaller chance than a sober person (e.g. coming for an appointment to an entity conducting medical activity) to knowingly read the information posted anywhere that a given room is under monitoring, under which the sound is recorded (apart from the fact that the plates at the main entrances to the Center do not inform about such registration). And just because of this, the Administrator should be more careful when determining the scope of personal data processed by him. For the above reasons, it seems a gross

exaggeration to say by the Administrator in a letter dated [...] December 2021 that (quoted): "It is appropriate to emphasize at this point that the Center was displayed in places visible to people staying in the area covered by monitoring boards clearly informing about the form, purpose and scope of monitoring), which excludes the possibility of recognizing that the monitoring in question is carried out without the knowledge of the people who are subject to it "- it is worth mentioning that only the places of activity of sound recording microphones are marked with : "OBJECTIVE MONITORED PICTURE AND SOUND IS RECORDING").

It should be remembered that the recording of image and sound using a recording device in facilities such as the Center is inextricably linked with the processing of personal data, including data of special categories. In these places, various, often intrusive, even intimate discussions can be undertaken, and information exchanged, unlimited in quantity and type. That is why the Administrator's nonchalant statement in the letter of [...] December 2021 (quoted) is so surprising: "(...) it should be stated that the regulations governing the operation of sobering-up stations, specifying the minimum standards of equipment for sobering-up stations, do not exclude the admissibility of using monitoring sound, and the monitoring of some of the rooms of the chamber is necessary to ensure an adequate level of security for people and property in the Center and is justified by the above-mentioned and discussed grounds ".

According to the European Data Protection Board's Guidelines set out in "Guideline 3/19 on the processing of personal data by video devices" [1] (hereinafter: "the Guidelines"), audiovisual recording is undoubtedly a greater form of interference with privacy than the image itself. In addition, point 9.3 point 129 of the Guidelines indicates that the administrator, when selecting technical solutions relating to the conducted monitoring, should not choose solutions containing functions that are not necessary (these functions include: unlimited tracking of camera movements, the possibility of zooming in, radio transmission, analysis and sound recordings). According to the above-mentioned Guidelines, functions that are not essential should be deactivated.

Bearing in mind the above and taking into account the previously mentioned argumentation of the President of the Personal Data Protection Office (which shows that the sound recording is not justified by care for the health or safety of people admitted to the Center, or the obligations or tasks of the Administrator), the Administrator's indication of provisions by the Administrator should be considered unfounded. art. 6 sec. 1 or Art. 9 sec. 2 lit. b) and c) of Regulation 2016/679 as the basis for sound recording in the Center. Considering the latter basis (Article 9 (2) (b) and (c) of Regulation 2016/679), it should be directly

indicated that the processing of data of persons staying in the Center in terms of the recorded sound is not necessary for the performance of obligations and the exercise of special rights by the Administrator or a person, data subject (in the field of labor law, social security and social protection), and is not necessary to protect the vital interests of the data subject or another natural person - physically or legally incapable of giving consent. Recording the voices of people who are often in a state of intoxication, preventing them from knowingly formulating statements or controlling the sounds produced, is a redundant, pointless and not finding real justification - especially taking into account the places where the Administrator has placed microphones in the cameras. How would the placement of microphones in the depository room above the desk be necessary, for example, for the performance of the Administrator's duties in the above scope? Likewise, no vested interest in a person unable to give consent appears to justify recording sound in the changing room. Enabling the Center to process the personal data of persons brought to sober up (as part of the documentation created), as well as data recorded as part of the video monitoring carried out, is, in the opinion of the legislator (as indicated by the analysis of the relevant provisions), sufficient for the implementation of the tasks of this entity.

As it has been shown, the provisions of the Act on Upbringing in Sobriety and Counteracting Alcoholism and the Regulation of 8 December 2014 indicated by the Administrator in the letter of [...] February 2021 that the Center has the right to use monitoring only in the field of image recording.

The provisions of Regulation 2016/679 established the basic rules for the processing of personal data, including the principle of lawfulness, formulated in art. 5 sec. 1 lit. a) of 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 processed in accordance with the law) "(Fajgielski Paweł, Commentary to the Regulation No. 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 Center, when installing monitoring devices in the form of cameras and microphones in its area, should have a premise that allows not only video recording, but also sound. Meanwhile, in the present case, the Administrator cannot rely on any of the premises listed in Art. 6 sec. 1 of the Regulation 2016/679, and in particular to the one indicated in art. 6 sec. 1 lit. c), according to which the processing of data is necessary to fulfill the legal obligation incumbent on the administrator. As it has been shown above, none of the provisions regulating issues related to the activities of the Center allows it to record this type of data (sound) as part of its monitoring. On this basis, it should also be stated that the condition set out in Art. 6 sec. 1 lit. e) of 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, the Administrator's reference to Art. 9 sec. 2 lit. b) and c) of Regulation 2016/679.

Consequently, it should be considered that the processing of personal data in the field of sound recordings made at the Center results in the Administrator's violation of art. 5 sec. 1 lit. a) and art. 6 sec. 1 of Regulation 2016/679. In order for the processing of personal data to be lawful, it is necessary to indicate the legal basis for the processing. It is undisputed in this case that no legal provision authorizes the Administrator to process personal data in the field of sound recordings made at the Center, and moreover, the Administrator himself is not able to indicate the legal basis for his action.

Based on Article. 58 sec. 2 lit. i) of 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 that Regulation, an administrative fine pursuant to Article 83 of the Regulation 2016/679, depending on the circumstances of the specific case. Bearing in mind 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 Warsaw Center for Drunk Persons based in Warsaw .

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

a) The nature, gravity and duration of the breach, taking into account the nature, scope or purpose of the processing in question, the number of data subjects affected and the extent of the damage suffered by them (Article 83 (2) (a) of Regulation 2016/679); in the opinion of the President of the Personal Data Protection Office, this violation is of great importance and of a

serious nature. The administrator is an entity of public trust, who should be expected to know the regulations and apply them properly, as well as to higher standards of the services provided. This entity, processing personal data without a legal basis in the field of sound recording carried out in the Center (which allows the recording of data of persons who, due to their condition and the fact that coercive measures can be applied to them, may have a limited ability to control their actions and spoken words), violates the principle of lawfulness of data processing, referred to in art. 5 sec. 1 lit. a) of Regulation 2016/679. This breach is therefore of great importance and was long-lasting - the explanations provided by the Administrator show that the data including sound was recorded by the Administrator from [...] November 2016 to [...] December 2021, and therefore the state of violation of the provisions of Regulation 2016/679 lasted from [...] May 2018 to [...] December 2021 (more than three and a half years have passed from the date of application of the provisions of Regulation 2016/679 to the date of switching off the sound recording). The fact that the sound has been recorded for such a long time means that the violation may affect a potentially very large number of people - and not only people brought to the Center to sober up - some idea in this regard is provided by the data included in the report of the National Mechanism for the Prevention of Torture on the visit of the Center carried out on [...] - [...] July 2017, which was made available by the Administrator to the supervisory authority in a letter of [...] February 2022, which shows that in 2016, 26,432 adults and 12 minors were placed in the Center.

b) Intentional nature of the breach (Article 83 (2) (b) of Regulation 2016/679); the Administrator should act only on the basis of legal provisions - these, however, did not authorize the Administrator to process data in the field of sound recordings made at the Center. In the case in question, the Administrator, already at the stage of indicating the provisions constituting, in his opinion, the legal basis for the processing of such data, could verify their content (also taking into account the scope of rights to process personal data by the Police carrying out the same tasks towards intoxicated persons in rooms intended for persons brought to sobering up) and make changes to the categories of data processed - on this basis, it should be stated that the Center's breach of data protection provisions in the above scope is intentional.

When determining the amount of the administrative fine, the President of the Personal Data Protection Office also took into account a mitigating circumstance affecting the final penalty, i.e. the degree of cooperation with the supervisory authority in order to remove the violation and mitigate its possible negative effects (Article 83 (2) (f) of Regulation 2016 / 679). The fact that the Administrator reacted (though not immediately) to the notification sent to him on [...] November 2021 by the supervisory authority about the initiation of administrative proceedings with the cessation (preventive - until the President of the Personal

Data Protection Office issues a decision) of data processing in this regard and deletion of all data registered by [...] December 2021, proves that the Administrator has taken into account the rights of persons present in the Center. Such behavior of the Administrator proves, in the opinion of the supervisory body, the will of the Administrator to cooperate.

The fact that the President of the Office applied a sanction in the form of an administrative fine, as well as its amount, was not affected by other sanctions specified in Art. 83 sec. 2 of Regulation 2016/679, the circumstances, i.e. :

a) actions taken by the controller to minimize the damage suffered by data subjects (Article 83 (2) (c) of Regulation 2016/679) - the information held by the Office does not indicate that such damage occurred;

b) the degree of responsibility of the controller, taking into account technical and organizational measures implemented by him pursuant to Art. 25 and 32 (Article 83 (2) (d) of Regulation 2016/679) - the subject of these proceedings did not cover issues related to the security of personal data;

c) relevant previous violations of the provisions of Regulation 2016/679 by the Center (Article 83 (2) (e) of Regulation 2016/679) - until the date of this decision, the President of the Personal Data Protection Office has not identified any violations;

d) the categories of personal data concerned by the breach (Article 83 (2) (g) of Regulation 2016/679) - in the case in question, it was not found that the breach significantly concerned specific categories of personal data;

e) the manner in which the supervisory authority learned about the breach (Article 83 (2) (h) of Regulation 2016/679) - the President of the Personal Data Protection Office obtained information about a potential breach of the provisions on the protection of personal data from a third party;

f) compliance with previously applied measures in the same case, referred to in Art. 58 sec. 2 of Regulation 2016/679 (Article 83 (2) (i) of Regulation 2016/679) - due to the fact that no such measures were applied in the present case;

(g) adherence to approved codes of conduct pursuant to Art. 40 of the Regulation 2016/679 or approved certification mechanisms pursuant to Art. 42 of Regulation 2016/679 (Article 83 (2) (j) of Regulation 2016/679) - it does not appear from the explanations provided by the Center that it applied them;

h) financial benefits obtained directly or indirectly in connection with the infringement or avoided losses (Article 83 (2) (k) of Regulation 2016/679) - the evidence collected in this case does not show that the Administrator has obtained benefits in connection with this infringement financial or avoided losses.

In the opinion of the President of the Personal Data Protection Office, the applied administrative fine performs the functions

referred to in Art. 83 sec. 1 of Regulation 2016/679, i.e. it is effective, proportionate and dissuasive in this individual case. 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.

It should be emphasized that the penalty will be effective if its imposition leads to the fact that the Administrator complies with the applicable law and ceases to permanently violate the protection of personal data by processing personal data in the field of sound recordings made at the Center.

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

The dissuasive nature of a financial penalty is related to preventing future violations and paying more attention to the performance of the administrator's tasks. The penalty is intended to deter both the administrator from repeated breach and other entities. By imposing an administrative fine for infringement of the provisions on the protection of personal data, the President of the Personal Data Protection Office took into account both aspects: they will be effectively discouraged from violating the personal data protection law in the future, while exercising greater diligence in the implementation of their obligations under the General Data Protection Regulation.

The purpose of the imposed penalty is to ensure that the Administrator performs the obligations provided for in art. 5 sec. 1 lit. a) and art. 6 sec. 1 of the Regulation 2016/679, and consequently to conduct data processing processes in accordance with applicable law.

In connection with the above, it should be noted that the fine of PLN 10,000 (say: ten thousand zlotys) meets the conditions referred to in Art. 83 sec. 1 of Regulation 2016/679 due to the seriousness of the infringement found in the context of the basic objective of Regulation 2016/679 - protection of fundamental rights and freedoms of natural persons, in particular the right to the protection of personal data. At the same time, the amount of the administrative fine imposed by this decision on the administrator who is a unit of the public finance sector (indicated in Art. 9 of the Act of 27 August 2009 on Public Finance) is within the scope specified in Art. 102 paragraph. 1 of the Act on the Protection of Personal Data, the limit of PLN 100,000.

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

[1] Guidelines 3/2019 on the processing of personal data by video devices, version 2.0, adopted on January 29, 2020.

