THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 16

June

2021

DECISION

ZKE.440.71.2019

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735), art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with art. 12 point 2, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 57 sec. 1 lit. a) and lit. f) 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 UE L 119 of 04/05/2016, p. 1, Journal of Laws UE L 127 of 23/05/2018, p. 2 and Official Journal of the European Union L 74 of 04/03/2021, p. 35), on the complaint of Mr. JG and Mr. TM, represented by r. pr. MF, against the refusal by Mr. WM and Mrs. MM, partners of the H. sc civil partnership, to provide them with personal data of users who are the authors of the entries posted on websites belonging to the Internet domain "[...]", in terms of their IP numbers, President Office for Personal Data Protection

1. to discontinue the proceedings with regard to the application submitted by Mr. J. G .;

2. to discontinue the proceedings as to the remainder.

JUSTIFICATION

The Inspector General for Personal Data Protection (currently: the President of the Personal Data Protection Office) received a complaint from Mr. J. G. and Mr. T. M. (hereinafter referred to as: the Complainants), represented by M. F., against the refusal of Mr. W. M. and Ms. M. M., partners of the civil law partnership H. s.c. (hereinafter referred to as: Partners), personal data of users who are authors of entries posted on websites belonging to the Internet domain "[...]", in terms of their IP numbers.

As argued by the Complainants, the disputed comments - enumerated in the list attached to the complaint - were offensive and contained false descriptions of situations and events, which consequently adversely affected the good name and reception of the Complainants by the community of users visiting the website “[…]”. The comments, which, in the opinion of the

Complainants, violated their personal rights (pursuant to the wording of Article 24 of the Civil Code), justified the existence of a factual and legal interest on the part of the Complainants in demanding the identification of the persons who were the authors of these statements, and in pursuing their rights in court .

In order to consider the complaint in question, the Inspector General for Personal Data Protection (hereinafter referred to as: Inspector General) initiated administrative proceedings with reference number [...], in which it established the following facts relevant to the resolution of the case:

Mr. W. M. and Mrs. M. M., acting as Partners of the civil partnership H. s.c. were on the date of filing the complaint, as well as during the proceedings, ref. no. [...], personal data administrators requested by the Complainants, ie they processed information about the IP numbers of devices from which users of the portal "[...]" made the questioned entries.

In written explanations of [...] July 2017 and [...] October 2017, submitted to the Inspector General, the Shareholders indicated that through the administrator of the system enabling the servicing of the "[...]" domain, they have access to this system in the portal part, which is tantamount to access to comments posted under the articles published on the above-mentioned website. As portal administrators, the Partners have access to the nickname, text of the comment, the date it was posted and the IP number of the computer from which the comment was sent.

Due to the intention to pursue claims from users of the disputed comments, the Complainants requested the Shareholders to disclose their personal data. The partners, despite receiving the application in question, refused to comply with the complainants' request.

After conducting the explanatory procedure, with the above in mind, the Inspector General for Personal Data Protection, in an administrative decision of March 14, 2018 (reference number: DOLiS / DEC-440-1479 / 17 / MR / I / 4887,4885,4884), ordered partners of the company H. sc, providing both Complainants with personal data (in the scope of IP addresses) of users who are the authors of the following entries:

with regard to entries posted at: [...] in the scope of IP regarding logins of the authors of comments of [...] January 2015:

"[...]",

"[...]",

"[...]",

"[...]";

with regard to entries posted at: […] as regards the IP on the login of the author of the comment of […] January 2015: "[…]";

with regard to entries posted at: […] as regards the IP on the login of the author of the comment of […] January 2015: "[…]";

with regard to entries posted at: […]

as regards the IP regarding the login of the author of the comment of [...] January 2015: "[...]",

in the scope of IP regarding logins of the authors of comments of [...] January 2015:

"[...]",

"[...]",

"[...]"

"[...]",

as regards the IP on the login of the author of the comment of […] December 2014: "[…]";

with regard to entries posted at: [...] scope of IP regarding the login of the author of the comment of [...] December 2014: "[...]";

with regard to entries posted at: […] as regards the IP on the login of the author of the comment of […] December 2014: "[…]";

with regard to entries posted at: […]

as regards the IP regarding the login of the author of the comment of [...] December 2014: "[...]",

in the scope of IP regarding logins of the authors of comments of [...] December 2014:

"[...]",

"[...]";

with regard to entries posted at: […]

in the scope of IP regarding logins of the authors of comments of [...] December 2014:

"[...]",

"[...]";

"[...]";

"[...]";

"[...]";

as regards the IP regarding the login of the author of the comment of [...] December 2014: "[...]"

in the scope of IP regarding logins of the authors of comments of [...] December 2014:

"[...]",

"[...]",

"[...]",

"[...]",

"[...]",

with regard to entries posted at: […]

in the scope of IP regarding logins of the authors of comments of [...] November 2014:

"[...]",

"[...]",

"[...]",

"[...]",

Regarding the IP regarding logins of the authors of the comments of [...] November 2014:

"[...]",

"[...]",

in the scope of IP regarding logins of the authors of comments of [...] November 2014:

"[...]",

"[...]";

with regard to entries posted at: […]

as regards the IP regarding the login of the author of the comment of [...] July 2014 at [...]: "[...]"

in the scope of IP regarding logins of the authors of comments of [...] July 2014:

"[...]",

"[...]",

"[...]",

"[...]",

"[...]",

"[...]",

as regards the IP regarding the login of the author of the comment of [...] July 2014: "[...]"

in the scope of IP regarding logins of the authors of comments of [...] July 2014:

"[...]",

"[...]",

"[...]",

"[...]",

"[...]",

as regards the IP regarding the login of the author of the comment of [...] July 2014: "[...]"

as regards the IP regarding the login of the author of the comment of [...] July 2014: "[...]"

as regards the IP on the login of the author of the comment of […] July 2014: "[…]";

with regard to entries posted at: […]

in the scope of IP regarding logins of the authors of comments of [...] July 2013:

"[...]",

"[...]",

"[...]",

in the scope of IP regarding logins of the authors of comments of [...] July 2013

"[...]",

"[...]",

with regard to entries posted at: […]

in the scope of the IP regarding the login of the author of the comment of ... (the date was not given): "[...]",

as regards the IP on the login of the author of the comment of […] August 2013: "[…]";

with regard to entries posted at: [...] in the scope of IP regarding logins of the authors of comments of [...] November 2014:

"[...]",

"[...]",

"[...]",

with regard to entries posted at: […]

in the scope of IP regarding logins of the authors of comments of [...] November 2014:

"[...]",

"[...]",

"[...]",

as regards the IP on the login of the author of the comment of […] November 2014: "[…]";

with regard to entries posted at: […]

as regards the IP regarding the login of the author of the comment of [...] August 2013: "[...]",

as regards the IP regarding the login of the author of the comment of [...] August 2013: "[...]",

as regards the IP on the login of the author of the comment of […] August 2013: "[…]".

In connection with the issued decision, the company's shareholders appealed to the Voivodship Administrative Court in Warsaw against the decision in question, requesting annulment of the contested decision in its entirety, or for its complete annulment and discontinuance of the proceedings. The shareholders accused the contested decision of a breach of: 1) Art. 105 § 1 of the Code of Civil Procedure by not terminating the administrative proceedings in the event of the death of Mr. J. G .; 2) art. 7, art. 77 § 1 and article. 107 § 3 of the Code of Civil Procedure by not sufficiently examining the facts of the case and not establishing whether the Partners are in possession of personal data at all, which the supervisory body has obliged them to disclose, as well as by failing to indicate which personal data are to be made available to Mr. J. G. and which to Mr. T. M .; 3) art. 105 § 1 of the Code of Civil Procedure by not terminating the procedure in a situation where it has become redundant due to the impossibility of executing the decision, as the Shareholders do not have the information required by the Inspector General to disclose them, and the indicated comments have not been available on the website for over two years "[... ] "; 4) art. 180a paragraph. 1 point 1 of the Act of July 16, 2004 Telecommunications Law in connection with Art. 18 sec. 5 of the Act of July 18, 2002 on the provision of electronic services by failing to apply them in a situation where there is no obligation to store IP numbers for a period longer than 12 months.

By the judgment of January 8, 2019, in the case file ref. II SA / Wa 762/18, the Provincial Administrative Court in Warsaw confirmed the validity of the allegations raised by the Shareholders and annulled the challenged decision in part ordering the disclosure of personal data to Mr. 2 of the judgment).

When referring this case to the data protection authority for reconsideration, the court indicated what circumstances should be

taken into account in order to correctly resolve it. In particular, the court ordered the supervisory authority to take into account the death of the applicant, Mr J. G., and to execute - pursuant to Art. 30 § 4 of the Code of Civil Procedure - an assessment of whether the proceedings relating to him have become redundant. At the same time, the Provincial Administrative Court considered the death of the complainant as undoubtedly, deriving this fact from the excerpt from JG's abbreviated death certificate attached to the case files, confirming that the complainant had died on [...] December 2017. The court then ordered the supervisory authority to determine whether the Shareholders could be considered as "Data controllers" in the form of IP addresses, as defined in Art. 7 point 4 in connection with Art. 3 sec. 2 point 2 of the Act of August 29, 1997 on the protection of personal data, whether they processed this data and whether they are able to disclose it. In the opinion of the court, the data protection authority did not conduct exhaustive explanatory proceedings and did not make sufficient arrangements to order the Shareholders to disclose personal data to the other Complainant. In the contested decision, the authority unequivocally assumed that the Shareholders were "controllers of the users' personal data as regards the IP number of the devices from which they entered the entries", however, such a categorical statement was in no way justified. In the court's opinion, the supervisory body did not explain whether the Partners actually process personal data in connection with commercial or professional activities, as well as deciding about the purposes and means of data processing, and whether this processing takes place using technical means located in the territory of the Republic of Poland - which was questioned in the course of the proceedings by both Partners. As indicated by the court, the authority did not in any way refer to the Shareholders' statements that they do not process personal data, because they do not collect, store or archive the personal data of the users of the portal "[...]", while in terms of the IP number, they can only return ask the system administrator for access in the part concerning their portal in order to delete comments or block the possibility of writing comments from a given device and therefore are able to determine the IP number of that device.

Moreover, in the opinion of the Provincial Administrative Court, the authority did not take into account the regulation contained in Art. 180a paragraph. 1 point 1 of the Telecommunications Law, pursuant to which the operator of a public telecommunications network and a provider of publicly available telecommunications services are obliged to retain and store the data referred to in Art. 180c, generated in the telecommunications network or processed by them, on the territory of the Republic of Poland, for a period of 12 months from the date of connection or unsuccessful connection attempt, and on the date of expiry of this period, destroy these data, except for those that have been secured, in accordance with separate regulations.

As pointed out by the court, the supervisory body has in no way determined whether the said provision applies to the Shareholders, and if so, whether its instruction applies to the facts of this case. In the opinion of the court, making findings in this respect is important because the comments detailed in the operative part of the contested decision come from 2013-2015, which makes the question of the enforceability of the decision on the date of its issuance a legitimate question.

Bearing in mind that the complainants' request concerned the disclosure of personal data of third parties to them, the court also emphasized that the data protection authority was obliged to balance the opposing interests, which on the one hand are the right to protection of honor, dignity and good name, and on the other the right to the protection of personal data. In the opinion of the Court, the authority did not make such a balance in the present case, recognizing the superiority of the claimants' claim over the rights of the users of the website, understood as freedom of expression and protection of their privacy. In this context, it was also insufficient for the supervisory authority to take into account only the “will” to exercise by the applicants, J. G. and T. M. the right to bring an action for the protection of personal rights. The authority was obliged to assess the feasibility of such a declaration, as the mere hypothetical intention to bring an action in a civil trial does not make the obtaining of personal data credible yet.

Finally, the Provincial Administrative Court pointed out that the remainder of the challenged decision was justified by the fact that the Inspector General had ordered the disclosure of personal data to both Complainants, without specifying which IP addresses pertain to entries relating to the personal rights of which of the applicants, and thus to which of them individual personal data should be made available - which should have been considered a defective operation, requiring factual and legal reassessment.

Bearing in mind the above, as well as the content of Art. 153 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2019, item 2325), according to which the legal assessment and indications as to further proceedings expressed in the court decision are binding on the authorities in the case, whose action, inaction or prolonged conduct of the proceedings was the subject of the appeal, as well as the courts, unless the law has changed, the personal data protection authority updated and re-analyzed the evidence collected in the case in question.

In the course of these administrative proceedings with reference number ZKE.440.71.2019, conducted in order to reconsider the case on the request of the Complainants, Mr. J. G. and Mr. T. M., the President of the Office for Personal Data Protection established the following factual circumstances relevant to its decision:

Mrs. M. M. and Mr. W. M., partners of the civil partnership "H. s.c. " are the controllers of the personal data of the users of the internet portal "[...]". Partners process the data of people who have an account on the website in terms of their: name, surname, nickname, e-mail address, telephone number, position, place of work and IP address. The purpose of processing users' data is to enable them to use the website "[...]". Providing data is voluntary, but necessary to use the portal (including posting announcements, advertisements or comments). Information about the above is published in the Website's Privacy Policy at: [...] and in the Information Clause, which is displayed in the web browser automatically each time you try to open the website.

The publications with the entries questioned by the Complainants are still available on the website. However, all the disputed comments, indicated in the complaint of [...] June 2017, concerning the complainant, Mr T. M., were permanently removed in a way that made it impossible to read their content. In connection with the above, the personal data of the authors of these comments, including the IP numbers of computers from which the questioned entries were made, are no longer processed by the administrators of the website "[...]" (proof: written explanations of the Shareholders of [...] November 2020 ).

In the course of the proceedings, the President of the Office for Personal Data Protection obtained ex officio information about the death of the complainant, Mr. J. G., who died on [...] December 2017. This circumstance was clearly confirmed in the course of the proceedings pending before the Provincial Administrative Court in Warsaw, file ref. [...], on the basis of a copy of an abridged death certificate attached to the case file concerning the above-mentioned.

Having examined the evidence gathered in this case, the following should be considered.

At the outset, it should be noted that on May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection Act, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735). At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From 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 (Official Journal of the European Union L 119 of May 4, 2016, p. 1 and the Official Journal of the European Union L 127 of May 23, 2018, p. 2.), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and considers complaints submitted by the data subject or by - in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The manner of conducting proceedings in cases initiated and pending before the date of entry into force of the new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which “the public administration body assesses the actual state of the case according to the date of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., El / 2012).

At the outset, i.e. before making a substantive analysis of the complaint being the subject of these proceedings, it should be indicated that a circumstance occurred that had a significant impact on the decision issued in the case. The President of UODO learned about the death of Mr. J. G., who was one of the Complainants.

Taking into account the applicable provisions in the field of administrative procedure, in relation to the above-mentioned findings, the President of the Personal Data Protection Office was obliged to discontinue the administrative proceedings in the scope of the application submitted by the Complainant. According to Art. 105 § 1 of the Code of Civil Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part.

As indicated in the justification of the judgment of June 7, 2019 (reference number II FSK 2113/16), the Provincial Administrative Court in Kraków: a provision means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The redundancy of the proceedings may result from reasons that can be divided into subjective reasons, e.g. death of a party (natural person) in the course of the proceedings, which aimed at specifying rights or obligations of a strictly personal and non-hereditary nature (...) and objective reasons - when the case was not and is not subject to an administrative decision. "

In the light of the cited jurisprudence, it should be assumed that an essential condition for discontinuation of the proceedings is undoubtedly the loss by the entity participating in the proceedings (in this case by the Complainant) of the features specified in Art. 28 of the Code of Civil Procedure, according to which everyone is a party, whose legal interest or obligation is related to the proceedings, or who requests action by an authority because of his legal interest or obligation. Thus, the effect of discontinuation of the proceedings is caused by the death of the Complainant, if the administrative matter concerns rights directly related to him. In the doctrine and jurisprudence, it is uniformly stated that the death of a natural person causes the loss of legal capacity, the consequence of which is that administrative proceedings cannot be initiated and conducted against the deceased, as well as decisions cannot be made in the proceedings already instituted. Such a decision would grossly violate the law (see the resolution of the Supreme Administrative Court of September 22, 1997, file reference number FPS 6/97, publ. ONSA 1998/1/1; judgments of the Supreme Administrative Court: of September 20, 2002, file reference number I SA 428/01; of March 11, 2008, file reference number I OSK 1959/06; of September 30, 2009, file reference number I OSK 1429/08; of July 1, 2011, file reference number act I OSK 1261/10). There is no doubt that the administrative proceedings in this case, initiated, inter alia, by Mr J. G.'s complaint concerned the rights directly related to his person, and therefore the authority was obliged to discontinue the proceedings as regards the request of this very applicant.

However, referring to the content of the allegations raised by the second applicant, Mr T. M., concerning the refusal of Mr W. M. and Ms M. M., partners of the civil partnership "H. sc ", personal data of users who are the authors of entries posted on websites belonging to the Internet domain" [...] ", in terms of their IP numbers, the President of the Personal Data Protection Office took the position that, if the actual state existed at the time of issuing the administrative decision from 14 March 2018, file ref. DOLiS / DEC-440-1479 / 17, there were factual and legal grounds for ordering the Shareholders to provide the above-mentioned personal data, in the current state of affairs there is no justification for issuing a similar decision.

It should be noted that in the course of the investigation, the President of the Personal Data Protection Office established that the website "[...]" still contains publications containing comments considered by the Complainant as offensive, but insulting to the Complainant, entries listed in detail in the complaint of [...] June 2017, concerning the person of Mr. TM, they were permanently removed by the website administrators in a way that makes it impossible to read their content. A detailed analysis of the content published on the website administered by Ms M. M. and Mr W. M. indicates that the following were removed:

under the article published at: [...] entries of the authors of the comments of [...] January 2015 about logins:

"[...]";

"[...]"

"[...]"

"[...]"

under the article published at: [...] entry of the author of the comment of [...] January 2015 about the login "[...]".

under the article published at [...] entries:

the author of the comment of [...] July 2014 on the login "[...]";

the author of the comment of [...] July 2014 on the login "[...]";

the author of the comment of [...] July 2014 on the login "[...]".

under the article published at [...] entries:

authors of comments of [...] July 2013 on logins "[...]" and "[...]";

authors of comments of [...] July 2013 on logins "[...]" and "[...]"

authors of comments of [...] August 2013 on logins "[...]" and "[...]";

the author of the comment of [...] July 2013 on the login "[...]".

under the article published at: [...] entries:

the author of the comment dated ... (the date was not given) with the login "[...]";

the author of the comment of [...] August 2013 on the login "[...]".

under the article published at [...], entries of the authors of the comments of [...] November 2014 on logins:

"[...]";

"[...]"

"[...]"

Under the article published at [...], entries:

authors of comments of [...] November 2014 on logins: "[...]", "[...]" and "[...]"

the author of the comment of [...] November 2014 about the login: "[...]"

"[...]"

Under the article published at [...], entries:

the author of the comment of [...] August 2013 on the login "[...]";

the author of the comment of [...] August 2013 on the login "[...]";

the author of the comment of [...] August 2013 on the login "[...]".

In connection with the above, and also taking into account the Shareholders' written explanations of [...] November 2020, it should be considered that the personal data of the authors of the above-mentioned comments, including the IP numbers of the devices from which the entries were made, are no longer processed by the Shareholders and as such cannot be made available to the Complainant.

When assessing the established facts through the prism of the applicable provisions of law, it had to be stated that the proceedings conducted in the present case with regard to the applicant's request, Mr. TM - similarly as in the case of Mr. redemption pursuant to art. 105 § 1 of the Code of Civil Procedure In this case, an element of the material-legal relationship that ended after the initiation of the administrative procedure was the processing by the Shareholders of personal data of the users of the website "[...]" who published comments violating the complainant's personal rights. The confirmation of the existence of such processing would allow only to decide on the existence of a legal basis justifying the ordering the disclosure of the above-mentioned data for the benefit of Mr. T. M.

The determination by the public administration body of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

Thus, the President of the Office for Personal Data Protection discontinued these administrative proceedings, at the same time refraining from performing the actions he was required to take by the judgment of the Provincial Administrative Court in

Warsaw of January 8, 2019, issued in case no. II SA / Wa 762/18. The circumstance of cessation of the processing of personal data which the complaint relates to by the Partners of the civil partnership "H. s.c. " leads to the conclusion that taking further steps in the case would lead to its unjustified extension, while having no influence on the way the case was handled by the data protection authority.

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. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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 entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-09-15