

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 04

of December

2020

DECISION

DKE.561.9.2020

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) pursuant to Art. 58 sec. 2 b in connection with Art. 31 and art. 58 sec. 1 lit. a) and e) of the Regulation of the European Parliament and of the EU Council 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general on data protection) (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 of the KSA, President of the Personal Data Protection Office,

reminds K. S.A. for violation of the provisions of Art. 31 and art. 58 sec. 1 lit. e) Regulation of the European Parliament and of the EU Council 2016/679 and of the EU Council 2016/679 of 27 April 2016 on the protection of natural persons 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 data protection) (Journal of Laws UE L 119 of 04/05/2016, page 1, as amended), hereinafter referred to as "Regulation 2016/679", consisting in the lack of cooperation with the President of the Personal Data Protection Office in the performance of his tasks and failure to grant information in the proceedings (reference number [...]) necessary for the President of the Personal Data Protection Office to perform its tasks.

Justification

The Office for Personal Data Protection received a complaint from Mr. M.K. (hereinafter referred to as the Complainant), for the processing of his personal data for marketing purposes without a legal basis and failure to fulfill the information obligation by K. S.A. (hereinafter referred to as the Company). The President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office"), as part of the administrative procedure initiated to examine the complaint (under the reference number [...]), requested the Company in a letter of [...] April 2019 to comment on the content of the

complaint and to grant answers to the questions contained in the letter within 7 days from the date of its receipt. The letter was notified twice and finally returned to the sender on [...] May 2019. By letter of [...] February 2020, the President of UODO again asked the Company to provide explanations in the matter. The letter was notified twice and finally returned to the sender on [...] March 2020. The President of the Personal Data Protection Office (UODO), with the above-mentioned letters, asked the Company to comment on the content of the complaint and to answer the following questions:

- 1) if, and if so, when, on what legal basis, from what source, for what purpose and scope, the Company obtained the complainant's personal data, in particular the telephone number - [...];
- 2) whether, and if so, on what legal basis, in what data set, for what purpose and scope the Company is currently processing and possibly for how long and on what legal basis it will process all the complainant's data;
- 3) whether the Company fulfilled the information obligation towards the Complainant, and if so, when, in what form and to what extent;
- 4) whether the Complainant effectively objected to the Company against the processing of his personal data for marketing purposes, and if so, when, whether it was taken into account by the Company, what response was provided to the Complainant and on what legal basis;
- 5) whether the Complainant requested the Company to stop processing and delete his personal data, and if so, how the Company responded to the request and on what legal basis;
- 6) whether the Company runs internet portals such as: [...], [...], [...], [...], [...].

The company did not reply to any of the above letters from the President of the Personal Data Protection Office. The above-described omission of the Company in the proceedings with reference number [...] gave the basis for establishing a violation of Art. 31 and art. 58 sec. 1 lit. a) and e) of the GDPR, consisting in the Company's failure to comply with the obligation to cooperate with the President of the Personal Data Protection Office as part of the performance of his tasks (Article 31 of the GDPR), and failure by the Company to provide the President of the Personal Data Protection Office with the information necessary to perform his tasks, art. 58 sec. 1 lit. a) and e) of the GDPR) - in this case, to the substantive resolution of the above-mentioned case. Due to the failure of the Company to provide any information, in a letter of [...] August 2020, the President of the Office for Personal Data Protection (reference number [...]) informed about the initiation of ex officio proceedings to impose an administrative fine on the Company pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679. The above

letter was delivered to the Company to the address indicated in the National Court Register No. [...] in [...]. In this letter, the President of the Personal Data Protection Office also summoned the Company - in order to determine the basis for the penalty, pursuant to Art. 101a paragraph. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to present the Company's financial statements for 2019 or - in the absence thereof - a statement on the amount of turnover and financial result achieved by the Company in 2019. The letter was notified twice and returned to the sender with the note "the return has not been made on time" on [...] September 2020.

Due to the lack of response to the letter on the initiation of proceedings for the imposition of a penalty and the collection of evidence, [...] on September 2020, the President of the Office of Personal Data again sent the Company to the addresses indicated in the regulations for the provision of services, regulations for the performance of the cooperation agreement with K. imposition of an administrative fine and called for an opinion on the content of the complaint and to answer the questions contained in the letter of [...] April 2019. On [...] October 2020 and [...] October 2020, the letters were returned to the sender with the annotation "the return was not received on time".

Due to the failure by the Company to provide any information necessary for the substantive resolution of the case, ref. No. [...] an employee of the Personal Data Protection Office contacted the President of the Management Board of the Company by phone on [...] October 2020. During the interview, the President of the Management Board informed the Office for Personal Data Protection about the change of the Company's correspondence address. To the address provided, the President of the Office for Personal Data Protection, with a covering letter of [...] October 2020, sent in the enclosure information on the initiation of the proceedings and the collection of evidence of [...] August 2020 (reference number [...]) and asked for an opinion to the content of the complaint and to answer the questions contained in the letter of [...] April 2019. In addition, the attached letter indicates that if the Company provides exhaustive explanations in the procedure under reference number [...], to be granted by the President of the Personal Data Protection Office in earlier letters, this circumstance may have a mitigating effect on the amount of the administrative fine adjudicated in these proceedings or may result in waiving its imposition. The letter was properly delivered to the Company on [...] October 2020.

In response to the letter, the President of the Management Board of the Company provided explanations on [...] November 2020 to the matter, answering all the questions contained in the above-mentioned in writing, which allowed the President of UODO to pursue further proceedings in the case of [...].

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 an 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.

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 (5) (e) 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. Moreover, pursuant to Art. 31 of the Regulation 2016/679, the controller and the processor are obliged to cooperate with the supervisory body as part of the performance of its tasks.

Recital 148 of Regulation 2016/679 states that "in order to make the enforcement of the Regulation more effective, 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, and described at the beginning of this decision, it should be stated that the Company - the personal data administrator - as a party to the proceedings conducted by the President of the Personal Data Protection Office (UODO) No. [...], by not providing an answer, it undoubtedly breached the obligation to provide all information necessary for the performance of tasks and the obligation to provide the President of the Personal Data Protection Office with access to all personal data and all information necessary for the performance of tasks - for the substantive resolution of the case. It should also be pointed out here that failure to provide all information requested by the President of UODO from the Company within the specified time limit prevented a thorough examination of the case and contributed to its extension. Moreover, it should be added that pursuant to Art. 41 paragraph. 1 of the Code of Administrative Procedure "In the course of the proceedings, the parties and their representatives and attorneys are obliged to notify the public administration body of any change of their address". Failure to provide up-to-date data made it difficult to communicate with the person representing the Company and to efficiently conduct the administrative procedure. The President of the Management Board of the Company provided explanations only in response to the letter of the President of the Personal Data Protection Office of [...] October 2020, and the first letter to the Company to comment on the content of the complaint and to answer the following questions was sent to the Company on [...] April 2019 year.

Determining the nature of the infringement consists in determining which provision of Regulation 2016/679 has been infringed and classifying the infringement to the appropriate category of infringed provisions, i.e. those indicated in Art. 83 sec. 4 or in art. 83 sec. 5 and 6 of Regulation 2016/679, i.e. in this case art. 58 sec. 1 a) and e) and art. 31 of Regulation 2016/679. It should be pointed out that pursuant to Art. 31 of Regulation 2016/679, the controller and the processor, and - where applicable - their representatives, upon request, cooperate with the supervisory authority in the performance of its tasks. The obligation to cooperate is, inter alia, providing all necessary information necessary for the authority to consider the case on the merits (Article 58 (1) (a)) and to provide the supervisory authority with the possibility of obtaining from the controller (and the processor) access to all personal data and all information necessary for the supervisory authority to perform its tasks (Article 58 (1) (e) of Regulation 2016/679). The obligation of the administrator to cooperate is correlated with the tasks of the

supervisory authority set out in Art. 57 of the Regulation 2016/679 and the powers resulting from Art. 58 of the Regulation 2016/679. The assessment of the seriousness of the breach (e.g. low, medium or significant) is indicated by the nature of the breach as well as the scope, purpose of the processing concerned, the number of data subjects affected and the extent of the damage they have suffered. When marking the duration of the breach, it should be indicated that it was long-lasting, which in turn prolonged the findings necessary for the substantive examination of the case (regarding the legality of the processing of personal data), nevertheless, it was removed.

The Article 29 Working Party in the Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679 adopted on 3 October 2017 with reference to the intentional or unintentional nature of an infringement indicated that, in principle, "intention" encompasses both knowledge and intent. due to the characteristics of a prohibited act, while "inadvertent" means no intention to cause an infringement, despite the controller or processor's failure to fulfill the legally required duty of care. Intentional violations are more serious than unintentional violations and, consequently, more often involve the imposition of an administrative fine. In the opinion of the President of the Personal Data Protection Office, the above-mentioned the breach was unintentional, the Company had no intention of committing the breach. The reason for the lack of response to the requests of the President of the Personal Data Protection Office was the lack of receipt of correspondence due to the Company's failure to inform about the change of address data for correspondence. Ultimately, however, on the part of the Company, there was a will to cooperate in providing the authority with all information (evidence) necessary for the continuation of the complaint procedure with reference number [...]. The company submitted explanations regarding the content of the complaint and replied to all questions contained in the letter of [...] October 2020. The explanations presented by the President of the Management Board do not release the Company from its responsibility as a data controller for not responding to the summons, therefore the President of the Personal Data Protection Office decided to impose sanctions on the Company.

Taking into account 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 case of violation of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office considers it justified to provide the Company with a reminder regarding the breach of the provision. art. 31 in connection with Art. 58 sec. 1 lit. e) Regulation 2016/679. In these proceedings, the admonition imposed is of a preventive nature and is intended to prevent the occurrence of

similar violations in the future.

The possibility of replacing a financial penalty with a warning results from recital 148 of Regulation 12016/679, which stipulates that sanctions, including administrative fines, should be imposed "in order to make the enforcement of the provisions of this Regulation more effective". In view of the above, the President of the Personal Data Protection Office decided that, in the established circumstances of this case, the appropriate remedy would be to issue a reminder.

At the same time, it should be noted that in the event of a similar event occurring in the future, each admonition will be taken into account when assessing the grounds for imposing an 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.

2021-02-03