

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

## DECISION

ZKE.440.40.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 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. 12 point 2 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and with Art. 57 sec. 1 points a) and f) 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 (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), after conducting administrative proceedings regarding the complaint of Mrs. AB, for processing, without a legal basis and without fulfilling the information obligation, her personal data by L. Sp. z o.o., the President of the Personal Data Protection Office discontinues the proceedings.

## JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms A. B., hereinafter referred to as "the Complainant", concerning irregularities in the processing of her personal data by L. Sp. z o.o. (hereinafter referred to as "L.") and by U. Sp. z o.o. (hereinafter referred to as "the Laws"). The applicant indicated in her complaint that [...] in May 2015, L. had sent her a letter requesting "amicable damages" in a case about which she had no knowledge. In connection with this event, the complainant accused L. of processing her personal data without a legal basis and without fulfilling the information obligation referred to in Art. 25 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as u.o.d.o. 1997, while as regards U., the complainant questioned the legality of disclosure of her personal data by that company to company L. By the decision of [...] June 2015, ref. material concerning the complaints of the complainant against U. The proceedings regarding

the processing of the complainant's personal data by the law were registered under reference number [...], while the present proceedings were conducted only against L. As regards L. The applicant requested that her personal data be removed from the databases of that company and that her obligation to inform referred to in Art. 25 u.o.d.o. 1997.

In the course of the proceedings conducted in the present case (also based on the findings made in the course of comprehensive inspections carried out in L. - file reference [...] and [...]), the President of the Personal Data Protection Office established the following facts:

L. acquired [...] in June 2013 the copyrights to audiovisual works (films) posted on the website [...] in the field of exploitation including the use and distribution of these works on the [...] network.

Using the application for monitoring copyright infringement in the network [...], L. determined that [...] in June 2014 on the network [...] was disseminated, using the IP address [...], without L.'s consent, an audiovisual work "[...]", hereinafter referred to as "the Work".

L. determined, based on the data provided by the telecommunications operator U. Sp. z o.o. to the files of the investigation with reference number [...], conducted by the Municipal Police Headquarters in [...] (in which L. was the aggrieved party), that the complainant was the subscriber to the Internet connection used to disseminate the Work. From the files of these proceedings, L. obtained the complainant's personal data in the field of name and surname, address of residence or stay, PESEL number and IP address of her computer.

As the legal basis for obtaining the complainant's personal data, L. indicated Art. 156 § 5 of the Act of June 6, 1997, the Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended), giving the parties to the preparatory proceedings the right to access the files of the proceedings and the right to draw up or obtain copies and copies of documents. As the legal basis for the further processing of the Complainant's personal data - in order to pursue civil law claims for compensation for the damage caused by the unlawful dissemination of the Work - L. invoked Art. 23 sec. 1 point 2 u.o.d.o. 1997.

Using the data obtained from the files of the investigation with reference number [...], L. sent to the applicant on [...] May 2015 a letter entitled "Pre-trial request for payment or to provide explanations regarding the committed crime", in which it requested the applicant to pay "amicable damages" in the amount of [...] PLN as compensation for damage caused as a result of unlawful conduct - in its opinion - disseminates the [...] Work on the Internet or to provide explanations as to the circumstances of the event. The letter was delivered to the applicant on [...] May 2015.

In the above-mentioned letter, L. informed the Complainant about her address and full name, about the purpose of data collection ("implementation of civil and criminal claims arising from the law"), about the categories of data recipients ("Data recipients may be: court, police, prosecutor's office, bailiff a court, a selected law firm, a debt collection company and a register of insolvent debtors. "), about the source of the data (" As a result of the investigation conducted by the Municipal Police Headquarters in [...] [file reference [...]], [ ...] ") and about the complainant's right to access and correct their data. However, the letter does not contain the other information provided for in Art. 25 sec. 1 u.o.d.o. 1997: on the scope of collected data and the complainant's rights under Art. 32 sec. 1 point 7 and 8 u.o.d.o. 1997.

On [...] August 2018, pursuant to the decision of the District Court [...] Commercial Division of the National Court Register, company L. (KRS No. [...]) was deleted from the Register of Entrepreneurs of the National Court Register. The deletion became final on [...] September 2018. The dissolution of the company without liquidation proceedings, and consequently its deletion from the National Court Register, took place pursuant to Art. 25d paragraph. 1 of the Act of August 20, 1997 on the National Court Register (Journal of Laws of 2019, item 1500, as amended), which states: "If the registration court determines in proceedings for dissolution of an entity entered in the register without conducting winding-up proceedings that the entity does not have transferable assets and does not actually conduct business, the registry court decides on the dissolution of the entity without conducting winding-up proceedings and orders it to be deleted from the register ". The announcement on the dissolution of the company without liquidation proceedings was published in Monitor Sądowy i Gospodarczy No. [...] of [...] August 2018, while the announcement on its deletion from the National Court Register - in the Court and Economic Monitor No. [...] of [...] November 2018

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

On the date of entry into force 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. 2018 ", ie on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, on the basis of u.o.d.o. 1997, in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "the Code of

Administrative Procedure". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act on Personal Data Protection Act 2018).

Pursuant to Art. 57 sec. 1 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 (general regulation on the protection of personal data) (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) its territory, it monitors and enforces the application of this regulation (letter a) and considers complaints submitted by the data subject or by an entity empowered by him - in accordance with Article 80 of Regulation 2016/679 - an entity, organization or association, to an appropriate extent and inform the complainant of the progress and the outcome of those proceedings within a reasonable time (point (f)).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. As the doctrine points out, "the 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., EI / 2012). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 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".

In the course of these proceedings, the President of the Personal Data Protection Office stated, on the basis of entries in the National Court Register (covered by the warranty of public faith and presumption of truthfulness) and notices in the Court and Economic Monitor, the legal existence of the company L will cease on [...] August 2018 The finding of this fact entails the necessity to recognize the present proceedings as groundless and to discontinue it pursuant to Art. 105 § 1 of the Code of Civil Procedure

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Civil Procedure means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority (B. Adamiak, J. Borkowski, Code of Administrative Procedure Comment ", 14th edition, CH Beck Publishing House, Warsaw 2016, p. 491). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits". The jurisprudence has developed the view that the art. 105 § 1 of the Code of Civil Procedure the phrase "for any reason" means "any reason resulting in the lack of one of the elements of the material legal relationship in relation to its subjective or objective party" (judgment of the Supreme Administrative Court of March 18, 1997, SA / Rz 258/96, LEX No. 58125). This creates the basis for distinguishing the subjective and objective reasons for the subjectivity of the proceedings. The subjective causes include the death of the party (unless the case mentioned in Article 97 § 1 point 1 occurs), the loss of its legal existence by a party other than a natural person, as well as the lack of a legal interest on the part of the entity requesting the decision, if the authority it will state this after the proceedings have been initiated. (A. Krawczyk in: Code of Administrative Procedure. Commentary to Art. 105 [online], Wolters Kluwer Polska, 2019-10-30, <https://sip.lex.pl/#/commentary / 587785940/583380>).

In the present case, this element of the substantive legal relationship which ceased to exist during the proceedings is the subjective element - the existence of a legal person that is a party to a material legal relationship which arises between the data subject and the data processor (in this case the data controller). ). The finding of the existence of both parties to this relationship would only allow to decide whether the processing of personal data was actually carried out between the parties, and then about its legality (existence of a legal basis for processing) and compliance with the provisions on the protection of

personal data (including the administrator's compliance with information obligations incumbent on him towards the applicant).

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 Civil Procedure of the decision, the party has the right to submit an application for reconsideration of the case within 14 days from the date of its delivery 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.

2021-05-14