THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

DKE.440.72.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) and 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 of 2018, item 138), in connection with Art. 2 clause 2 lit. c of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal UE L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding a complaint from Mr. DD, about the processing of his personal data by means of monitoring by Ms. K . and Mr. PK, President of the Personal Data Protection Office

refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection) received a complaint from Mr. D. D. (hereinafter referred to as: the Complainant) about the processing of his personal data by means of monitoring by Mrs. K. and Mr. P. K. (hereinafter referred to as: the Complainants). The complainant asked for the quotation: “1. Fulfilling my obligation to provide information under Art. 24 sec. 1 of the Act on the Protection of Personal Data 2. Removal of my personal data that is stored and processed without my consent in the monitoring system "and the quotation" to provide information whether K. P. K. has correctly registered the data set ".

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

The complainants stated that they were processing the Complainant's personal data through monitoring for private purposes,

the data was not shared with third parties. From the explanations of the Defendants it appears that the complainant's personal data were made available only to the District Court in Z., Division [...] in connection with the proceedings in the case [...], ref. No. act [...], ref. Act […].

The evidence attached to the explanations of the Defendants shows that the monitoring installed on their property does not cover the complainant's property or public space.

The defendants emphasized that all personal data obtained through the monitoring "are deleted every few days (...), only situations indicating breaking the law are saved on a computer secured with an additional password without third party access".

In the place where the monitoring was installed, a notice was posted that the area is being monitored and the monitoring is silent.

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

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

Pursuant to Art. 160 sec. 1-3 of the 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, and of 2018, item 138), in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096) as amended), hereinafter referred to as "Kpa". 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, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95 / 46 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

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, hereinafter referred to as:

administrative procedure) and on the basis of Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of 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 “a public administration body assesses the actual state of the case according to the moment 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).

In the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07 The Supreme Administrative Court stated that "when examining [...] the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision on the matter and whether it is done in a lawful manner" .

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

In a situation where the Complainants have the status of natural persons and process the Complainant's personal data only for personal or domestic purposes, it is undoubted that the provisions of the Act did not apply in the case at hand and currently the provisions of Regulation 2016/679 do not apply. As it resulted from the content of Art. 3 a section 1 point 1 of the Act, it did not apply to natural persons who process data solely for personal and domestic purposes, and as it results from the content of Art. 2 clause 2 c of Regulation 2016/679, its provisions do not apply to the processing of personal data by a natural person as part of purely personal or household activities. Above the position of the authority results from the facts found in the course of the proceedings in the case in question. The monitoring installed by them serves to improve security within their premises in connection with repeated violations of the law. The complainant's personal data processed through monitoring was made available only to the District Court in Z., in connection with the proceedings in the case of [...], ref. No. act [...], ref. Act […].

The argumentation of the authority presented in this decision is consistent with the position of the Court of Justice contained in the judgment of the Court of Justice of 11 December 2014 in the case ref. C-212/13 František Ryneš v Úřad pro ochranu separate údaju, according to which Art. 2 (2c) of Regulation 2016/679 should be interpreted in such a way that the use of a camera system that stores the images of people on a continuous recording equipment, such as a hard drive, installed by a natural person in his or her family home in order to protect property, health and life of the home owners, which system monitors public space, does not constitute data processing in the course of purely personal or household activities within the meaning of this provision. This position was confirmed by the thesis to the gloss to the judgment of the Court of Justice of December 11, 2014, C-212/13 quoting "the purpose of processing should determine the nature of a given activity, and thus be decisive for determining whether data processing is purely personal or domestic (... ) Protection of the inviolability of a private home against any unlawful interference, in particular assault or theft, should be considered a purely domestic activity "(Czerniawski, Michał. Glosa to the judgment of the Court of Justice of December 11, 2014, C-212/13. Legal Information System) LEX, 2015).

Taking into account the above, it should be emphasized once again that the facts of the case show that the processing of the Complainant's personal data is carried out with the use of monitoring installed on the premises of the Defendants in order to ensure security. Monitoring of the Defendants covers the area of their private property, and not public space, therefore it should be assessed as falling within the scope of purely personal and domestic activities. Moreover, in the present case we are dealing with a complaint against natural persons who do not process the Complainant's personal data in connection with their commercial or professional activity. Therefore, the Complainants cannot be considered personal data administrators within the meaning of the provisions of the Act and Regulation 2016/679. Thus, they were not, and are currently not subject to, the obligations arising from the above-mentioned regulations, including the obligation to register personal data files.

Due to the fact that the provisions of the Act did not apply to the case in question, nor do the provisions of Regulation 2016/679 apply at present, the President of the Personal Data Protection Office may not issue a decision ordering the restoration to legal status. Therefore, it is justified to issue a decision refusing to accept the application.

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 submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. If a party does not want to

exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-05-06