

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

of December

2021

DECISION

DKE.523.25.2021

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. 4 paragraph 1, art. 6 sec. 1 lit. c), 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 ended with the decision of the Inspector General for Personal Data Protection of 18 May 2017 (reference number DOLiS / DEC-604/17 / 40572,40578) regarding the refusal to accept the application regarding the processing of its data by C. Sp. z o.o. represented by A.G.

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 Ms E. S., hereinafter referred to as "the Complainant", about irregularities in the processing of her personal data by C. Sp. z o.o., hereinafter referred to as the "Company".

In her complaint, the applicant indicated that, during her stay on sick leave, Ms B.B. (acting as a member of the Supervisory Board of the Company) together with another person, inspected the correctness of the use of the sick leave by the complainant in her apartment. According to the complainant, these persons were not authorized to process her personal data, in particular with regard to her state of health.

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:

The company indicated that the complainant's personal data are processed in the data filing [...] in order to fulfill the obligations arising from the employment contract concluded with it of [...] June 1993, as well as in the data filing [...] in order to ensure the safety of the Company's operations. The company also indicated that pursuant to the provisions of the above-mentioned The applicant's employment contract was, inter alia, duties of the deputy President of the Management Board in the Company (until [...] July 2016). The company further indicated that both Ms B.B. as well as other persons, did not control the applicant's use of the sick leave. Referring to the event of [...] July 2016, the Company explained that Ms B.B. personally delivered to the complainant the notice of convening the meeting of the Management Board of the Company. The above-mentioned method of the notification was dictated by the close date of the meeting of the Management Board of the Company and in no case was it intended to verify the legitimacy of the applicant's being on sick leave. In its explanations, the Company also indicated that it did not disclose the complainant's personal data to unauthorized persons. Whereas Mrs. B.B. as a member of the Supervisory Board of the Company, he was authorized to access all documents of the Company, including employee documents. At the same time, the explanations were supplemented by the above-mentioned authorization of [...] May 2016, issued for an indefinite period.

In these facts, GIODO issued a decision of 18 May 2017 (reference number DOLiS / DEC-604/17 / 40572,40578), by which it refused to grant the complainant's request.

Within the statutory deadline, ie [...] June 2017 (date as postmarked), the complainant filed an application for reconsideration of the case.

In support of her request, the complainant indicated that Ms B.B. she could not hold an authorization from [...] May 2016 to process her personal data, because issuing such authorization precluded the need to issue another authorization for Ms B.B. this time to make a photocopy of the applicant's sick leave. In the opinion of the complainant, the date appearing on the authorization, ie [...] May 2016, is not the actual date of its issue.

The applicant reiterated that the visit of Ms B.B. at the door of the apartment, it was intended solely to verify the legitimacy of the applicant's use of the sick leave, as quoted: "Ms B. (...) the next day she came to the HR department for [the applicant's] sick leave", and also quotes: "In July 2016, the Social Insurance Institution (ZUS) requested (...) the clinic [of the complainant] to send a file with the history of the disease, as a request was received from the employer to check the legitimacy of using the sick leave".

The complainant added that under Art. 219 of the Act of September 15, 2000, Code of Commercial Companies (Journal of Laws of 2020, item 1526, as amended), hereinafter referred to as "K.s.h.", It does not follow that Mrs. B.B. she could quote, "come to my apartment with any correspondence. This is not part of the performance of its duties, as the Supervisory Board exercises permanent supervision over the company's operations in all areas of its activity. "

After re-examining all the evidence collected 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 u.o.d.o., proceedings conducted by the Inspector General for Personal Data Protection, 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 of 2016, item 922), hereinafter referred to as the "1997 Act", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, .., item 256, as amended), hereinafter referred to as "K.p.a". 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, 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 the 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 "the public administration body assesses the facts 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 a 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 K.p.a - Journal of Laws 00.98.1071, M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

Pursuant to Art. 219 § 1 of the Commercial Companies Code The supervisory board exercises permanent supervision over the company's activities in all areas of its activity. This means that it can supervise partial activities, some departments or the work of board members. Permanent supervision over the company's operations is the right and duty of the supervisory board. This means that the supervision must be permanent and relate to the entire company (see J. Jacyszyn, Supervisory Boards of Companies, KPP 1994, issue 3, p. 439). Article 219 of the Code of Commercial Companies and Partnerships it sets the broadest limits to the possibility of supervision. Permanent supervision over the company's activities is specified in terms of examples of activities of the supervisory board referred to in Art. 219 § 4 of the Code of Commercial Companies and Partnerships In order to perform its functions, the supervisory board has the right to review all the company's documents relating to the following spheres: financial, HR, contracts and management board resolutions (A. Kidyba, Spółka z o.o. Comment, 2002, p. 529).

In connection with the above, it should be pointed out again that the Company's action consisting in providing the complainant's personal data, Ms B.B. was based on the aforementioned provision, which fulfilled the condition of legality of data processing indicated in art. 23 sec. 1 point 2 of the Act of 1997. Currently, the activities of the Company would be permissible in connection with the content of Art. 6 sec. 1 lit. c) GDPR. On [...] July 2016, Mrs. B.B. was authorized to process the personal data of the Company's employees, and thus the personal data of the Complainant acting as the Deputy President of the Management Board.

The explanatory proceedings carried out in the present case did not give rise to the assumption that the personal delivery of the notice about the close date of the management board meeting by a member of the supervisory board during the applicant's

stay on sick leave was aimed at verifying the legitimacy of her use of the exemption. If, however, it was assumed that the inspection of the correctness of the use of the sick leave by the applicant in fact took place, the legal basis for its conduct was indicated in Art. 68 of the Act of June 25, 1999 on cash benefits from cash insurance in the event of sickness and maternity (Journal of Laws of 2021, item 1133, as amended). With the above According to the provision, the payers of contributions (employers) who submit more than 20 insured persons for sickness insurance and units of the Social Insurance Institution (ZUS) are entitled to control the correct use of the leave from work.

On the other hand, referring to the applicant's assertions that Ms B.B. was not authorized to process the complainant's personal data, due to the fact that the date of authorization of Ms B.B. was not the actual date of its issue, it should be emphasized that the President of the Office for Personal Data Protection does not have the authority to check the authenticity of any documents. If, in the opinion of the complainant, there was an offense against the credibility of documents, she should notify the competent law enforcement authorities. Similarly, referring to the allegation of unlawful personal communication to the applicant by Ms B.B. about the date of the meeting of the Management Board of the Company, it should be indicated that the matter concerning the form of such notification is also not subject to control by the President of the Office for Personal Data Protection. The competences of the President of the Personal Data Protection Office do not include the examination of the work organization implemented by the employer. The version of the events presented by the applicant in these proceedings shows that the background of the event described in the complaint could have been a conflict, a dispute between the applicant and the employer. At this point, therefore, it should be pointed out again that the President of the Office is not competent to settle disputes in this respect. The body for supervision and control over compliance with labor law is the National Labor Inspectorate. You can also pursue your rights under the labor law before a common court. The competences of the President of the Personal Data Protection Office include monitoring and enforcement of the application of the provisions on the protection of personal data, and as has been shown above, the event that was the subject of the complaint was not related to the violation of these provisions.

The assessment by the President of the Personal Data Protection Office serves in each case the legitimacy of referring to a specific subject of the order, corresponding to the instruction 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. The President of the Personal Data Protection Office found no irregularities in the disclosure of

personal data to the complainant, Ms B.B. Therefore, after re-analyzing the material collected in the case, the President of the Office for Personal Data Protection considered the correct decision contained in the decision of 18 May 2017 (reference number DOLiS / DEC-604/17 / 40572,40578) and upholds it in whole.

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.

2022-01-18