

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

October

2019

## DECISION

ZKE.440.48.2019

Based on Article. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) in connection with joke. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with joke. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 6 sec. 1 lit. f) and art. 57 sec. 1 lit. a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 Data Protection Regulation) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. AH who runs his business economic under the name of P., represented by legal adviser Ms SK (Kancelaria Radcy Prawnego [...]) for irregularities in the processing of his personal data by M. Sp. z o.o. consisting in placing on the website [...] of an entry containing a debt card containing personal data in the field of name and surname, tax identification number and information on the amount of the debt, President of the Office for Personal Data Protection

discontinues the proceedings

### Justification

The Office of the Inspector General for Personal Data (currently: the Office for Personal Data Protection) received a complaint from Mr. A. H., running a business under the name of P. (hereinafter: the Complainant or P.), represented by legal counsel, Mrs. S. K., to order M. Sp. z o.o. (hereinafter referred to as the "Company") to delete the entry posted on the website [...] containing the debt card covering the following data range: name and surname, tax identification number and information on the amount of the debt.

In connection with the above, the attorney of the Complainant requested:

1. Order to remove from the website [...] the entry containing the debt card of Mr. A. H. containing personal data in the scope of name and surname, tax identification number and information on [...].
2. Awarding Mr. A. H. from M. Sp. z o.o. reimbursement of the costs of the proceedings, including the reimbursement of the stamp duty on the complaint and the granted power of attorney.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

1. By letter of [...] October 2019, the Company informed the President of the Personal Data Protection Office about the removal from the website of [...] the entry regarding claims against Mr. A. H. placed on the debt exchange operated by the Company.
2. Currently on the website [...] there is no entry containing a debt card with personal data of the Complainant in the scope of name and surname, tax identification number and information on the amount of the debt.

The President of the Office for Personal Data Protection informed the Complainant and the Company in the letters of conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility of expressing his opinion on the collected evidence and materials as well as the requests submitted in accordance with Art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings

In these facts, the President of the Personal Data Protection Office 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, item 1000, as amended), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection Act, 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 of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "kpa ". 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, also 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 (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

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 August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of 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 "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 the 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 the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

In the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court stated that "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the present case is the fact that the entry posted on the website [...] containing the debt card covering the following scope of the Complainant's data: name and surname, number NIP and information on the amount of the debt has been removed from the above-mentioned website, about which the Company M. informed the President of the Office. In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Code of Civil Procedure against its objectlessness. "The definition of Art. 105 § 1 of the Code of Civil Procedure "proceeding for any reason has become redundant" because it includes situations where a party's request is out of date or has expired by operation of law. The proceeding in the case is groundless when there is no party to it or there is no object, i.e. there is no legal and factual basis for considering and settling the case "(Judgment of the Provincial Administrative Court in Kraków of January 30, 2019, I SA / Kr 1289 / 18, LEX no.2622023). As the entry concerning the Complainant posted on the website [...] has been removed from that

website, these proceedings should be discontinued.

However, referring to the request of the Complainant's Representative to grant Mr. A. H. reimbursement by M. Sp. z o.o. costs of the proceedings, it should be noted that in accordance with the judgment of the Supreme Administrative Court of September 28, 2010, file ref. no. II OSK 1499/09 in the administrative procedure the possibility of adjudicating on the costs of proceedings between the parties is unknown.

In this situation, it should be noted that the President of the Personal Data Protection Office is not the authority competent to meet the above-mentioned works.

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

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he 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 to the party. The complaint is lodged through the President of the Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-02-16