

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 19

March

2021

DECISION

DKE.561.22.2020

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) in connection with Art. 7 and art. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) and pursuant to art. 31, art. 58 sec. 1 lit. a) and lit. e) and art. 58 sec. 2 lit. b) 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) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with the amendment announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2), after conducting administrative proceedings on the imposition of an administrative fine on Mr. TZ, running a business under the name of TZ, President of the Office for Personal Data Protection, reminds Mr. T. Z., running a business under the name of T. Z., for violating the provisions of Art. 31 and art. 58 sec. 1 lit. a) and lit. e) Regulations of the European Parliament and the EU Council 2016/679 and the EU Council 2016/679 of 27 April 2016. on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, with the amendment announced in the Journal of Laws UE L 127 of 23/05/2018, p. tasks.

JUSTIFICATION

The Office for Personal Data Protection received a complaint from Mr. K. M., hereinafter referred to as the "Complainant", about irregularities in the processing of his personal data by Mr. T. Z. running a business under the name T. Z. (previously also under the name: A.), hereinafter referred to as the "Entrepreneur". The indicated violation consisted in sending to the Complainant an e-mail of a marketing nature, failure to comply with the information obligation towards him and failure to comply with the Complainant's request to delete his personal data. The President of the Personal Data Protection Office, hereinafter also referred to as the "President of the Personal Data Protection Office", as part of the administrative procedure

initiated to consider the complaint (reference number [...]), asked the Entrepreneur in a letter of [...] February 2020 to comment - within 7 days from the delivery of the summons - to the content of the complaint and to answer the following detailed questions regarding the case:

if, and if so, when, on what legal basis, from what source, for what purpose and scope the Entrepreneur obtained the Complainant's personal data, including his e-mail address: [...];

whether the Entrepreneur is currently processing the Complainant's personal data, including his e-mail address: [...], and if so, to what extent, on what legal basis, for what purposes and for how long the data will be processed;

whether, when and to what extent the Entrepreneur fulfilled the information obligation referred to in Art. 13 or 14 of Regulation 2016/679, and if he has not fulfilled this obligation - then for what reasons;

whether, when and how the Entrepreneur referred to the Complainant's e-mail of [...] December 2018, [...] December 2018, [...] December 2018 and [...] January 2019, regarding the fulfillment of the information obligation towards the Complainant under Art. 15 of Regulation 2016/679, sent by him to the following e-mail addresses: [...], [...], [...], [...], [...] and [...];

whether, when and how the Entrepreneur referred to the Complainant's e-mail of [...] December 2018, [...] December 2018 and [...] January 2019, sent by him to the e-mail addresses : [...], [...], [...], [...], [...] And [...], containing a request to delete the Complainant's personal data, including his e-mail address: [...].

The entrepreneur was also informed that failure to send explanations in the above-mentioned scope may result in the imposition of an administrative fine, in accordance with Art. 83 sec. 5 lit. e) Regulation 2016/679. The letter in question, addressed to the address of the Entrepreneur's permanent place of business (ie [...]) disclosed in the Central Register and Information on Economic Activity (ie [...]), was properly delivered to him on [...] February 2020. Despite the above, the Entrepreneur did not provide any response to the request.

In connection with the above, in a letter of [...] June 2020, the President of the Personal Data Protection Office again called on the Entrepreneur to respond to the content of the complaint and to provide detailed explanations on the matter, setting a 7-day deadline for responding to him. Despite the delivery of the said correspondence on [...] June 2020, the Entrepreneur did not in any way respond to the request formulated by the personal data protection authority.

Due to the failure by the Entrepreneur to provide the information necessary to settle the case with reference number [...], initiated by a complaint of Mr. K. M., the President of the Personal Data Protection Office (UODO) initiated ex officio against

the Entrepreneur - in connection with his breach of Art. 31 and 58 sec. 1 lit. a) and lit. e) Regulation 2016/679 - these administrative proceedings to impose an administrative fine (reference number DKE.561.22.2020). The Entrepreneur was informed about the initiation of the procedure by letter of [...] October 2020, properly delivered to the addressee on [...] October 2020.

At the same time, by the decision of [...] October 2020, ref. No. [...], properly delivered to the Entrepreneur [...] October 2020, the President of the Personal Data Protection Office (UODO) considered the application submitted by the Complainant and ordered the Entrepreneur to remove the Complainant's personal data, and moreover, in connection with the breach by the Entrepreneur of Art. 12 sec. 1, 3 and 4 in connection with Art. 15 sec. 1 lit. b) and g) of Regulation 2016/679, consisting in the failure to comply with the Complainant's request for access to his personal data, provided the Entrepreneur with an appropriate reminder. Thus, the supervision authority established, on the basis of the information provided by the Complainant and its own findings made in the course of the proceedings, factual circumstances sufficient to resolve the case.

In view of the coming into force of [...] November 2020, the above-mentioned of the administrative decision, the President of the Personal Data Protection Office (UODO) initiated ex officio proceedings to determine its implementation (reference number [...]). To this end, in a letter of [...] February 2021, the President of the Personal Data Protection Office requested the Entrepreneur to provide explanations and evidence confirming the removal of the Complainant's personal data from all data carriers held.

In response to the summons, in a letter of [...] March 2021, the entrepreneur informed that the analysis of own resources showed that he does not currently process the personal data of Mr. KM, in particular his name, surname or e-mail address, which is clear with the execution of the order. In his explanations, the Entrepreneur also referred to the previous lack of cooperation with the President of the Personal Data Protection Office, indicating that due to the nature of the economic activity, which is running a farm, he stays outside the place of residence for a significant part of the year (whose address is the same as the address of the permanent place of business activity). business specified in CEiDG). Hence, the Entrepreneur did not have the actual possibility of personal collection or timely response to the correspondence addressed to him, related to the complaint proceedings No. [...]. All letters sent to the Entrepreneur by the personal data protection authority were collected by his household. The Entrepreneur had knowledge of the pending proceedings only upon receipt of written information about the collection of evidence, sufficient to issue an administrative decision in the above-mentioned case. Bearing in mind the above,

the Entrepreneur expressed regret about the situation.

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

Pursuant to Art. 57 sec. 1 lit. a) Regulation 2016/679, the President of the Personal Data Protection Office - as a supervisory authority within the meaning of art. 51 of Regulation 2016/679 - monitors and enforces the application of this regulation on its territory. As part of his competences, the President of the Personal Data Protection Office examines, inter alia, Complaints brought by data subjects shall investigate these complaints to the appropriate extent and inform the complainant of the progress and the outcome of these proceedings within a reasonable time (Article 57 (1) (f)). In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office has a number of specified in Art. 58 sec. 1 of Regulation 2016/679, the rights in the scope of conducted proceedings, including the right to order the administrator and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the administrator and the processor to all personal data and information necessary for the performance of its tasks (Article 58 (1) (e)). Moreover, the President of the Personal Data Protection Office is entitled to a number of provisions specified in Art. 58 sec. 2 corrective powers, including reminders to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by processing operations. Violation of the provisions of Regulation 2016/679, consisting in the failure of the controller or the processor to provide access to the data and information referred to above, resulting in the violation of the authority's rights specified in art. 58 sec. 1 (including the right to obtain data and information necessary to perform its tasks), and is subject - in accordance with art. 83 sec. 5 lit. e) in fine of Regulation 2016/679 - an administrative fine of up to EUR 20,000,000, and in the case of an enterprise - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount being applicable. It should also be indicated that the controller and the processor are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679. The President of the Personal Data Protection Office, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679, it may also consider it justified to provide the controller or processor with a reminder regarding the infringement of the provisions of art. 31 and art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679. Pursuant to recital 148 of Regulation 2016/679, for more effective enforcement of the provisions of the Regulation, sanctions, including administrative fines, should be imposed for breaches of the Regulation, in addition to or instead of appropriate measures imposed by the supervisory authority under this Regulation. If

the infringement is minor, the fine may be replaced by an admonition. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was not intentional, the steps taken to minimize the harm, the degree of liability or any previous relevant breach, how the supervisory authority became aware of on breach, on compliance with the measures imposed on the controller or processor, on the application of codes of conduct, and on any other aggravating or mitigating factors.

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, it should be stated that the Entrepreneur as the administrator of personal data and at the same time a party to the proceedings with reference number [...], by failing to provide a substantive response to the requests of the President of the Personal Data Protection Office of [...] February 2020 and [...] June 2020 to submit explanations, breached the obligation to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks, resulting from Art. . 31 and 58 sec. 1. lit. a) and lit. e) Regulation 2016/679. In this case, the information essential for the further course of the proceedings was the confirmation of the legitimacy of the complaint - including the determination of the circumstances related to the sending of marketing content by the Entrepreneur to the Complainant's e-mail address, despite the Complainant's lack of consent to the processing of his personal data for the above-mentioned purposes. Preventing access to information requested by the President of the Personal Data Protection Office from the Entrepreneur, and which was undoubtedly in his possession, prevented a thorough and, above all, timely consideration of the case and resulted in prolongation of the procedure, which is contrary to the basic rules governing the administrative procedure - set out in art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), the principles of insight and speed of proceedings.

In the opinion of the President of the Personal Data Protection Office, the mere finding of a breach of the provisions of Regulation 2016/679 - subject to an administrative fine - does not, however, justify in this case the application of the strictest sanctions provided for by the personal data protection system to the Entrepreneur. Although the violation in question is of great importance and serious nature, in the opinion of the President of the Personal Data Protection Office, the attitude of the Entrepreneur indicates the lack of purposefulness in its action. It should be noted that the Entrepreneur explained the reasons for the initial lack of cooperation with the supervisory authority. The arguments presented by him justify the statement that the lack of response to the requests for explanations addressed to the Entrepreneur did not result from the Entrepreneur's bad will,

nor did it intend to deliberately obstruct the proceedings. The entrepreneur was not aware of the correspondence sent to him in the case with reference number [...] (which was accepted by the above-mentioned households), which is why he did not provide the President of the Personal Data Protection Office with the information necessary for the performance of his tasks. The fact that the Entrepreneur contacted the Office for Personal Data Protection and informed about the execution of the order to delete personal data of Mr. KM, imposed on the Entrepreneur by an administrative decision of the President of the Personal Data Protection Office of [...] October 2020 (ref. [...] ...). Thus, it should be concluded that the objectives of the administrative proceedings conducted before the President of the Personal Data Protection Office have been achieved. The active attitude of the Entrepreneur clearly indicates that he is ready for further cooperation with the President of the Personal Data Protection Office. In the opinion of the supervisory body, the very initiation of the procedure to impose an administrative fine and the real prospect of imposing a financial penalty have become a clear signal for the Entrepreneur that further evasion of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the strictest sanctions provided for in these provisions.

In the opinion of the President of the Personal Data Protection Office, all the circumstances of the case, considered jointly, allow the conclusion that the lack of a substantive response to the requests of the President of the Personal Data Protection Office in the proceedings with reference number [...] Was not intentional. In connection with the above, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, according to which each supervisory authority has the right to issue a reminder to the controller or processor in the event of a breach of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office recognizes that it is justified to provide the Entrepreneur with a reminder regarding the breach of the provisions. art. 31 and art. 58 sec. 1 lit. a) and lit. e) Regulation 2016/679. The admissibility of replacing a financial penalty with a warning is also justified by recital 148 of Regulation 2016/679, which states that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective". The President of the Personal Data Protection Office decided that in the case in question, in the light of the criteria set out in Art. 83 sec. 2 of Regulation 2016/679, it will be sufficient to issue a reminder. It should be noted, however, that in the event of a similar event occurring in the future, each reminder issued by the President of the Personal Data Protection Office against the Entrepreneur will be taken into account when assessing the premises for a possible administrative penalty, in accordance with the principles set out in Art. 83 sec. 2 of the Regulation 2016/679.

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

The decision is final. The party has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, via the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200.

In the proceedings before the Provincial Administrative Court, the party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of a party submitted prior to the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

2021-07-21