

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 20

January

2022

DECISION

DKE.561.24.2021

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) in connection with Art. 7 sec. 1 and 2 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. 58 sec. 2 lit. b) in connection with Art. 31 and art. 58 sec. 1 lit. a) and lit. e) 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 Regulation) (Journal of Laws UE L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2, and in the Official Journal of the European Union L 74 of 04.03.2021, p. 35), following administrative proceedings to impose an administrative fine on K. S.A. represented by S. K., the 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 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 Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, with the changes announced in the Journal of Laws UE L 127 of 23/05/2018, page 2, and in the Journal of Laws of the EU L 74 of 04/03/2021, page 35), consisting in the lack of cooperation with the President of the Office for Personal Data Protection in as part of the performance of his tasks and failure to provide the President of the Office for Personal Data Protection with access to information necessary for the performance of his tasks.

Justification

Facts

The Office for Personal Data Protection received a complaint from Ms E. C., represented by legal advisor K. F., against the unlawful processing of her personal data by P. Closed Investment Fund, managed and represented by K. Spółka Akcyjna

(hereinafter referred to as the "Company"). In the complaint, the attorney of Ms E. C. asked for the fulfillment of the information obligation towards her principal as well as for the submission of a copy of two debt assignment agreements containing her personal data.

In order to consider the complaint of Ms E. C., the President of the Personal Data Protection Office (hereinafter referred to as the "President of the Personal Data Protection Office") initiated administrative proceedings with the reference number [...], under which - pursuant to 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 regulation on data protection) (Journal of Laws UE L 119 of 04.05.2016, p. 1, as amended by the changes announced in the Journal of Laws UE L 127 of 23.05.2018, p. 2, and in the Journal of Laws UE L 74 of 04.03.2021, p. 35) (hereinafter referred to as "Regulation 2016/679") - called the Company - in a letter of [...] August 2020 - to respond to the content of the complaint and to provide explanations on the matter, in particular to provide answers to three specific questions on issues relevant to the case. The tender offer was delivered to the Company on [...] August 2020.

In the letter of [...] August 2020, the Company's representative - legal advisor S. K. - referred to the complaint, provided explanations in the case by answering all three questions addressed to the Company, and provided evidence confirming the provided explanations. The letter of attorney of the Company attached a photocopy (not certified in any way) of the power of attorney of [...] August 2020, from which he was entitled to "represent the Company in administrative proceedings conducted by the President of the Office for Personal Data Protection [...], in particular proceedings initiated in connection with the submission of complaints to PUODO regarding the processing of personal data ".

Due to the fact that the attorney did not properly demonstrate his authorization to represent the Company in the case, the President of the Personal Data Protection Office (UODO) asked it - in a letter of [...] October 2020 - to supplement the formal shortcomings of the letter of [...] August 2020 by sending a power of attorney granted attorney at law S. K. to represent the Company in the case or for a reply to the letter of the President of the Personal Data Protection Office of [...] August 2020, signed by persons authorized to represent the Company in accordance with the relevant entry in the National Court Register. This summons - delivered to the Company on [...] November 2020 - remained without any response.

Due to the lack of response to the call of [...] October 2020 - in a letter of [...] January 2021 - the President of UODO again

asked the Company to supplement the formal shortcomings of the letter of [...] August 2020 by sending a power of attorney granted attorney at law S. K. to represent the Company in the case or for a reply to the letter of the President of the Personal Data Protection Office of [...] August 2020, signed by persons authorized to represent the Company in accordance with the relevant entry in the National Court Register. Also, this call (served on the Company on [...] January 2021) remained without any response from the Company.

Another (third) summons - essentially identical to the content of the summons of [...] October 2020 and [...] January 2021 - the President of the Personal Data Protection Office (UODO) addressed the Company in a letter of [...] February 2021. At the summons, this - delivered to the Company on [...] March 2021 - The Company also did not respond.

Another (fourth) request to supplement the formal deficiencies of the letter of [...] August 2020, the President of UODO sent to the Company on [...] April 2021. This request was delivered to the Company on [...] May 2021. Also, it remained without any reply.

The request of the President of the Personal Data Protection Office of [...] April 2021 contained an instruction on the possibility of imposing on the Company - in the absence of an exhaustive response to this request - an administrative fine in connection with the failure to cooperate with the President of the Personal Data Protection Office in the performance of his tasks and failure to provide access to personal data and information necessary for the President of the Personal Data Protection Office to perform his tasks, in accordance with art. 83 sec. 4 lit. a) or Art. 83 sec. 5 lit. e) of Regulation 2016/679.

The above facts of the case were determined by the President of the Personal Data Protection Office on the basis of all official correspondence between the Company and the President of the Personal Data Protection Office, contained in the files of the proceedings with the reference number [...]. This correspondence reflects all the attempts by the President of the Personal Data Protection Office to obtain access to information necessary for the performance of his tasks, i.e. in this case - to consider the case number [...], and on the other hand - the reaction of the Company and its representative to the requests of the President of the Personal Data Protection Office.

Procedure

Due to the failure by the Company to provide binding and evidentiary information necessary to resolve the case with the reference number [...], the President of the Personal Data Protection Office initiated against it ex officio - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679 - these administrative proceedings (no. DKE.561.24.2021) regarding the imposition of an

administrative fine, in connection with the violation of Art. 31 and art. 58 sec. 1 lit. a) and e) of Regulation 2016/679. The Company was informed about the initiation of the procedure by letter of [...] September 2021, delivered to the Company on [...] September 2021. The Company was also requested by this letter - 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), hereinafter referred to as "u.o.d.o." - to present a financial statement or other document presenting the amount of turnover and financial result achieved by the Company in 2020.

In response to the letter informing about the initiation of administrative proceedings No. DKE.561.24.2021, the Company's representative, legal counsel S. K., supplemented with a letter of [...] September 2021 (which was received by the Office for Personal Data Protection [...] September 2021.) - formal defects of his letter of [...] August 2020, presenting a copy of the power of attorney granted to him by the Company on [...] August 2020, certified by himself to be true to the original. At the same time, in the same letter, the attorney of the Company requested that the administrative fine be waived in these proceedings, indicating the reasons for not showing in the proceedings with reference number [...] the authorization of the person submitting the explanations to represent it on behalf of the Company. The Company's representative indicated that the errors in the case were related to the fact that at the same time three cases were pending before the President of the Personal Data Protection Office (UODO) concerning complaints by persons named C. (one of the complaints of Mrs. E. C. and two of the complaints of Mr. M. C.). In all these cases, Mr. S. K. was an attorney of two entities against which complaints were filed: K. S.A. and K. Towarzystwo Funduszy Inwestycyjnych S.A. fund manager P. Fundusz Inwestycyjny Zamknięty. In addition, as the representative of the Company pointed out, during the COVID-19 pandemic "[...] in the suggested company, and a significant part of the required work model was remote work, and the correspondence to the representative was to be sent in the form of a scan, which could have resulted in errors and delays. ". The attorney of the Company indicated that the Company de facto provided exhaustive explanations in a letter of [...] August 2020, that his relevant power of attorney was in the case file number [...] (from the complaint by M. C.) and that the facts of the case [...] had been clarified in a letter sent to the President of the Personal Data Protection Office (UODO) on behalf of K. TFI S.A., in which the letter "also describes the Company's activities in relation to NSFIZ [in fact: P. Fundusz Inwestycyjny Zamknięty]". The representative of the Company emphasized that "the breach of the Company did not prejudice the main purpose of the Office's explanatory proceedings, which is to ensure the protection of personal data for the persons concerned. It did not result from ill-will or passivity (responses were referred to

the wrong signatures), but from repeated mistakes of the attorney. " Finally, the representative of the Company declared that the Company was ready to clarify further doubts of the authority.

After considering all the evidence collected in the case, the President of the Personal Data Protection Office considered the following.

Regulations

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 powers, the President of the Personal Data Protection Office is entitled, inter alia, to conduct proceedings on the application of the provisions of the legal act in question (Article 57 (1) (h)), including proceedings related to the assessment of personal data breaches, reported to the President of the Personal Data Protection Office by data administrators pursuant to Art. 33 of the Regulation 2016/679.

In order to enable the performance of such defined tasks, the President of the Personal Data Protection Office is entitled to a number of tasks specified in art. 58 sec. 1 of Regulation 2016/679, the rights in the scope of conducted proceedings, including the right to order the controller and the processor to provide all information needed to perform its tasks (Article 58 (1) (a)) and the right to obtain access from the controller and the processor to all personal data and information necessary for the performance of its tasks (Article 58 (1) (e)).

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, is subject to - in accordance with art. 83 sec. 5 lit. e) in fine 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.

In addition, both the controller and the processor are required, at the request of the supervisory authority, to cooperate with it in the performance of its tasks, as provided for in Art. 31 of Regulation 2016/679. Failure to comply with this obligation is threatened - in accordance with Art. 83 sec. 4 lit. a) Regulation 2016/679 - an administrative fine of up to EUR 10,000,000, and in the case of a company - up to 4% of its total annual worldwide turnover from the previous financial year, with the higher amount being applicable.

Moreover, the President of the Personal Data Protection Office is entitled to a number of provisions specified in Art. 58 sec. 2 remedial powers, including reminders to the administrator or processor in the event of violation of the provisions of Regulation 2016/679 by processing operations. The President of the Personal Data Protection Office, acting pursuant to Art. 58 sec. 2 lit. b) of Regulation 2016/679, it may consider it justified to provide the administrator or processor with a reminder in the event of a breach of the provisions of Regulation 2016/679, including the provisions of art. 31 and art. 58 sec. 1 lit. e) of this legal act. Pursuant to recital 148 of Regulation 2016/679, in order to make the enforcement of the Regulation more effective, sanctions, including administrative fines, should be imposed for its infringement, in addition to or instead of the relevant 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 actions taken by the controller to minimize the harm, the degree of liability or any prior breach, and the way in which the supervisory authority became aware of a breach, compliance with the measures imposed on the controller or processor, compliance with codes of conduct and any other aggravating or mitigating factors.

Legal assessment

Referring the above-mentioned provisions of the Regulation 2016/679 to the facts established in this case, it should be stated that the Company, as a party to the proceedings with reference number [...], by failing to provide binding and evidential explanations necessary to resolve the case with reference number [...], breached the obligation to provide the President of the Personal Data Protection Office with access to information necessary for the performance of his tasks, resulting from Art. 58 sec. 1. lit. e) Regulation 2016/679. As a consequence, the lack of access to the information requested by the President of the Personal Data Protection Office from the Company prevented a thorough examination of the case and resulted in the prolongation of the above-mentioned proceedings, which in turn contradicts the basic principles governing administrative proceedings - specified in Art. 12 sec. 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), hereinafter referred to as the "k.p.a.", principles of insight and speed of proceedings.

The President of the Personal Data Protection Office could not consider the information as evidence valid in the letter of [...] August 2020 by a person who did not demonstrate authorization to act on behalf of the Company in accordance with Art. 33 § 3 of the Code of Civil Procedure. Such a correct demonstration of the authorization to represent the Company cannot be considered to be the presentation of a copy of the power of attorney neither officially certified nor certified by a professional

attorney appearing in the case. For inconsistent with the above-mentioned provision of Art. 33 § 3 of the Code of Civil Procedure the reference to the fact that the relevant power of attorney is in the files of another case should also be recognized. This provision clearly implies the obligation to submit a power of attorney in each case in which the attorney acts separately. This is how the doctrine and jurisprudence of administrative courts are unequivocally adopted: "The administration body is not obliged to seek power of attorney in files other than the files of a specific case (see e.g. the third thesis of the decision of the Supreme Administrative Court of 26 April 2012, II GZ 140/12, LEX No. 1321426) . " (P. M. Przybysz [in:] Code of Administrative Procedure. Updated comment, LEX / el. 2021, art. 33.).

The President of the Personal Data Protection Office called the Company four times - pursuant to Art. 64 § 2 of the Code of Civil Procedure - to remedy the formal shortcomings of the letter of [...] August 2020 (see points 4-7 of the statement of reasons to this decision), however, these requests (properly delivered to the Company) remained unanswered. As a result of the above, it was necessary to initiate these proceedings to impose an administrative fine on the Company, as a result of which the Company started cooperation with the President of the Personal Data Protection Office. In response to the information about the initiation of the procedure, the Company's representative submitted a copy of the power of attorney certified by him to the case file number [...], which allowed the President of the Personal Data Protection Office to consider the explanations contained in the letter of the Company's representative of [...] August 2020 as valid. in turn, allowed the President of the Personal Data Protection Office to take further steps in the case of [...]. Therefore, it should be considered that upon receipt of the letter of the Company's attorney with the attached copy of the power of attorney at the Office for Personal Data Protection, i.e. the beginning should be considered the date of [...] November 2020, i.e. the date of the expiry of the deadline for supplementing the formal deficiencies of the letter of [...] August 2020, designated for the Company in the tender offer of [...] October 2020).

The above-described proceedings of the Company, consisting in the lack of response to the requests addressed to it by the President of the Personal Data Protection Office, also exhaust - apart from the violation of Art. 58 sec. 1. lit. e) Regulation 2016/679 - indications of violation of art. 31 of this regulation, which requires the controller and the processor to cooperate with the supervisory authority - at its request - in the performance of its tasks. In the opinion of the President of the Personal Data Protection Office, there is no doubt that for some time (from [...] November 2020 to [...] September 2021 - see point 21 of the justification to this decision) in the proceedings with reference number [...] it was not possible to speak of cooperation on the

part of the Company and its attorney, despite the calls addressed to the Company. These calls, in fact, formulated a "request" of the supervisory authority referred to in Art. 31 of Regulation 2016/679.

Finding a breach by the Company of the provisions of Art. 58 sec. 1 lit. e) and art. 31 of the Regulation 2016/679, the President of the Personal Data Protection Office notices, however, that it was removed by the Company immediately and fully after the initiation of the procedure ended with the issuance of this decision. The President of UODO considers the explanations of the Company's attorney as to the proceedings of the same Company in the case No. [...] to be credible. In particular, notes that the infringement was unintentional; resulted from human errors and organizational shortcomings related to the flow of information and documents in the Company and between the Company and its proxy, which were largely caused by the COVID-19 pandemic. The circumstances of the case, and in particular the attitude of the Company in these proceedings, allow it to be assumed that its failure to respond to the calls of the President of the Personal Data Protection Office in the case with the reference number [...] was not a result of ill will, nor was it intended to deliberately obstruct the proceedings. On the contrary - the subsequent, active attitude of the Company indicates its return to full and efficient cooperation with the President of the Personal Data Protection Office, which was the basic - apart from the repressive aspect - purpose of initiating this proceeding. In the opinion of the supervisory body, the very initiation of the proceedings to impose an administrative fine and the real prospect of imposing a financial penalty have become a clear signal for the Company that evasion of the obligations imposed by the provisions of Regulation 2016/679, including procedural obligations (related to the UODO in proceedings), will inevitably lead to the application of more severe sanctions, provided for by these provisions, in the future. It should be noted that in the event of a similar event occurring in the future, each reminder given to the Company by the President of the Personal Data Protection Office will be taken into account when imposing a possible administrative fine, in accordance with the principles set out in Art. 83 sec. 2 of the Regulation 2016/679.

Bearing in mind 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 event of a breach of the provisions of this Regulation by processing operations, the President of the Personal Data Protection Office found it justified to provide the Company with a reminder for breach of Art. 31 and art. 58 sec. 1 lit. e) Regulation 2016/679, assuming that in the light of the criteria set out in Art. 83 sec. 1 and 2 of Regulation 2016/679, this sanction will be proportional to the breach, i.e. it will be effective and necessary to achieve the assumed goals of this proceeding, but at the same time it will be as painful as possible

for the Company.

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 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.

2022-02-03