

Warsaw, on 31

of August

2022

Decision

DKE.561.5.2022

Based on Article. 104 § I of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) in connection with Art. 7 sec. 1 and 2, art. 60, art. 101, art. 101a sec. 2 and art. 103 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. i), art. 83 sec. 1-3, art. 83 sec. 4 lit. a) in connection with art. 31 and Art. 83 sec. 5 lit. e) in connection with art. 58 sec. 1 lit. a) and e) of 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 / EC (general regulation on data protection) (OJ L 119 of 04/05/2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04.03.2021, p. 35), after conducting administrative proceedings initiated ex officio to impose an administrative fine on Mr R. G., President of the Office for Personal Data Protection, finding a violation by Mr. R. G. of the provisions of Art. 31 and Art. 58 sec. 1 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), consisting in the lack of cooperation with the President of the Office for Personal Data Protection in the performance of his tasks and failure to provide the President of the Office for Personal Data Protection with access to information necessary to perform his tasks, imposes on him an administrative fine in the amount of PLN 6,854 (in words: six thousand eight hundred and fifty four zlotys).

Justification

Facts

The Office for Personal Data Protection received a complaint from Ms. M. R. about irregularities in the processing of her personal data by Mr. R. G. (hereinafter referred to as the "Administrator"), consisting in recording her image using video surveillance without a legal basis and in failing to fulfill the information obligation towards her, about which referred to in art. 15 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 the EU L 119 of 04.05.2016, p. 1, with changes announced in the Official Journal of the EU L 127 of 23/05/2018, p. 2, and in the Official Journal of the EU L 74 of 04/03/2021 , p. 35) (hereinafter referred to as "Regulation 2016/679").

In order to consider the complaint of Mrs. M. R., the President of the Office for Personal Data Protection (hereinafter referred to as the "President of the Personal Data Protection Office") initiated administrative proceedings with reference number [...], under which - pursuant to art. 58 sec. 1 lit. a) and e) of Regulation 2016/679 - called on the Administrator in a letter of [...] November 2020 - to respond to the content of the complaint, to provide explanations in the case, in particular to answer a number of detailed questions on issues relevant to the case, as well as to provide evidence confirming the explanations provided. This request, addressed via the Polish Post to the Administrator to the address of his residence indicated by Mrs. M. R., advised twice - on [...] and [...] November 2020 - was not received by the addressee. It returned to the sender with the annotation "RETURN not taken on time". In connection with the above, the President of the UODO - based on the provision of art. 44 § 4 of the Act of June 14, 1960, the Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended) (hereinafter referred to as "the Code of Administrative Procedure") - deemed them delivered to the Administrator on November [...], 2020 and left it in the case files. The administrator did not respond to this request of the President of the UODO.

In the absence of a response to the request of November 2020, the President of the UODO again - in a letter of March 2021 - addressed the Administrator with a request with content identical to the content of the request of November 2020. This summons - also addressed to the Administrator's address of residence - was received by him personally [...] March 2021. Also this summons of the President of the UODO remained without any response from the Administrator.

Another request for information necessary to consider Ms. M. R.'s complaint, with the same content as the content of the previous two requests, was sent by the President of the UODO to the Administrator in a letter of [...] June 2021. This request - addressed to the Administrator to the address of his residence - was also received by him personally [...] June 2021. This call also remained without any response from the Administrator.

The letters of the President of UODO of March 2021 and June 2021 contain an instruction that failure to provide explanations in the case may constitute a violation of the obligation to cooperate with the supervisory authority, which is the President of the Office for Personal Data Protection, i.e. Art. 31 of Regulation 2016/679 in connection with joke. 58 sec. 1 lit. e) of Regulation

2016/679, as a consequence of which the President of the UODO may consider imposing an administrative fine on the Administrator pursuant to art. 83 sec. 2 lit. f) in connection with joke. 83 sec. 5 lit. e) Regulation 2016/679.

The above circumstances of the facts of the case were determined by the President of the UODO on the basis of all official correspondence that the President of the UODO conducted with the Administrator in the case, which correspondence is stored in the files of the proceedings with reference number [...]. This correspondence, in which there is no response from the Administrator to the requests of the President of the UODO, documents all attempts by the President of the UODO to obtain access to information necessary to perform his tasks, i.e. in this case - to consider the case with reference number [...], and on the other hand reflects the Administrator's lack of reaction to the requests of the President of the Personal Data Protection Office.

Procedure

Due to the Administrator's failure to provide information necessary to resolve the case with reference number [...], the President of the UODO initiated ex officio proceedings against him - pursuant to art. 83 sec. 4 lit. a) and Art. 83 sec. 5 lit. e) of Regulation 2016/679 - these administrative proceedings (reference number DKE.561.5.2022) regarding the imposition of an administrative fine in connection with the violation of Art. 31 and Art. 58 sec. 1 lit. e) Regulation 2016/679. The Administrator was informed about the initiation of the proceedings by a letter of February [...] 2022, delivered to him on February [...] 2022. In this letter, the Administrator was summoned - in order to determine the basis for the penalty, pursuant to Art. 101a sec. 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 provide information on its income for 2021. The administrator was also informed what the infringement is alleged to be; has been instructed about the sanctions for this violation; he was also informed about the possibility of submitting explanations requested by the President of the UODO in the proceedings with reference number [...], which could have a mitigating effect on the amount of the administrative fine imposed in this case. In addition, the Administrator was informed about the possibility of expressing his opinion - before issuing an administrative decision - on the collected evidence and materials and submitted requests.

The administrator did not take any action in response to the information about the initiation of these proceedings. After considering all the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Regulations

In accordance with art. 57 sec. 1 lit. a) 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, conducts proceedings regarding these complaints to the appropriate extent and informs the complainant about the progress and results of these proceedings within a reasonable time (Article 57(1)(f) of Regulation 2016/679).

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

Violation of the provisions of Regulation 2016/679, consisting in the controller's or processor's failure to provide access to the data and information referred to above, resulting in a violation of the authority's rights set out in art. 58 sec. 1, is subject - 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 global turnover from the previous financial year, with the higher amount applicable.

In addition, both the controller and the processing entity are obliged, 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 at risk - in accordance with Art. 83 sec. 4 lit. a) of Regulation 2016/679 - an administrative fine of up to EUR 10,000,000, and in the case of an enterprise - up to 2% of its total annual worldwide turnover from the previous financial year, with the higher amount applicable.

In accordance with art. 83 sec. 3 of Regulation 2016/679, in the event of a violation by the controller or processor as part of the same or related processing operations of several provisions of this regulation, the total amount of the administrative fine may not exceed the amount of the penalty for the most serious violation.

When assessing whether, and if so, to what extent an administrative fine should be imposed, the supervisory authority is obliged to take into account the following circumstances (reasons for imposing a fine) specified in Art. 83 sec. 2 Regulation 2016/679:

the nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the given processing,

the number of data subjects affected and the extent of the damage suffered by them,

the intentional or unintentional nature of the breach,

actions taken by the controller or processor to minimize the damage suffered by the data subjects,

the degree of responsibility of the controller or processor, taking into account the technical and organizational measures implemented by them pursuant to art. 25 and 32,

any relevant previous infringements by the controller or processor,

degree of cooperation with the supervisory authority in order to remove the infringement and mitigate its possible negative effects,

categories of personal data affected by the breach,

how the supervisory authority found out about the breach, in particular whether and to what extent the controller or processor reported the breach,

if the controller or processor concerned were previously subject to the measures referred to in art. 58 sec. 2 - compliance with these measures,

application of approved codes of conduct under Art. 40 or approved certification mechanisms under Art. 42,

any other aggravating or mitigating factors applicable to the circumstances of the case, such as financial benefits gained directly or indirectly from the breach or losses avoided.

In addition, the supervisory authority - in accordance with art. 83 sec. 1 Regulation 2016/679 - ensures that the applied administrative fines are effective, proportionate and dissuasive in each individual case (principles of imposing a fine).

In order to determine the basis for the assessment of the administrative fine, the entity against which the proceedings to impose the administrative fine are pending is obliged, at the request of the President of the UODO, to provide him, within 30 days from the date of receipt of the request, with the data necessary to determine this basis (Article 101a section 1 u.o.d.o.). However, in the event of failure to provide this data by the entity subject to the penalty, the President of the UODO determines the basis for the administrative fine in an estimation manner, taking into account the size of the entity, the specificity of its activity or generally available financial data regarding the entity (Article 101a section 2 u.o.d.o.).

Pursuant to the content of art. 103 u.o.d.o. the equivalent of the amounts expressed in euro referred to in Art. 83 of Regulation

2016/679, is calculated in PLN at the average euro exchange rate announced by the National Bank of Poland in the exchange rate table 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.

Legal assessment

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case, it should first be considered whether the Administrator is the addressee of the obligations referred to in art. 58 sec. 1 lit. e) and Art. 31 of Regulation 2016/679, the violation of which is subject to an administrative fine pursuant to art. 83 sec. 4 and 5 of Regulation 2016/679. Both of the above-mentioned provisions of Regulation 2016/679 impose procedural obligations - as part of the proceedings conducted by the President of the UODO - on controllers and processors. The content of Mrs. M. R.'s complaint shows that the Administrator, by installing [...] a video monitoring system on the building, is the administrator of data obtained using this system, including Mrs. M. R.'s data in the field of her - at least - image. When installing this system, the Administrator had to have a specific purpose for processing data obtained using this system, and the installation and launch of this system (used for at least downloading, and probably also for viewing, recording, storing and using for the purposes specified by the Administrator, the image of people, which were within the reach of this system) is the method of processing personal data also specified by the Administrator. The above allows us to assume that the Administrator, in the actual state described by Mrs. M. R., acts as an administrator defined in art. 4 point 7 of Regulation 2016/679. This determination is justified all the more that the Administrator - despite knowing about the initiation of these proceedings - did not provide evidence to the contrary; did not even deny that he was processing Mrs. M. R.'s personal data obtained by means of a video monitoring system. Due to the fact that Mr. R. G. is the administrator within the meaning of Art. 4 item 7 of Regulation 2016/679, the President of the UODO was entitled - in accordance with art. 58 sec. 1 lit. a) of Regulation 2016/679 - to order him to provide information necessary to consider Ms M. R.'s complaint, and the Administrator - pursuant to art. 58 sec. 1 lit. e) Regulation 2016/679 - was obliged to provide such information.

In the proceedings with reference number [...], in order to determine the facts of the case initiated by Mrs. M. R.'s complaint, the President of the UODO requested the Administrator three times to respond to the content of the complaint and to provide explanations by answering detailed questions about the case. The first call was not received by the Administrator despite

having been notified twice, therefore it was considered delivered to the Administrator in accordance with art. 44 § 4 k.p.a. The next two summons were received by the Administrator in person, which allows us to assume that he was aware of the information about the proceedings pending before the President of the UODO with his participation and about the demands of the authority addressed to him. Despite this, the Administrator did not provide the explanations requested by the President of the UODO. This state of affairs was not changed by the initiation of these proceedings regarding the imposition of an administrative fine (reference number DKE.561.5.2022). The letter from the President of the UODO of February 2022, addressed to the Administrator, informing about the initiation of this procedure (see point 7 of the justification for this decision), also remained unanswered.

Therefore, it is indisputable that the President of the UODO - exercising the right referred to in Art. 58 sec. 1 lit. a) of Regulation 2016/679 - sent to the Administrator - in a form consistent with the provisions of the k.p.a. regulating calls - a request to provide information needed to perform its tasks. It is also indisputable that the President of the Personal Data Protection Office did not obtain the requested information from the Administrator, which constitutes a violation of Art. 58 sec. 1 lit. e) Regulation 2016/679.

The Administrator's conduct consisting in failing to provide the President of the UODO with access to information necessary for him in the proceedings with reference number [...] at the same time meets the criteria of a violation of art. 31 of Regulation 2016/679. Cooperation with the supervisory authority in the performance of its tasks, which is the subject of the obligation specified in this provision, also includes (and even primarily) the obligation to provide the authority - at its request - with all information held by the controller or processor related to the proceedings conducted by it. In the present case, the request for cooperation referred to in this provision was presented to the Administrator in three summons addressed to him in the proceedings with reference number [...]. The Administrator's lack of any response to this request is undoubtedly a violation of his obligation set out in art. 31 of the Regulation.

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

2016/679).

At the same time, in the event of a violation by the Administrator of two provisions of Regulation 2016/679 (Article 31 and Article 58(1)(e)), pursuant to Art. 83 sec. 3 of this legal act, the President of the UODO determined the amount of the adjudicated administrative fine in an amount not exceeding the amount of the fine for the most serious of these violations. In the presented facts, the President of the UODO considered the most serious violation consisting in the Administrator's failure to provide access to all information necessary to perform its tasks, i.e. violation of the provision of art. 58 sec. 1 lit. e) of Regulation 2016/679, punishable by a higher penalty of the two provided for in Regulation 2016/679 - up to EUR 20,000,000, and in the case of an enterprise up to 4% of its total annual turnover from the previous financial year, depending on which amount is higher. 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 the Administrator not only prevents an objective, thorough and comprehensive consideration of the case, but also results in excessive and unjustified prolongation of the proceedings, which is contrary to the basic rules governing administrative proceedings - set out in art. 12 sec. 1 k.p.a. principles of thoroughness and speed of proceedings.

Premises and rules for the imposition of an administrative fine

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. In each case, he refers to a number of premises listed in points a) to k) of the above-mentioned provision (see point 14 of the justification for this decision). When deciding to impose an administrative fine on the Administrator in this case and determining its amount, the President of the UODO 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 regard. 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 importance of the violation of these obligations was emphasized by the EU legislator itself, providing for failure to provide access to information resulting in the violation of Art. 58 sec. 1 of Regulation 2016/679, the higher penalty of the two specified in the provisions of Regulation 2016/679 - a penalty of up to EUR 20,000,000, and in the case of an enterprise up to 4% of its turnover from the previous financial year. The Administrator's conduct, consisting in complete ignoring the correspondence addressed to him by the President of the UODO, and resulting in hindering and unjustified prolongation of the proceedings conducted by the President of the UODO, should therefore be considered as violating the personal data protection system, and therefore of great importance and reprehensible nature. The seriousness of the infringement is additionally increased by the fact that the infringement committed by the Administrator was not an incidental event. The Administrator's operation is continuous and long-lasting. The state of infringement of the provisions of Regulation 2016/679 lasts from the expiry of the 7-day deadline set for submitting explanations in the first summons addressed to him by the President of the UODO in the proceedings with reference number [...], that is from [...] December 2020, until the date of issue of this decision.

Intentional nature of the infringement (Article 83(2)(b) of Regulation 2016/679).

In the opinion of the President of the UODO, the Administrator's conduct in the case with reference number [...], consisting in a complete lack of cooperation in providing the authority with access to all information necessary to resolve the case, is conscious and purposeful. There is no doubt that the requests of the President of the UODO have reached the awareness of the Administrator (see points 3, 4 and 7 of the justification for this decision). The lack of response to them must have been the result of the Administrator's conscious decision to make it difficult for the President of the UODO to consider Ms. M. R.'s complaint. It is worth noting that the information about the initiation of these proceedings (letter of the President of the UODO of February 2022) - in addition to information about the infringement made by the Administrator and about the threat of a sanction in the form of an administrative fine for this violation - also informed the Administrator about the still existing possibility of presenting the information requested from him by the President of the UODO in the proceedings with reference number [...]. Therefore, the administrator was and is fully aware of the infringement committed, as well as knowing how to end this infringement (provide the President of the UODO with the requested information). The Administrator has not done so even at

the current stage of the case, which, in the opinion of the President of the UODO, increases the degree of intentionality of the Administrator's conduct and has an aggravating effect on the assessment of the violation committed by him.

Degree of cooperation with the supervisory authority to remove the infringement and mitigate its possible negative effects (Article 83(2)(f) of Regulation 2016/679).

In the course of these proceedings regarding the imposition of an administrative fine on the Administrator (reference number DKE.561.5.2022), the Administrator did not cooperate in any way with the President of the UODO. In particular, the Administrator did not provide any information requested by the President of the UODO in the proceedings with reference number [...], which could be treated as an action aimed at removing the violation found in this case or mitigating its effects. Such a complete lack of cooperation with the President of the UODO continues to make it difficult to quickly and thoroughly consider Mrs. M. R.'s complaint in the proceedings with reference number [...].

In the opinion of the President of the UODO, none of the prerequisites referred to in Art. 83 sec. 2 of Regulation 2016/679, does not support the mitigation of the established - taking into account the above-mentioned aggravating circumstances - the amount of the penalty imposed by this decision.

Due to the specific nature of the breach (concerning the relationship between the controller and the supervisory authority, and not the relationship between the controller and the data subjects), the following circumstances could not necessarily be taken into account by the President of the UODO in this case:

number of injured persons and the extent of the damage suffered by them (Article 83(2)(a) of Regulation 2016/679) - due to the fact that the breach does not involve a breach of personal data of any person and, consequently, there were no damage to natural persons;

actions taken by the controller or processor to minimize the damage suffered by the data subjects (Article 83(2)(c) of Regulation 2016/679) - due to the fact that there was no damage to the data subjects in the case physical, there is no obligation and no possibility for the Administrator to take any action to minimize them;

the degree of responsibility of the controller or processor, taking into account the technical and organizational measures implemented by them pursuant to art. 25 and 32 of Regulation 2016/679 (Article 83(2)(d) of Regulation 2016/679) - due to the fact that the infringement itself does not involve technical and organizational measures implemented by the Administrator to ensure protection personal data and the security of their processing;

categories of personal data that the breach concerned (Article 83(2)(g) of Regulation 2016/679) - due to the fact that the breach does not involve the breach of any personal data.

Other circumstances indicated below referred to in Art. 83 sec. 2 of Regulation 2016/679, after assessing their impact on the infringement found in this case, were considered neutral by the President of the UODO, i.e. having neither an aggravating nor mitigating effect on the amount of the adjudicated administrative fine:

any relevant previous violations by the controller or processor (Article 83(2)(e) of Regulation 2016/679);

The President of the UODO has not found any previous violations of the provisions on the protection of personal data by the Administrator, therefore there are no grounds for treating this circumstance as aggravating. And since such a state (compliance with the provisions on the protection of personal data) is a natural state resulting from the legal obligations incumbent on the Administrator, it also cannot have a mitigating effect on the assessment of the infringement made by the President of the UODO.

how the supervisory authority found out about the infringement (Article 83(2)(h) of Regulation 2016/679);

Information about the violation found in this case was obtained by the President of the UODO ex officio by analyzing the course of the proceedings pending before him with reference number [...]. This is a natural way of obtaining information about this type of infringement (i.e. lack of cooperation with the authority and failure to provide access to information necessary to consider the case) resulting from the competence of the President of the UODO to assess the course of these proceedings and assess what information is necessary for him to resolve the case. Therefore, there are no grounds for a negative assessment of the fact that the information about the breach does not come from the Administrator; however, this fact cannot be taken into account in favor of the Administrator, since he did not participate in obtaining information about the infringement by the President of the UODO.

compliance with the measures previously applied in the same case referred to in Art. 58 sec. 2 of Regulation 2016/679 (Article 83(2)(i) of Regulation 2016/679);

Before issuing this decision, the President of the UODO did not apply any measures listed in art. 58 sec. 2 Regulation 2016/679, therefore the Administrator was not obliged to take any actions related to their application, and which actions, subject to the assessment of the President of the UODO, could have an aggravating or mitigating impact on the assessment of the infringement found.

application of approved codes of conduct or approved certification mechanisms (Article 83(2)(j) of Regulation 2016/679);

The administrator does not use the instruments referred to in art. 40 and art. 42 of Regulation 2016/679. However, their adoption, implementation and application is not - as provided for in the provisions of Regulation 2016/679 - mandatory for controllers and processors, therefore the circumstance of their non-application cannot be considered to the Administrator's disadvantage in this case. In favor of the Administrator, however, the circumstance of adopting and applying such instruments as measures guaranteeing a higher than standard level of protection of personal data being processed could be taken into account.

financial benefits achieved directly or indirectly in connection with the infringement or losses avoided (Article 83(2)(k) of Regulation 2016/679)

The President of the UODO did not state that the Administrator, due to the lack of cooperation with the authority and failure to provide the information requested by this authority, gained any financial benefits or avoided such losses. Therefore, there are no grounds for treating this circumstance as incriminating the Administrator. The statement of the existence of measurable financial benefits resulting from the violation of the provisions of Regulation 2016/679 should be assessed definitely negatively. On the other hand, the Administrator's failure to achieve such benefits, as a natural state, independent of his will and actions, is a circumstance that, by nature, cannot be a mitigating factor for the Administrator. This is confirmed by the wording of Art. 83 sec. 2 lit. k) Regulation 2016/679, which requires the supervisory authority to pay due attention to the "achieved" benefits - those that occurred on the part of the entity that committed the infringement.

other aggravating or mitigating factors (Article 83(2)(k) of Regulation 2016/679).

The President of the UODO, examining the case comprehensively, did not notice any circumstances other than those described above that could affect the assessment of the infringement and the amount of the adjudicated administrative fine.

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. When defining the above-mentioned rules for imposing administrative fines, reference should be made to the views of the legal doctrine on the protection of personal data.

"A sanction is effective if it achieves the purpose for which it was introduced. The sanction is proportionate if it does not exceed the severity threshold determined by taking into account the circumstances of the individual case. A sanction is a deterrent if it meets the considerations of individual and general prevention, in other words, it is a clear signal of disapproval of the violation

for the society, as well as for the sanction's addressee" (P. Litwiński (ed.), Regulation of the European Parliament and of the Council (EU) 2016 /679 of April 27, 2016 [...]; Commentary on Article 83 [in:] P. Litwiński (ed.) General Data Protection Regulation. Personal Data Protection Act. Selected sectoral regulations. Commentary. Legalis) . The rules for imposing administrative fines defined in this way require reference to the financial and property situation of the punished entity. This reference is necessary because a penalty disproportionately low in relation to the financial capabilities of the perpetrator of the infringement (the penalty is even "imperceptible" for him) will not be effective and dissuasive towards him; a penalty that is too severe (a penalty whose payment will threaten the material existence of the punished person) will not be a proportional penalty.

In the opinion of the President of the UODO, the penalty imposed on the Administrator in these proceedings corresponds to the principles set out in art. 83 sec. 1 Regulation 2016/679. Its severity in the financial dimension will discipline the Administrator to properly cooperate with the President of the UODO, both in the further course of the proceedings with reference number [...] and in any other proceedings conducted in the future with his participation before the President of the UODO. Therefore, in the Administrator's disciplinary dimension, the penalty will be effective (it will achieve its goal). At this point, it should be pointed out that the imposition of an administrative fine on the Administrator is - in view of its previous conduct as a party to the case with reference number [...] - necessary; it is the only means at the disposal of the President of the UODO, which will enable him to gain access to information necessary in the proceedings.

The penalty imposed by this decision will also be - in the opinion of the President of the UODO - proportional to the seriousness of the infringement found and to the Administrator's ability to bear it without excessive prejudice to his individual and family financial status. The assessment of this status, due to the Administrator's failure to provide information on its income for 2021, was made by the President of the UODO in an estimated manner. The President of the UODO took into account, among others, the fact that the Administrator conducts agricultural activity, for which he receives annual payments under the Common Agricultural Policy. Publicly available data published by the Ministry of Agriculture and Rural Development (<https://beneficijenciwpr.minrol.gov.pl>) shows that in the last three years the payments received by the Administrator in this respect amounted to: in 2019 - [...], in 2020 in 2021 – [...], in 2021 – [...]. Given that these amounts should be treated as incidental income, independent of the basic income undoubtedly obtained by the Administrator from agricultural activity or from other sources, his material status should be considered at least medium. An administrative fine in the amount corresponding to

approx. 10% of the last income alone (for 2021) obtained as payment from the Common Agricultural Policy funds will be felt by the Administrator, but will not exceed the threshold of discomfort, which means a decrease in his material status.

In addition, in the opinion of the President of the UODO, the penalty imposed on the Administrator in the specific amount specified in the operative part of this decision will also serve as a deterrent; will be a clear signal both for the Administrator and other entities obliged under the provisions of Regulation 2016/679 to cooperate with the President of the UODO that disregarding the obligations related to providing access to personal data and information necessary for the President of the UODO to perform his tasks constitutes a violation of a large weight and as such will be subject to financial sanctions.

Considering the provision of art. 103 u.o.d.o. (see point 17 of the justification of this decision) The President of the UODO for the violations described in the conclusion of this decision imposed on the Administrator - using the average euro exchange rate of January 28, 2022 (where EUR 1 = PLN 4.5697) - an administrative fine in the amount of PLN 6 PLN 854 (equivalent to EUR 1,500).

In this factual and legal state, the President of the UODO resolved as in the sentence.

Instruction

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 2022, item 329, as amended) (hereinafter "p.p.s.a."), the party has the right to lodge a complaint against the decision to the Voivodship of the Administrative Court in Warsaw, within 30 days from the date of its delivery, via 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 p.p.s.a. 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) (hereinafter "u.o.d.o.") 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 u.o.d.o., the administrative fine should be paid within 14 days from the date of expiry of the deadline for lodging a complaint to the Provincial Administrative Court, or from the date of the administrative court's

decision becoming final and binding, to the bank account of the Office for Personal Data Protection in NBP O/O Warszawa No. 28 1010 1010 0028 8622 3100 0000.

In addition, in accordance with art. 105 sec. 2 u.o.d.o., the President of the UODO may, at the justified request of the punished entity, postpone the 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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