THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 19

September

2019

DECISION

ZSZZS.440.801.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), art. 6 sec. 1 lit. c and art. 58 sec. 2 of 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 (Official Journal of the European Union , L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Mr. JK, for disclosure of his personal data in the field of information contained in PIT-37 forms for 2015 and 2016 by the Head of (...) the Tax Office (...) with its seat in Ł. at the request of the Chief Labor Inspector with headquarters in Warsaw at ul. Barska 28/30 and questioning the legality of the above-mentioned an application for the disclosure of data and the processing of this data by the National Labor Inspectorate with its seat in Warsaw at ul. Barska 28/30, President of the Office for Personal Data Protection

orders the National Labor Inspectorate with its seat in Warsaw at ul. Barska 28/30, deletion of the personal data of Mr. J.K., contained in PIT-37 forms for 2015 and 2016;

as to the remainder, it refuses to accept the application.

Justification

The Personal Data Protection Office received a complaint from Mr. JK, hereinafter referred to as the Complainant, about disclosure of his personal data in the scope of information contained in PIT-37 forms for 2015 and 2016 by the Head of (...) the Tax Office (...) with its seat in Ł., Hereinafter referred to as hereinafter the Tax Office or the Tax Office, at the request of the Chief Labor Inspector with its seat in Warsaw at ul. Barska 28/30, hereinafter referred to as GIP, and challenging the legality of the above-mentioned an application for the disclosure of data and the processing of this data by the National Labor Inspectorate with its seat in Warsaw at ul. Barska 28/30, hereinafter referred to as PIP. The President of the Office, in a letter of (...) April 2019, made the District Labor Inspectorate in Ł. A party to the proceedings, hereinafter: PIP.

In the course of the administrative procedure, the President of the Personal Data Protection Office established the following facts.

Mr. J.K. was an employee of the National Labor Inspectorate, district in Ł., until (...) October 2017.

The applicant was an employee performing inspection activities and was therefore subject to the supervision of the General Inspectorate of Labor.

On (...) 09.2017, GIP sent to the Tax Office an application for disclosure of financial data from the Complainant's declaration. Based on Article. 14 sec. 1 of the Act of 13 April 2007 on the National Labor Inspectorate (i.e. Journal of Laws of 2018, item 623), it was requested to disclose personal data regarding declarations submitted by the taxpayer in 2015 and 2016, the amount of income obtained by the Complainant from copyrights and other sources, as well as information whether in 2015-2017 there was an impact of information on the taxpayer's income issued by a precisely indicated payer - (...).

The head of (...) the Tax Office (...) provided the Complainant's personal data from the Central Register of Tax Data in the requested scope on (...) 10.2017 and provided it with the clause "Fiscal Secret".

The District Labor Inspectorate in Ł. Indicated that it did not ask the GIP to provide the data contained in the PIT-37 form for 2015 and 2016 and does not have a copy of these documents.

The obtained personal data was used to terminate the employment relationship with the Complainant by the District Labor Inspectorate in Ł.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

It is necessary to emphasize that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, "a public administration body assesses the facts of the case according to the moment 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 based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of

June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A. Wróbel, Lex., El / 2012). At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated the following: "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision."

It should be emphasized, however, that two circumstances are decisive for the decision that must be issued in the present case. First, the disclosure of the Complainant's personal data by the Tax Office to the GIP was a one-off and accomplished event, which took place on (...) October 2017, i.e. during the application of the Act of August 29, 1997 on the protection of personal data (Journal of Laws No. of 2016, item 922, as amended), hereinafter referred to as the 1997 Act. Therefore, the legality of the disclosure of personal data will be assessed on the basis of the provisions of the 1997 Act. Secondly, in connection with the continued processing of data obtained by GIP , the provisions of 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 the repeal of Directive 95/46 / WE (Official Journal of the European Union, L 119, May 4, 2016), hereinafter referred to as: GDPR.

In this case, it is necessary to define the duties and roles performed by the National Labor Inspectorate, Chief Labor Inspector and the District Labor Inspectorate in Ł., Pursuant to the Act of 13 April 2007 on the National Labor Inspectorate (i.e. Journal of Laws of 2018, item 623), hereinafter referred to as the Act on PIP. First of all, it should be pointed out that the complainant was employed by the District Labor Inspectorate in Ł., Which, pursuant to Art. 3 sec. 1 of the Act on PIP is an organizational unit of the National Labor Inspectorate. On the other hand, the Chief Labor Inspector, pursuant to Art. 3 sec. 2 of the PIP Act, manages the National Labor Inspectorate, as well as pursuant to art. 18 sec. 6 of the PIP Act, performs activities in the field of labor law in relation to, inter alia, employees supervising or performing inspection activities (including in relation to the Complainant). It should also be noted that the statutory powers are granted to the authority, ie the National Labor Inspectorate, and are exercised through authorized persons, including the Chief Labor Inspector. Importantly, the NLI is responsible for exercising the competences of NLI as a body by an organizational unit included in the structure of the authority. Therefore, although the complaint in question concerns the Chief Labor Inspector, who, while exercising the powers conferred on the

authority of the National Labor Inspectorate, requested disclosure of the Complainant's personal data, the entity responsible for its operation is the National Labor Inspectorate. This means that despite the fact that the Chief Labor Inspector applied to the Head of the Tax Office in this case for disclosure of the complainant's indicated personal data, the National Labor Inspectorate, as the administrator of personal data within the meaning of Art. 4 sec. 7 GDPR and the authority whose competences were used by the applicant. In addition, the responsible entity is also the District Labor Inspectorate in Ł., Which, being the direct employer of the Complainant, used the complainant's personal data obtained by the Chief Labor Inspector in order to terminate the employment relationship with him.

When referring to the disclosure of data by the Tax Office to PIP, it should be noted that any form of personal data processing, the so-called "Ordinary" should have found support in one of the enumerated in Art. 23 sec. 1 of the Act of 1997, the prerequisites for the legality of this process. Each of these premises was autonomous and independent. This means that these conditions were equal, and the fulfillment of at least one of them constituted the lawful processing of personal data. It should be pointed out that, irrespective of the consent of the data subject, the processing of his personal data was permissible, inter alia, when it was necessary to exercise the right or fulfill the obligation resulting from the law in the case of ordinary data processing (Article 23 paragraph 1 point 2 of the 1997 Act).

In the case in question, the scope of the disclosed data is limited to the complainant's tax information, which is governed by the provisions of the Act of August 29, 1997 - Tax Ordinance (i.e. Journal of Laws 2018, item 800), hereinafter referred to as the tax ordinance. As indicated in Art. 293 § 1 of the Tax Ordinance, the data contained in the declaration and other documents submitted by taxpayers are subject to fiscal secrecy. Moreover, pursuant to Art. 299 § 1 of the tax ordinance, information from tax files may be made available to the authorities listed in art. 298 of the Tax Code. Article 298 of the Tax Ordinance does not refer directly to PIP as the body authorized to receive files covered by fiscal secrecy, but point 7 of this provision provides for disclosure to "other authorities - in cases and on the terms specified in separate acts". As indicated in Art. 14 sec. 1 of the Act on PIP, when performing its tasks, this body may cooperate with other entities and organizations, including the bodies of the National Revenue Administration. Pursuant to Art. 11 sec. 1 point 5 of the Act of November 16, 2016 on the National Revenue Administration (i.e. Journal of Laws of 2019, item 768, as amended), one of the bodies of the National Revenue Administration are the heads of tax offices.

In the opinion of the President of the Office, the disclosure of the requested personal data by the Tax Office did not violate the

provisions on the protection of personal data. This body is legally obliged to cooperate with the National Labor Inspectorate on the basis of the above-mentioned provisions, therefore the disclosure of data by the Tax Office was in accordance with Art. 23 sec. 1 point 2 of the Act of 1997. This authority was not empowered to refuse to disclose the requested information on the basis of the applicable provisions of law.

It should be noted, however, that in Art. 10 of the Act on PIP, there is a closed list of tasks performed by this authority, which includes, inter alia, supervision and control of compliance with the law (paragraph 1 point 1), control of the legality of employment, other gainful work, activity, and control of compliance with obligations (paragraph 1 point 3). The key issue in this case is the separation of statutory powers held by the National Labor Inspectorate acting as a supervisory body, and powers held by an organizational unit of PIP as an employer. As indicated in the literature, the tasks and competences resulting from Art. 10 of the PIP Act are implemented by this authority towards employers (Rączka, Krzysztof. Art. 10. In: Act on the National Labor Inspectorate. Comment. LexisNexis Legal Publishing, 2008). In the case at hand, the actions taken by the NLI were not aimed at implementing the tasks provided for in Art. 10 of the PIP Act, and the control of the employee's compliance with Art. 48 sec. 2 of the Act on PIP, which limits the economic activity of employees of the National Labor Inspectorate. Data obtained by PIP under Art. 14 in connection with joke. 10 should apply to controlled or supervised entities, and not to employees employed in its structures. In view of the above, it should be pointed out that the GIP, as an organizational unit of PIP, was not empowered to apply in the case the PIP's powers during the performance of statutory tasks and demand that the Complainant's data contained in the tax documentation stored in the Tax Office resources be made available. Moreover, the Act on PIP allows for obtaining data from the bodies of the National Revenue Administration, but only and exclusively as part of the control carried out by the State Labor Inspectorate in the entity acting as an employer. In view of the above, it should be concluded that obtaining the data of the Chief Labor Inspector from the Tax Office was inconsistent with Art. 23 sec. 1 of the Act of 1997, due to the lack of a competence provision that would allow PIP to obtain from the Tax Office data on a person employed in its structure, for a purpose other than employee control.

Moreover, the Complainant's personal data contained in the PIT forms provided, which was obtained by GIP, were used as the basis for the termination of the employment relationship concluded between the Complainant and the District Labor Inspectorate in Ł. It should be noted that from the explanations submitted by the GIP on (...) November 2018 . and (...) April 2019, it appears that the Complainant's personal data obtained from the Tax Office had a significant impact on the termination

of the employment relationship with the Complainant by his direct employer - District Labor Inspectorate in Ł. this unit communicated to the SPI. In the opinion of the President of the Personal Data Protection Office, the above action violated Art. 23 sec. 1 in conjunction joke. 26 sec. 1 of the Act of 1997. Not only the GIP exceeded the statutory powers of PIP, but also transferred the obtained data and allowed for their processing by other organizational units of the PIP, which were not authorized to process personal data obtained in this way concerning the Complainant. It should also be pointed out that in accordance with the purpose limitation principle, the data controller should make every effort to ensure that data processing is carried out for specific and legitimate purposes. Such an obligation was imposed by Art. 26 sec. 1 clause 2 - 4 of the 1997 Act, and currently it is based on Art. 5 sec. 1 lit. b GDPR. It should be pointed out that the Complainant's data was obtained with the use of the competences used to control employers as part of the process used to control the employee, and then they were used for a purpose other than for which they were collected, i.e. transferred to the PIP and used to terminate the employment relationship. In the opinion of the President of the Office, both of these activities were inconsistent with the principle of the limited purpose of personal data processing and constituted a breach of the provisions on the protection of personal data.
The personal data of the Complainant obtained by GIP are further processed, therefore the provisions of Art. 6 sec. 1 GDPR. The data of former and current employees are processed on the basis of art. 6 sec. 1 letter c of the GDPR. The scope of this data is limited in accordance with the provisions of Art. 221 of the Labor Code (the Act of June 26, 1974, the Labor Code (i.e. Journal of Laws of 2018, item 917, as amended). Nevertheless, the data obtained by GIP from the Tax Office are not necessary to fulfill the legal obligation In addition, as shown above, they should not have been obtained by the GIP or communicated to its organizational units. Therefore, it should be considered that their processing does not meet any of the conditions set out in Article 6 (1) GDPR and is therefore inconsistent with the applicable provisions on the protection of personal data, and therefore their removal is ordered.
The administrative procedure conducted by the President of the Personal Data Protection Office serves to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 58 of the GDPR, on the basis of which the supervisory authority may, inter alia, order the rectification or deletion of data, restriction of data processing, or ordering notification of these activities to recipients to whom the data has been disclosed (Article 58 (2) (g).
In the case at hand, it was established that the acquisition of the Complainant's personal data and the continuation of their

processing by PIP should be considered a breach of the provisions on the protection of personal data, i.e. Art. 23 sec. 1 of the 1997 Act and Art. 6 sec. 1 GDPR, therefore the President of the Office ordered the removal of the Complainant's personal data in the scope of data contained in PIT-37 forms for 2015 and 2016.

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

Caution: The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) and in connection with joke. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2017, item 1369, as amended), the party has the right to lodge a complaint against this decision with the Provincial Administrative Court in Warsaw, in within 30 days from the date of delivery of this decision, via 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 the right to assistance, including exemption from court costs.

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