

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 17

July

2020

DECISION

ZKE.440.81.2019

Based on Article. 138 § 1 point 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. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), Art. 160 sec. 1-3 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) and art. 6 sec. 1, 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 (general regulation on protection of personal data) (Journal of Laws UE L 119 of 4 May 2016, p. 1 and Journal of a case concluded by the decision of the Inspector General for Personal Data Protection of April 10, 2018 (case no. DOLiS-440-1910 / 17) concerning the refusal to consider the application for irregularities in the processing of his personal data by Ms MM, President of the Office for Personal Data Protection, upholds the contested decision.

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. M. P., hereinafter referred to as the Complainant, about the processing of his personal data by Mrs. M. In the content of the complaint, the complainant requested intervention in the case of illegal, in his opinion, placing of cameras by Ms M. M. and recording of his image, plot and entry to his private property. The applicant pointed out that the distance between his plot of land and the cameras was so small that it was easy to recognize people who were on his premises. In the course of the proceedings initiated by a complaint, the Inspector General for Personal Data Protection, hereinafter also referred to as "GIODO", established the following facts:

Ms M. M. does not conduct any business activity, but processes the complainant's personal data only for personal and domestic purposes. In response to the complaint, Ms M. M. indicated that when making the decision to set up the monitoring,

she was guided by the need to take care of her own property and the safety of her family, as there were cases of damage to her property in connection with the economic activity conducted by the applicant. It stated that none of the cameras was directly facing the applicant's property, with the exception of one camera covering only the fence, behind which a fragment of the applicant's property could be seen. At the same time, Ms M. M. emphasized that the monitoring did not cover the entry to the applicant's premises.

In these facts, the GIODO issued a decision of April 10, 2018 (case reference number DOLiS-440-1910 / 17), by which it refused to accept the complainant's request.

Within the statutory deadline, ie [...] April 2018, the Complainant filed a request for reconsideration, in which he indicated that as follows: "in the decision of 10 April 2018, Ms MM submitted a false statement and only her arguments were accepted which I find highly unfair. In my opinion, she has not posted cameras for her private use, because one of them is directed directly at my plot to observe what is happening on my property. The camera is placed in such a way that you can only see my property and the entrance from it, and it has hidden it behind the balcony railing so that it cannot be seen. Such concealment suggests that Ms M. is trying to find hooks on me, and not in defense of her safety (...). Our information also shows that Ms M. disseminates her recordings and provides information about who was in my company (...)". As evidence of the above, the Complainant attached photos of the camera to the application for reconsideration.

At the same time, in a letter of [...] October 2019, the Complainant supplemented the above-mentioned a request by requesting an inspection.

In response, Ms M. M. explained that the quotation: "(...) there has been a neighborly conflict between me and the applicant for a long time. The conflict is caused by the fact that Mr. M. P. leads the questionable according to legal, economic activity on his plot, on which since 2013 administrative proceedings have been pending in the commune of M. In July 2017, the commune issued a decision unfavorable to the Complainant [...] ordering the restoration of the area to the previous method of spatial development as agricultural real estate. Mr. M. P. appealed against the decision of the Commune, the case was referred to the Local Government Appeal Court in L., and then to the District Court in L., which offices issued a decision favorable to me and upheld the decision of the Commune. Moreover, the District Court in L. decided that the economic activity of the applicant was undoubtedly onerous. (...) I am a party to the proceedings in all cases (...) When removing tree branches that had been cut down because they disturbed my neighbor, we noticed that the fence that I owned had damaged, most likely by my neighbor,

also deciding I took care of my own property and the safety of my family. Ms M. M. explained again that only one of the surveillance cameras covers the damaged fence mesh, and only its trees can be seen behind the mesh in the background frame. The monitoring does not include entry to the neighbor's premises. The surveillance from the cameras does not extend to the space occupied by the Complainant and his clients and is therefore not directed beyond the private sphere. Ms MM also indicated that the Complainant's personal data were made available in 2013 for the purposes of the administrative proceedings in the M Commune. The monitoring system is handled personally by Ms MM for the purposes of family safety and protection of her property, and the data contained therein are stored on a hard drive hard for a period of 14 days.

After re-examining all the evidence gathered in the case, the President of the Office for Personal Data Protection 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 of 2018, item 1000), 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 GIODO, 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 on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws No. . of 2016, item 922), hereinafter referred to as the "Act of 1997", in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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 (EU Official Journal L 119 of 04.05.2016, p. 1 and EU Official Journal L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks set out 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 an entity, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these

proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (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 1997 (with regard to the provisions governing the administrative procedure) and on the basis of Regulation 2016/679 (with regard to 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 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 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 Kpa - Journal of Laws 00.98.1071, M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

The President of the Personal Data Protection Office, hereinafter also referred to as the "President of the Office", did not find any irregularities in the processing of the complainant's personal data, as the complainant's allegations regarding the "illegal" processing of his personal data in the form of an image by Ms MM were not confirmed. In the case, the evidence indicates that during the administrative proceedings the camera is directed only at the applicant's fence and the neighboring trees owned by Ms MM, which obscure the visibility of the property, and more specifically the applicant's paving stones. In view of the above, the applicant's argument that the camera is placed in such a way that the property and the entrance can be seen from it, and that it is hidden behind a balcony railing, suggests that Ms M. is trying to find "hooks" on the applicant. In the opinion of the President of the Office, Ms M. M. processes the complainant's personal data in the form of an image only for personal and domestic purposes, and the image from the cameras does not extend beyond the boundaries of her real estate. The camera mounted on Ms M. M.'s real estate is only a protective function of her private property, therefore, as indicated in the contested decision, the Act on the Protection of Personal Data is not applicable in the present case.

If, in the opinion of the Complainant, there has been a breach of his personal rights (e.g. the right to privacy), he may pursue his claims in this respect by way of a civil action brought before the locally competent common court. According to the content of Art. 23 of the Civil Code Regardless of the protection provided for in other regulations, personal rights of a person, including the right to privacy, remain under the protection of civil law. The provision of Art. 24 of the Civil Code guarantees the person

whose personal rights has been endangered with the right to request to refrain from acting violating the personal rights, and in the event of an already committed violation of the request, that the person who committed the infringement will complete the actions necessary to remove its effects. At the same time, pursuant to Art. 448 of the Civil Code, in the event of infringement of a personal interest, the court may award an appropriate amount to the person whose interest has been infringed as compensation for the harm suffered, or, upon his request, order an appropriate amount of money for the social purpose indicated by it, regardless of other measures needed to remove the effects of the infringement.

Regarding the Complainant's request for inspection, it should be noted that the inspection of the compliance of data processing with the provisions of the Act on the Protection of Personal Data (currently compliance with the provisions of Regulation 2016/679) belongs to the autonomous competences of the President of the Office, and therefore is not carried out on the request of the person concerned. In the present case, the authority did not find any infringement that would become a reason for initiating ex officio proceedings. At the same time, I would like to inform you that if, in the opinion of the Complainant, a prohibited act was committed to his detriment, the Complainant may apply directly to the law enforcement authorities with an appropriate notification about the possibility of committing a crime and seek protection of his rights through proceedings before the law enforcement authorities, and then before a common court.

The assessment made by the President of the Office in each case serves to examine the legitimacy of referral to a specific subject of the warrant, corresponding to the disposition of art. 18 sec. 1 of the Act of 1997, aimed at restoring the lawful state in the process of data processing - it is therefore justified and necessary only insofar as there are irregularities in the processing of personal data.

In the opinion of the President of the Office, there are no grounds to conclude that the complainant's personal data are processed by Ms M. M. in a manner inconsistent with the provisions on the protection of personal data, and therefore there was no necessary condition for the President of the Office to issue a decision ordering the restoration of the lawful state.

The President of the Office, after re-analyzing the material collected in the case, considered the correct decision contained in the decision of April 10, 2018 (case no. DOLiS-440-1910 / 17).

In this actual and legal sledge, the President of the Office resolved as in the sentence.

The decision is final. Based on Article. 21 sec. 2 of the Act in connection with joke. 13 § 2, art. 53 § 1 and art. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2019, item 2325), the party dissatisfied with

this decision has the right to lodge a complaint with the Provincial Administrative Court in Warsaw within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs or the right to assistance.

2021-03-08