

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 01

July

2021

DECISION

DKE.561.8.2021

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (i.e. Journal of Laws of 2021, item 735). 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. 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 JS and WS both bound by the civil partnership agreement I. sc, President of the Office for Personal Data Protection discontinues the proceedings.

JUSTIFICATION

In the proceedings under file no. [...] checking the implementation of his decision of [...] August 2020, ref. No. [...], by letters of [...] March 2021, delivered on [...] March 2021, the President of UODO summoned J. S. and W. S., bound by the civil partnership agreement I. s.c. (hereinafter also referred to as the "Obliged"), to submit explanations and evidence confirming the execution of the order of the decision in question, i.e. to apply additional precautionary measures in order to prevent unauthorized persons from reading the data contained in the correspondence addressed to W.B., (hereinafter referred to as the Complainant).

Due to the lack of information on the implementation of the decision in question and the lack of responses by the Obligated parties to properly delivered requests to confirm its implementation, justifying the suspicion of non-execution, the President of the Personal Data Protection Office initiated this administrative procedure, ref. DKE.561.8.2021., On the imposition of an administrative fine on the Obligations for failure to comply with the decision of the President of the Personal Data Protection Office of [...] August 2020 (reference number [...]).

On [...] May 2021 (date of receipt [...] June 2021), the Office for Personal Data Protection received a letter from the Obligated Parties. In the letter, the Obligated persons indicated that they had made efforts to prevent breach of the applicable provisions of law in the process of forwarding the correspondence to the Complainant. The obligated declared that they organized retraining for employees on the general principles of the GDPR, and in particular on the procedure for forwarding correspondence to the owners. Further, the letter indicated that the Complainant chose e-mail as the way of transmitting all documents, and the Obligated Parties adopted the principle that the correspondence would be delivered to the Complainant only in this way. In the letter it was argued that the Obligated parties use a new program for this purpose, which automatically generates e-mail correspondence and sends it without having to print it first, which eliminates the risk that this correspondence will be sent to unauthorized persons.

The obligated persons also referred to the lack of prior confirmation of the execution of the order of the decision of the President of the Personal Data Protection Office of [...] August 2020 (reference number [...]), justifying this fact by not receiving the calls of the President of the Personal Data Protection Office as a result of placing them together with letters not related to the case by the employee of the Obligated Parties. Moreover, the Obligated Parties indicated that at the time of delivering the summons, they were not present at the company's headquarters due to the Obligated's poor health and the risk of SARS-CoV2 virus. To confirm these explanations, the Obligated have attached the Obligated's medical documentation.

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 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. 105 § 1 of the Code of Administrative Procedure, when the proceedings for any reason become groundless in whole or in part, the public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part.

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in the above-mentioned case, it should be stated that the Obligated persons complied with the order of the President of the Personal Data Protection Office of [...] August 2020 (ref. [...]). The explanations and evidence contained in the letter allow the conclusion that the Obligated Parties introduced sufficient measures to protect the correspondence addressed to the Complainant against being read by unauthorized persons.

For the above reasons, the present administrative procedure became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The doctrine states that "The discontinuation of the proceedings is not dependent on the will of the administrative body, and even less left to the discretion of the body - this body is obliged to discontinue the proceedings if it is found to be irrelevant. (...) The irrelevance of the proceedings may also result from a change in the facts of the case. The proceedings must be deemed to be groundless as a result of the cessation of the facts subject to regulation by the administrative authority by way of a decision (cf. the justification of the judgment of the Supreme Administrative Court of 29 September 1987, IV SA 220/87, ONSA 1987, No. 2, item 67) "- Przybysz Piotr Marek. Art. 105. In: Code of Administrative Procedure. Comment updated. LEX Legal Information System, 2019.

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

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 prior to the commencement of the proceedings or in the course of the proceedings. The application is free of court fees.

2021-09-14