

Warsaw, day 23

March

2022

Decision

DKE.561.18.2021

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended), art. 7 section 1 and section 2, art. 60, art. 101, art. 101a sec. 2, art. 103 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), art. 83 sec. 1-3, art. 83 sec. 5 lit. e) in connection with art. 31, art. 58 section 1 lit. e), art. 58 sec. 2 lit. i) 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 Data Protection Regulation ) (Official Journal EU L 119 of 04/05/2016, p. 1, as amended) (hereinafter referred to as "Regulation 2016/679"), after conducting administrative proceedings initiated ex officio regarding the imposition of an administrative fine on Mr. P.K. residing B., plenipotentiary of the initiators of the municipal referendum on recalling the municipal council [...] before the end of the term of office, President of the Office for Personal Data Protection,

finding a violation by Mr. P. K. of the B. the provisions of art. 31 and art. 58 sec. 1 lit. e) Regulation 2016/679, consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and in the failure to provide access to personal data and other information necessary for the President of the Office for Personal Data Protection to perform his tasks, imposes on Mr. P.K. . B. an administrative fine in the amount of PLN 2,285 (say: two thousand two hundred and eighty-five zlotys).

#### JUSTIFICATION

On [...] February 2021, the Office for Personal Data Protection received information from the Electoral Commissioner in J indicating that Mr. P. K. zam. B., as the representative of the initiators of the municipal referendum on the dismissal of the Municipal Council [...] before the end of the term of office, respectively: the protocol of destruction of cards containing the signatures of residents entitled to elect the above-mentioned Council who wanted to support the initiative of holding this referendum or a statement that he did not collect signatures in support of the initiative to cancel the above-mentioned Council

before the end of the term. President of the Office for Personal Data Protection (hereinafter "President of the Personal Data Protection Office") as part of administrative proceedings initiated ex officio to consider the case under reference number [...], in a letter of [...] March 2021, he addressed Mr. P. K. zam. B., plenipotentiary of the initiators of the commune referendum on recalling the commune council [...] before the end of the term of office, for information:

whether the signatures of residents entitled to elect the Commune Council [...] were collected, who wanted to support the initiative of holding a communal referendum on the cancellation of the above-mentioned of the Council before the end of the term of office. In the event that the answer to the question asked in point 1 would be affirmative, the personal data protection authority asked for clarification in the following scope:

or in connection with the failure to submit a destruction report of cards containing the above signatures, an analysis of the incident in terms of the risk of violation of the rights or freedoms of natural persons was performed, which is necessary to assess whether there has been a data protection violation resulting in the need to notify the President of the Office for Personal Data Protection and the persons affected by the violation;

if the cards on which the signatures of people supporting the above-mentioned initiative were collected have not yet been destroyed, please indicate in whose possession these cards are currently - I also ask you to indicate the delivery address of the person in possession of these cards.

Letter of [...] March 2021, reference number [...] was sent to the address of residence of Mr P. K. indicated by the Electoral Commissioner in J. This letter was received by Mr P. K. [...] March 2021 Due to the lack of response from Mr P. K., again by letter of [...] May 2021 another summons was sent to him to provide the above-mentioned information. This letter was received by Mr. P. K. [...] of May 2021. The data protection authority also did not receive the requested information for this letter. In the letters of [...] March 2021. and [...] of May 2021, Mr. P. K. was instructed that the lack of response to the request of the President of the UODO may result - in accordance with art. 83 sec. 5 lit. e) in connection with joke. 58 sec. 1 lit. a) Regulation 2016/679 - imposition of an administrative fine.

Due to Mr. P.K.'s failure to provide information necessary to resolve the case with reference number [...], the President of the UODO initiated ex officio - pursuant to Art. 83 sec. 5 lit. e) Regulation 2016/679, in connection with the violation of Art. 31 and Art. 58 sec. 1 letter a) and e) of Regulation 2016/679 - administrative proceedings regarding the imposition of an administrative fine on Mr. P.K. (sign. DKE.561.18.2021). Mr. P. K. was informed about the initiation of the proceedings in a letter of August

[...] 2021, which he received on [...] August 2021. In this letter, Mr. P. K. was also summoned - in order to determine the basis for the penalty, based on Art. 101a sec. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) - to present evidence confirming the tax settlement on their total income for 2020, i.e. to present the correct PIT declaration, in order determining the amount of the administrative fine in these proceedings.

Until the date of this decision, Mr. P. K. did not provide the information necessary to consider the case with reference number [...] Mr. P. K. also did not comment on the letter informing about the initiation of the proceedings, reference number DKE.561.18.2021 regarding the imposition of an administrative fine on him.

After considering all the evidence collected in the case, the President of the UODO considered the following.

In accordance with art. 57 sec. 1 lit. a) of Regulation 2016/679, the President of the UODO - 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 competence, the President of the UODO considers, among others: complaints lodged by data subjects, conduct investigations into these complaints to the appropriate extent and inform the complainant of the progress and results of these investigations within a reasonable time (Article 57(1)(t)). In order to enable the enforcement of such competences, the President of the UODO is entitled to a number of specified in art. 58 sec. 1 of Regulation 2016/679, rights in the field of ongoing proceedings, including the right to order the controller and the processor to provide all information necessary to perform its tasks (Article 58(1)(a)). Violation of the provisions of Regulation 2016/679, consisting in failure to provide the information referred to above, resulting in a violation of the powers of the supervisory authority set out in art. 58 sec. 1, and is subject - in accordance with Art. 83 section 5 letter 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 global turnover from the previous financial year, with the higher amount applicable . It should also be pointed out that the controller and the processing entity are obliged to cooperate with the supervisory authority in the performance of its tasks, as provided for in art. 31 of Regulation 2016/679.

On the other hand, the processing of personal data of the group of initiators of the referendum on the appeal of the commune council and their proxy, if the initiator of the referendum is a group of citizens, is regulated by the provisions of the Act of 15 September 2000 on the local referendum (Journal of Laws of 2019, item 741). In a local referendum, hereinafter referred to as the "referendum", residents of a local government unit, as members of a local government community, express their will by voting to dismiss the decision-making body of this unit (Article 2(1)(1) of the Local Referendum Act). The initiator of the

referendum notifies in writing the chairman of the board of a given local government unit, and in the commune - the head of the commune (mayor, city president) of the intention to initiate the referendum (Article 12(1) of the Local Referendum Act). The notification referred to in sec. 1, contains: if the referendum is initiated by a group of citizens - surnames, first names, addresses of residence and PESEL registration numbers of all members of the group and an indication of the person acting as its representative (Article 12(2)(1) of the Local Referendum Act). The initiator of the referendum on recalling a body of a local government unit before the end of the term of office shall also notify the election commissioner of the intention to take such an initiative, the provisions of para. 1-3 (Article 12(6) of the Local Referendum Act). Within 60 days from the date of the notification referred to in Art. 12 sec. 1, the initiator of the referendum collects signatures of residents entitled to elect the constitutive body of a given local government unit who want to support the initiative in this matter (Article 14(1) of the Local Referendum Act). Signatures are collected on cards, each of which contains information about the subject of the intended referendum and that the support cannot be withdrawn. The card also contains: surnames and first names of group members and the name, surname and place of residence of the proxy, if the referendum is initiated by a group of citizens (Article 12(2)(1) of the Local Referendum Act).

If an application for a referendum is not submitted, its initiator shall destroy the cards on record (Article 14a(1) of the Local Referendum Act). The protocol confirming the destruction of the cards shall be immediately submitted by the referendum initiator to the council of the local government unit, and in the case of a referendum on the dismissal of a local government body - to the election commissioner (Article 14a(2) of the Local Referendum Act).

The findings made in this case showed that the Electoral Commissioner in J. received a notification of [...] September 2020 about the intention of a group of residents of the Commune [...] to hold an initiative to hold a communal referendum on the dismissal of the Commune Council [...] before the deadline term. The notification includes personal data of the group of initiators of this referendum in the following scope: name and surname, address of residence, PESEL number. The initiators of the referendum indicated Mr. P. K. zam. B. (notification in the case files).

It should be emphasized that Mr. P. K., as the representative of the group of initiators of the referendum on the appeal of the Commune Council [...] being the administrator of this data, is also responsible for compliance with the provisions of Regulation 2016/679, in this case, in particular for processing data in a manner that ensures appropriate security.

Due to the fact that Mr. P. K., as the data administrator of the group of initiators of the referendum on the appeal of the

Commune Council [...], did not submit to the Electoral Commissioner in J., respectively: the protocol of destruction of cards containing the signatures of residents entitled to elect the above-mentioned Council who wanted to support the initiative of holding this referendum or a statement that it did not collect signatures in support of the initiative to cancel the above-mentioned of the Council before the end of the term of office, the personal data protection authority as part of the initiated proceedings with reference number [...] in order to determine whether the signatures of residents were collected at all, and if so, whether in connection with the failure to submit a destruction report of cards containing the above signatures, an analysis of the incident in terms of the risk of violation of the rights or freedoms of natural persons was performed, which is necessary to assess whether there has been a data protection violation resulting in the need to notify the President of the Office for Personal Data Protection and the persons affected by the violation. In addition, in the event that the cards on which the signatures of persons supporting the above-mentioned initiative were collected have not yet been destroyed, the data protection authority asked Mr. P.K. to indicate in whose possession these cards are currently in possession, providing the cardholder's delivery address.

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case and described at the beginning of the justification of this decision, it should be stated that Mr. P.K. - as a party to the proceedings conducted by the President of the Office for Personal Data Protection, reference number [...] - breached its obligation to provide the supervisory authority with access to information necessary for the performance of its tasks, in this case to resolve the matter on the merits. Such action by Mr. P.K. is a violation of Art. 58 sec. 1 lit. e) Regulation 2016/679.

It should be noted that in the proceedings under reference number [...] The President of the Personal Data Protection Office twice called on Mr. P. K., as the representative of the initiator of the municipal referendum on the dismissal of the Municipal Council [...] before the end of the term of office, to provide explanations necessary to consider the case. Letters sent by the President of the Personal Data Protection Office were received by the addressee, but remained unanswered. The above state of affairs was not changed by the subsequent initiation of these proceedings regarding the imposition of an administrative fine. Mr. P. K., duly notified by the supervisory authority of the intention to take measures against him specified in art. 58 sec. 2 lit. i) Regulation 2016/679 actions, and, moreover, instructed about his right - as a party to these proceedings - to comment on the evidence and materials collected and the requests made, he did not take any steps to explain his inaction or justify the lack of cooperation with the President of the Personal Data Protection Office. Mr. P. K. also did not contact the Office for Personal

Data Protection to signal any doubts he might have regarding the scope of information requested by the President of the UODO.

The above-described proceedings of Mr. P. K. in the case with reference number [...], i.e. failure to respond to - contained in the above-mentioned documents received by him letters - specific, not too complicated and requiring no specialist knowledge in the field of personal data protection, questions from the President of the Personal Data Protection Office, indicate the lack of will of the latter to cooperate with the President of the Office for Personal Data Protection in establishing the facts of the case and its correct resolution, or at least grossly disregarding his obligations regarding cooperation with the President of the Office for Personal Data Protection as part of the performance of his tasks set out in Regulation 2016/679. The above statement is additionally justified by the fact that Mr. P. K. in no way tried to justify the lack of any response to the two requests for clarification, nor did he contact the Office for Personal Data Protection to signal any doubts he might have regarding the scope of information he requested President of the Personal Data Protection Office.

It should be pointed out here that making it difficult and impossible to obtain access to information that the supervisory authority has demanded and is demanding from Mr. P.K., and which is undoubtedly in his possession (e.g. whether he collected signatures of residents entitled to elect the Commune Council [...] who wanted support the initiative of holding a commune referendum on the dismissal of the above-mentioned Council before the end of the term of office), prevents a thorough consideration of the case, also results in excessive and unjustified prolongation of the proceedings, which is contrary to the basic principles governing administrative proceedings - set out 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) with the principles of thoroughness and speed of proceedings. In addition, Mr. P. K. is obliged to cooperate with the supervisory authority as part of the performance of its tasks, as provided for in art. 31 of Regulation 2016/679.

Considering the above findings, the President of the Personal Data Protection Office states that in this case there were premises justifying imposing on Mr. P.K. - pursuant to art. 83 sec. 5 lit. e) in fine and Art. 83 sec. 4 lit. a) Regulation 2016/679 - an administrative fine due to the lack of will to cooperate with the supervisory authority in the performance of its tasks (Article 31) and due to Mr. P.K.'s failure to provide access to information necessary for the President of the Office for Personal Data Protection for the implementation its tasks (Article 58(1)(e), i.e. to resolve the case with reference number [...]).

At the same time, in view of finding a violation by Mr. P.K. of two provisions of Regulation 2016/679 (Article 31 and Article

58(1)(e), pursuant to the content of Art. 83 sec. 3 of this legal act, according to which, if the controller or processor intentionally or unintentionally violates several provisions of this regulation as part of the same or related processing operations, the total amount of the administrative fine does not exceed the amount of the fine for the most serious infringement, the President of the UODO determined the amount of the adjudicated administrative fine a financial penalty in an amount not exceeding the amount of the penalty for the most serious of these violations. In the presented facts, the President of the UODO considered the most serious violation consisting in Mr. P.K.'s failure to provide access to all information necessary to perform his tasks, i.e. violation of the provision of art. 58 sec. 1 lit. e) Regulation 2016/679. The seriousness of this violation is evidenced by the fact that the lack of access to information that the President of the UODO has demanded and demands from Mr. P.K. not only prevents a thorough examination of the case, but also results in excessive and unjustified prolongation of the proceedings, which is contrary to the basic principles governing the proceedings administrative - specified in art. 12 sec. 1 k.p.a. principles of thoroughness and speed of proceedings.

Pursuant to the content of art. 83 sec. 2 of Regulation 2016/679, administrative fines are imposed depending on the circumstances of each individual case. At the same time, he refers in each case to a number of circumstances listed in points a) to k) of the above-mentioned provision. When deciding to impose an administrative fine on Mr. P.K. in this case and determining its amount, the President of the Personal Data Protection Office took into account - from among them - the following circumstances aggravating the assessment of the infringement:

Nature, gravity and duration of the infringement (Article 83(2)(a) of Regulation 2016/679). A breach subject to an administrative fine in this case undermines the system aimed at protecting one of the fundamental rights of a natural person, which is the right to the protection of his personal data, or more broadly - to protect his privacy. An important element of this system, the framework of which is defined by Regulation 2016/679, are supervisory authorities, which have been assigned tasks related to the protection and enforcement of the rights of natural persons in this respect. In order to enable the implementation of these tasks, supervisory authorities have been equipped with a number of control powers, powers to conduct administrative proceedings and corrective powers. On the other hand, controllers and processing entities have been imposed, correlated with the powers of supervisory authorities, certain obligations, including the obligation to cooperate with supervisory authorities and the obligation to provide these authorities with access to information necessary to perform their tasks. The actions of Mr. P. K. in this case, consisting in failing to provide all information requested by the President of the Office for Personal Data

Protection, and resulting in hindering and unjustified prolongation of the proceedings conducted by him, should therefore be considered as violating the entire system of personal data protection, and therefore great importance and reprehensible character. The gravity of the infringement is additionally increased by the fact that the infringement committed by Mr. P.K. was not a one-time and incidental event. On the contrary, the action of Mr. P. K. was continuous and long-lasting, which is unquestionably confirmed by the fact that the infringement found in these proceedings has lasted since the expiry of the deadline for submitting explanations, outlined in the first letter of the President of the UODO, i.e. from [...] March 2021, to the present.

Intentional nature of the infringement (Article 83(2)(b) of Regulation 2016/679). In the opinion of the President of the Personal Data Protection Office, Mr. P.K. lacks the will to cooperate in providing the authority with all information necessary to resolve the case in which the authority requested ask him to provide them. This is evidenced in particular by the lack of response to the calls of the President of the Office for Personal Data Protection addressed to Mr. P.K., which he received. Thus, Mr. P.K. knew which authority had sent the summons to him and what information this authority was asking him for. In connection with such action, Mr. P. K. made a conscious decision not to provide the personal data protection authority with information. Even the instruction contained in the above-mentioned a letter imposing an administrative fine on him in the absence of a response to the request of the President of the UODO did not prompt him to cooperate with the personal data protection authority in the matter of providing information. It is therefore a lack of will to cooperate with the authority or at least gross disregard of his obligations related to this cooperation . It should be emphasized that Mr. P. K. at no stage of the proceedings for reference no. [...] as well as in these proceedings, he made no attempt to justify such proceedings.

Lack of cooperation with the supervisory authority in order to remove the infringement and mitigate its possible negative effects (Article 83(2)(f) of Regulation 2016/679). In the course of these proceedings (DKE.561.18.2021) regarding the imposition of an administrative fine, Mr. P.K. did not provide any explanations that would allow to determine the reasons for its inaction as well as further proceedings in the case with reference number [...]. The lack of any explanations from Mr. P.K. still makes it difficult for the President of the Office for Personal Data Protection to issue a decision in the case with reference number [...].

Other premises for the imposition of an administrative fine indicated in Art. 83. sec. 2 Regulation 2016/679 had no impact (aggravating or mitigating) on the assessment of the infringement made by the President of the UODO (including: any relevant previous infringements by the administrator, the manner in which the supervisory authority learned about the infringement,



compliance with previously applied in the same case measures, the use of approved codes of conduct or approved certification mechanisms) or, due to the specific nature of the breach (concerning the relationship of the controller with the supervisory authority, and not the relationship of the controller with the data subject), could not be taken into account in this case with due to their non-occurrence (including: the number of injured people and the extent of the damage suffered by them, actions taken by the administrator to minimize the damage suffered by the data subjects, the degree of responsibility of the administrator, taking into account the technical and organizational measures implemented by him, the categories of personal data concerned infringement).

Pursuant to the wording of Art. 83 sec. 1 of Regulation 2016/679, the administrative fine imposed by the supervisory authority should be effective, proportionate and dissuasive in each individual case. In the opinion of the President of the Personal Data Protection Office, the penalty imposed on Mr. P.K. in these proceedings meets these criteria. It will discipline Mr. P. K. to properly cooperate with the supervisory authority, both in the further course of the proceedings for reference number [...] as well as in possible other proceedings conducted in the future with his participation before the President of the Office for Personal Data Protection. The penalty imposed by this decision is - in the opinion of the President of the UODO - proportional to the seriousness of the infringement found and the possibility of incurring it by Mr. P.K. This penalty will also act as a deterrent; will be a clear signal to Mr. P.K. that disregarding the obligations related to cooperation with him (in particular, hindering access to information necessary to perform his tasks) is a serious violation and as such will be subject to financial sanctions. At this point, it should be pointed out that the imposition of an administrative fine on Mr. P.K. is - in view of his previous conduct as a party to the proceedings [...] - necessary; is the only means at the disposal of the President of the Office for Personal Data Protection, which will enable access to information necessary in the conducted proceedings.

Due to Mr. P. K.'s failure to provide the financial data for 2020 requested by the President of the Office for Personal Data Protection, the President of the UODO determined the amount of the administrative fine as an estimate (Article 101a section 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781)).

Pursuant to the content of art. 103 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), the equivalent of the amounts expressed in euros referred to in art. 83 of Regulation 2016/679, is calculated in PLN according to the average euro exchange rate published by the National Bank of Poland in the table of exchange rates as at January 28 of each year, and if in a given year the National Bank of Poland does not announce the average euro exchange

rate on January 28 - according to the average euro exchange rate announced in the exchange rate table of the National Bank of Poland, which is the closest after that date.

Considering the above, the President of the Personal Data Protection Office, pursuant to art. 83 sec. 3 and art. 83 sec. 4 letter a) and art. 83 sec. 5 lit. e) of Regulation 2016/679, in connection with Art. 103 of the Personal Data Protection Act of 2018, for the infringements described in the operative part of this decision, imposed on Mr. P. K. - using the average euro exchange rate of January 28, 2022 (EUR 1 = PLN 4.5697) - an administrative fine of PLN 2,285 (equivalent to EUR 500), according to the average euro exchange rate announced by the National Bank of Poland in the table of exchange rates as at January 28, 2021. In view of the above, the President of the Personal Data Protection Office ruled as in the operative part of this decision.

The decision is final. In accordance with art. 53 § 1 of the Act of August 30, 2002 - Law on Proceedings before Administrative Courts (Journal of Laws of 2019, item 2325, as amended), the party has the right to lodge a complaint against the decision to the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery, through the President of the Office for Personal Data Protection (address: ul. Stawki 2, 00 - 193 Warsaw). A relative entry must be made against the complaint, in accordance with art. 231 in connection with art. 233 of the Act of August 30, 2002. Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325). In accordance with art. 74 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), lodging a complaint by a party to the administrative court suspends the execution of the decision regarding the administrative fine.

In the proceedings before the Provincial Administrative Court, the Party has the right to apply for the right to assistance, which includes exemption from court costs and the appointment of a lawyer, legal advisor, tax advisor or patent attorney. The right to assistance may be granted at the request of the Party submitted before the initiation of the proceedings or in the course of the proceedings. The application is free of court fees.

In accordance with art. 105 sec. 1 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), the administrative fine must be paid within 14 days from the date of expiry of the deadline for lodging a complaint to the Voivodeship Administrative Court, or from the date of the administrative court's decision becoming final, to the bank account of the Office for Personal Data Protection in the NBP O/O Warszawa No. 28 1010 1010 0028 8622 3100 0000. In addition, in accordance with art. 105 sec. 2 of the above-mentioned Act, the President of the UODO may, at the justified request of the punished entity, postpone the date of payment of the administrative fine or divide it into installments. In the event

of postponing the payment of an administrative fine or spreading it into installments, the President of the Office for Personal Data Protection shall charge interest on the unpaid amount on an annual basis, using a reduced interest rate for late payment, announced pursuant to art. 56d of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2021, item 1540, as amended), from the day following the date of submission of the application.

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