

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 26

March

2021

## DECISION

DKE.561.2.2021

Based on Article. 104 § 1 of the Act of 14 June 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. 58 sec. 2 lit. b) and art. 58 sec. 2 lit. g) and art. 83 sec. 6 of the 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 regulations) (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings on the imposition of an administrative fine on AZ, President of the Office for Personal Data Protection provides A. Z. a warning for non-compliance and failure to comply with the decision of the President of the Personal Data Protection Office of [...] July 2020 in the period from [...] August 2020 to [...] March 2021, ref. [...], ordering the deletion of A. A.'s personal data from the website [...].

### Justification

The President of the Personal Data Protection Office, after conducting administrative proceedings on the complaint AA (hereinafter referred to as the Complainant), represented by MB's legal advisor, about irregularities in the processing of her personal data by AZ (hereinafter also referred to as the Obligor), consisting in disclosing her personal data in the scope of her first name and surnames at [...] without legal basis, by decision of [...] July 2020, file ref. [...], based on Article. 4 pts 1, art. 6 sec. 1 and art. 58 sec. 2 lit. g 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 the protection data) (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, ordered the Obligor to eliminate irregularities in the processing of AA's personal data by removing from the website located at address [...] of the complainant's personal data in the scope of the name and surname

The decision was delivered to the Obligated [...] on August 2020. No appeal was filed against the decision in question.

In a letter of [...] December 2020, delivered on [...] December 2020, the President of the Personal Data Protection Office called the Obligated Party to submit explanations and evidence confirming the execution of the decision within 7 days from the date of delivery of the request. On [...] December 2020, an e-mail was sent to the Office for Personal Data Protection from the address: [...] to which a text document was attached. The content of the document was the statement: "As I explained in the telephone conversation I had with the local Data Protection Authority, after receiving the first letter - I had lost my login details to this page in order to make any changes to it. In a telephone conversation, someone from the office informed me that you would contact the domain administrator [...] with such a command. " The content of the document contained personal data of the Obligated Person, suggesting that he was the author of the letter. The findings made on the part of the Office, including direct arrangements with the person handling the case [...], showed that the telephone conversation between the Obligated Party and the Personal Data Protection Office, referred to in the above-mentioned statement, did not take place. In response to the request to send evidence of the implementation of the decision, apart from the above-mentioned e-mail, no other explanations or evidence confirming the implementation of the decision were received by the Office. The fact of further publication of the data in question at [...] and the content of the statement sent in the e-mail gave the basis for the conclusion that the decision of the President of the Personal Data Protection Office of [...] July 2020, ref. [...] Was not performed.

In view of the above, the President of the Personal Data Protection Office (UODO) initiated these administrative proceedings (ref. DKE.561.2.2021) concerning the imposition of an administrative fine on the Obligated Party for failure to comply with the order of the President of the Personal Data Protection Office (UODO) adjudicated by the decision of [...] July 2020, ref. No. [...]. The letter of [...] January 2021, informing about the initiation of the proceedings and gathering the evidence, was delivered to the Obligated [...] on February 2021. On the same day, the Obligated person initiated a telephone contact with an employee of the Department of Penalties and Enforcement of the Personal Data Protection Office, conducting this case - [...] (hereinafter also referred to as the case handler). During the conversation, the Obligated Party stated that he did not have data to log into the website [...] which had personal data that he should delete on the basis of a decision order. The case handler recommended the Obligor to make an effort, including directing official correspondence to the domain administrator [...] to exhaust all possible actions to implement the decision in question.

On the same day, ie [...] February 2021, at [...], a copy of the e-mail from the address [...] to the address [...] was sent to the

e-mail address kept by the Office of the Office. The content of the message was as follows:

"Hello, in connection with the decision of the President of the Personal Data Protection Office on the need to remove the name and surname of A. A. from the page I created on your website, for which I have lost my login data, please remove them. Yours sincerely, Z. A. "

In a letter of [...] March 2021 - due to the lack of further information from the Obligated Party regarding the implementation of the decision in question - the President of the Personal Data Protection Office called the Obligated Party to provide explanations and answer the question what actions he had taken to implement the decision.

By letter of [...] March, received by the Office via the ePUAP system, the Obligated Party sent a copy of the e-mail sent to the address [...] of [...] February 2021.

On [...] March 2021, the case investigator re-verified whether the order of the decision in question had been complied with by checking the content of the website [...]. Due to the further publication of the Complainant's personal data at the above-mentioned address and the lack of information regarding the Obligated's actions in order to implement the decision, the case handler contacted the Obligated by phone. During the conversation, the Obligated party maintained that he did not have data to log in to the website. The case handler instructed the Obligated that his actions to implement the decision may be perceived as apparent, i.e. intended to cause the President of the Personal Data Protection Office a false belief that the Obligated is acting in order to implement the decision, which in fact is not the case.

On the same day, that is [...] March 2021, the e-mail address [...] was sent from the address [...], indicating that the Obligated had complied with the decision order in question and removed the complainant's data from the website.

On [...] March, the case investigator verified whether the order of the decision in question had been complied with by checking the content of the website [...]. In the course of the proceedings, it was found that the Obligated removed the Complainant's personal data from the content available at that address to an incomplete extent, as the website still provided access to the Complainant's personal data both by opening a text file constituting a component of the website at [...] and after displaying a child element to the website in question, ie the subpage provided at [...]. On the same day, ie [...] March, the person conducting the case replied to the Obligated's e-mail, indicating the above-mentioned places from which the complainant's personal data should be removed.

In a letter of [...] March 2021, the President of the Personal Data Protection Office called the Obligated Party to execute the

decision. The letter indicated, inter alia, that the content of the decision of the President of the Personal Data Protection Office of [...] July 2020, ref. [...] leaves no doubt that the Obligated does not hold any of the items referred to in Art. 6 (1) of Regulation 2016/679 of the legal grounds for publishing the complainant's personal data, regardless of the place and form of publication, which is indicated on page 5 of the decision in question. The letter emphasized that it resulted in the obligation to delete the complainant's personal data at the Internet address [...], regardless of whether they were data in the form of open text or in the content of files and subpages integrated at that address.

On [...] March 2021, the Office received an e-mail from the address [...] indicating that the Obligated had deleted all the complainant's personal data, made available at [...]. On [...] March 2021, the case handler verified this information, stating that the Obligated had fully complied with the decision of the President of the Personal Data Protection Office of [...] July 2020, ref. No. [...].

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 the 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 is entitled to a number of provisions 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 all 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.

Pursuant to Art. 83 sec. 6 of Regulation 2016/679, failure to comply with the order issued by the supervisory authority pursuant

to art. 58 sec. 2 is subject to an administrative fine of up to EUR 20,000,000, and for a company - up to 4% of its total annual worldwide turnover from the previous financial year, whichever is higher.

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in the above case, it should be stated that the Obligated in the period from [...] August 2020 to [...] March 2021 refrained from performing (or in accordance with the terminology used by the EU legislator in Article 83 (6) of Regulation 2016/679) - "did not comply") with a legally binding order of the President of the Personal Data Protection Office of [...] July 2020, file ref. [...].

By the decision of [...] July 2020, file ref. [...], based on Article. 4 pts 1, art. 6 sec. 1 and art. 58 sec. 2 lit. g 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 the protection data) (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, the President of the Personal Data Protection Office ordered the Obligated to eliminate irregularities in the processing of AA's personal data by removing from the website, at the address [...] of the complainant's personal data in the scope of the first and last name.

The decision has not been appealed, therefore it became final and enforceable as of [...] August 2020. The decision was not fully implemented until [...] March 2021, preceded by the Obligated's calls to do so.

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 a 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.

As a result of the initiation of this procedure, the Obligated fully complied with the decision of the President of the Personal Data Protection Office of [...] July 2020, ref. [...]. 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 deems it justified to issue a reminder to AZ in the scope of the breach found art. 58 sec. 2 lit. g) 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 Obligated Party 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 Office for Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw). The complaint should be filed with a permanent fee in the amount of PLN 200, in accordance with Art. 231 in connection with Art. 233 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, as amended). A party (natural person, legal person, other organizational unit without legal personality) has the right to apply for the right to assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to aid may be granted upon the application of a party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

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