

Warsaw, day 25

May

2022

Decision

DKE.561.6.2022

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 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 ... 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 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), after conducting administrative proceedings regarding the imposition of an administrative fine on J. C. operating under the name [...], President of the Office for Personal Data Protection,

admonishes J. C. operating under the business name [...] for violating the provisions of art. 31 and Art. 58 sec. 1 lit. a) and e) of the Regulation of the European Parliament and of the EU Council 2016/679 of April 27, 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, with the changes announced in the EU Official Journal L 127 of May 23, 2018, p. 2, and in the EU Official Journal L 74 of March 4, 2021, p. 35), consisting in the lack of cooperation with the President of the Personal Data Protection Office in as part of the performance of its tasks and failure to provide the President of the Office for Personal Data Protection with access to personal data and information necessary to perform its tasks.

Justification

Facts

The Office for Personal Data Protection (hereinafter also referred to as "UODO") received a complaint from Mr. M. T. (hereinafter referred to as: "The Complainant") about irregularities in the processing of his personal data by Mrs. J. C., running

a business under the name [...], (hereinafter referred to as "Entrepreneur") consisting in failure to meet the information obligation carried out at the request of the data subject, i.e. the obligation 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"), including refusal to provide a copy of personal data.

In order to consider the complaint, 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 - by letters [...] of July 2020 and of [...] September 2020 - called on the Entrepreneur to respond to the content of the complaint and to provide explanations in the case by answering questions formulated in detail. The first letter of [...] July 2020 (delivered [...] July 2020) remained unanswered, while in response to the second letter of [...] September 2020 (delivered [...] September 2020), the entrepreneur by letter of [...] October 2020 provided clarification. At the same time, in a letter of [...] October 2020, the Entrepreneur authorized Mr B.C. to act on his behalf and requested that correspondence in the case be sent to the following address: [...], disclosed in CEIDG as the address of the additional permanent place of business of the Entrepreneur.

Due to the need to obtain additional explanations in the case, two more letters were sent to the Entrepreneur's attorney (to the address for service indicated by the Entrepreneur), with the dates, respectively: [...] June 2021 and [...] September 2021. The President of the UODO called in them to send a copy of the agreement connecting the Entrepreneur with [...], from which the role of the Entrepreneur in processing the Complainant's personal data obtained via the website [...], and in the absence of such a document, to submit appropriate explanations in this regard, i.e. regarding the rules of processing and roles played by both parties to this agreement. The President of the UODO also asked for clarification of the source of obtaining the Complainant's account number by the Entrepreneur and the circumstances of its use despite the return of funds by the website operator [...]. After two notifications, both letters were returned to the Office for Personal Data Protection with the annotation "Return not taken on time". In accordance with art. 44 § 4 k.p.a. the letters were deemed delivered on [...] June 2021 and [...] October 2021, respectively.

The summons of the President of the UODO of [...] June 2021 and the summons of [...] September 2021 contained an instruction that failure to provide explanations in the case would constitute a violation of the obligation to cooperate with the supervisory body, which is the Office for Personal Data Protection, i.e. Art. . 31 of Regulation 2016/679 in connection with Art. 58 sec. 1 letter e of Regulation 2016/679, as a consequence of which the President of the UODO may consider imposing an administrative fine pursuant to Art. 83 section 5 lit. e of Regulation 2016/679.

The above factual circumstances were determined by the President of the UODO on the basis of all official correspondence between the Entrepreneur and the President of the UODO, contained in the files of the proceedings with reference number [...]. This correspondence reflects 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 - the reaction of the Entrepreneur to the requests of the President of the UODO.

Due to the lack of cooperation with the President of the UODO in the performance of his tasks and the failure to provide the information necessary for the President of the UODO to perform these tasks, the President of the UODO initiated ex officio proceedings against the Entrepreneur - pursuant to art. 83 sec. 5 lit. e) Regulation 2016/679 - these administrative proceedings (reference number DKE.561.6.2022) 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 Entrepreneur was informed about the initiation of the proceedings in a letter of February [...] 2022, delivered [...] March 2022. The Entrepreneur was summoned in this letter - 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 present a financial statement or other document showing the amount of turnover and the financial result achieved by the Entrepreneur in 2021.

In response to the letter on the initiation of administrative proceedings, reference number [...], the Entrepreneur's representative contacted the UODO, asked for the opportunity to familiarize himself with the case files and, in a letter of [...] March 2022, provided explanations regarding the case [...]. He informed that correspondence was not received at the indicated delivery address [...] due to restrictions related to COVID-19 and closure of business in this location. From then on, the proper address for correspondence was the address of the permanent place of business [...]. In addition, after learning about the initiation of these proceedings regarding the imposition of an administrative fine, the Entrepreneur's plenipotentiary also took steps to provide explanations in the case [...] - first, he submitted explanations by phone, and then during a personal visit to the

UODO office on March [...] 2022, he submitted explanations in writing. However, he did not present the contract with [...], referring to an unspecified contract template on the website [...]. At the same time, he precisely indicated the path to download the appropriate contract from the Entrepreneur's account available to him after logging in (not available to the authority). On April 2022, the entrepreneur sent UODO the requested financial report for 2021.

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

Legal justification

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 is entitled, among others, to to conduct proceedings regarding the application of the provisions of this legal act (Article 57(1)(h) and, in particular, considers complaints lodged by data subjects and conducts proceedings regarding these complaints in accordance with the content of art. 57 section 1 lit. f) 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 needed 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 related to the lack of cooperation with the President of the UODO in the performance of his tasks resulting in violation of art. 31 of Regulation 2016/679 is subject - in accordance with art. 83 sec. 4 lit. a) in fine 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 global turnover from the previous financial year, with the higher amount applicable.

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

The President of the UODO is also entitled to a number of specified in art. 58 sec. 2 corrective powers, including issuing

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 UODO, acting pursuant to art. 58 sec. 2 lit. b) of Regulation 2016/679 may consider it justified to issue a reminder to the administrator or processor in the event of a violation of the provisions of Regulation 2016/679, including the provisions of art. article 31 and art. 58 sec. 1 lit. a) and e) of this legal act.

In accordance with recital 148 of Regulation 2016/679, in order to make enforcement of the regulation more effective, sanctions should be imposed for its violation, including administrative fines - in addition to or instead of appropriate measures imposed under this regulation by the supervisory authority. If the infringement is minor, the fine may be replaced by a warning. However, due attention should be paid to the nature, gravity and duration of the breach, whether the breach was intentional, the actions taken by the controller to minimize the damage, the degree of responsibility or any significant previous breaches, the manner in which the supervisory authority found out of a breach, compliance with the measures imposed on the controller or processor, the application of codes of conduct and any other aggravating or mitigating factors.

Preventing access to information requested by the President of the UODO from the Entrepreneur prevented a thorough consideration of the case and resulted in prolonging 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 745, as amended) with the principles of thoroughness and speed of proceedings

Referring the above-mentioned provisions of Regulation 2016/679 to the facts established in this case, it should be stated that the Entrepreneur, as a party to the proceedings with reference number [...], for a long period of time (from [...] June 2021 to [...] March 2022 ., i.e. from the expiry of the deadline set in the letter of [...] June 2021 to the date on which the Entrepreneur's Representative submitted explanations) failure to provide explanations necessary to resolve the case with reference number [...], violated the resulting from Art. 58 sec. 1. lit. a) and e) of Regulation 2016/679 - the obligation to provide the President of the UODO with access to information necessary for the performance of his tasks. In this case, the information necessary for the continuation of the proceedings was information on the rules of processing and the roles played by both parties to the agreement between the Entrepreneur and the website operator [...] in the processing of the Complainant's personal data (this circumstance was to be clarified by requesting the Entrepreneur to submit a copy of this agreement), as well as explanation of the source of obtaining the Complainant's account number by the Entrepreneur and the circumstances of its use despite the return of funds by the website operator [...].

The President of UODO, in order to determine the facts of the case with reference number [...], twice requested the Entrepreneur to send further explanations. The President of the UODO did not receive a response to any of the letters sent to the Entrepreneur (of [...] June 2021 and [...] September 2021). It should be emphasized that these letters were sent to the address indicated by the Entrepreneur as the address for correspondence in the case. The circumstance that the demands of the President of the UODO formulated in these letters did not reach the Entrepreneur (or his proxy) - they were not acted upon by him despite two notifications by the postal operator - therefore, the Entrepreneur himself is charged. It is the duty of each organizational unit to ensure that the collection of letters is organized in such a way that the course of correspondence takes place in a continuous and uninterrupted manner and only by authorized persons. Negligence in this respect is the responsibility of this organizational unit (see, for example, the judgment of the Provincial Administrative Court in Gorzów Wielkopolski of October 18, 2018, file reference number II SAB/Go 90/18 - LEX No. 2576144). The above made it necessary to initiate proceedings to impose an administrative fine. As a result, the Entrepreneur immediately started cooperation with the President of the UODO and submitted explanations in the proceedings with reference number [...]. Although the submitted explanations were not complete and fully in line with the expectations of the President of the UODO, however, they allowed for further activities in the above-mentioned case.

The entrepreneur, despite his obligation, did not inform UODO about the change of correspondence address. As a result of this omission, letters sent by the UODO to the address for service - previously indicated by the Entrepreneur - were not accepted by him. The entrepreneur did not answer the detailed questions contained in the summons addressed to him. In addition, the Entrepreneur, after becoming aware of the initiation of these proceedings to impose an administrative fine, did not provide all the requested information, i.e. did not present the contract with [...]. The above omissions of the Entrepreneur should be considered as hindering the conduct of the proceedings. These circumstances clearly indicate that the Entrepreneur has not fulfilled the obligation to provide the President of the UODO with access to information and personal data necessary to perform his tasks, resulting from art. 58 sec. 1. lit. a) and ... e) Regulation 2016/679. Preventing access to the information requested by the President of the UODO from the Entrepreneur prevented a thorough examination of the case with reference number [...] and resulted in prolonging the proceedings.

The above-described conduct of the Entrepreneur, consisting in the lack of reaction to the calls of the President of the UODO addressed to him, also exhausts - apart from the violation of art. 58 sec. 1. lit. a) and ... e) Regulation 2016/679 - signs of

violation of art. 31 of this regulation, which article imposes on the controller and the processing entity the obligation to cooperate with the supervisory authority - at its request - in the performance of its tasks. In the opinion of the President of the UODO, there is no doubt that for some time (from [...] June 2021 to [...] March 2022) in the proceedings with reference number [...] there was no cooperation on the part of the Entrepreneur and his attorney, despite calls addressed to the Entrepreneur.

These calls in fact formulated a "request" by the supervisory authority referred to in Art. 31 of Regulation 2016/679.

In the facts in question, as a result of the initiation of these proceedings, no other indications were found indicating the lack of will of the Entrepreneur to cooperate with the President of the UODO. The circumstances of the case, and in particular the subsequent attitude of the Entrepreneur, allow us to conclude that his initial tardiness was not due to ill will, while the subsequent, although not fully satisfying the requests of the authority, attitude of the Entrepreneur indicates his readiness to continue cooperation with the President of the UODO. In the opinion of the supervisory authority, the mere initiation of proceedings regarding the imposition of an administrative fine and the real prospect of its imposition have become a clear signal for the Entrepreneur that further evasion of the obligations imposed by the provisions of Regulation 2016/679 will inevitably lead to the application of the strictest, provided for these provisions, sanctions.

Considering 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 violation of the provisions of this regulation by processing operations, the President of the UODO considered it justified to issue a reminder to the Entrepreneur regarding the violation of the provisions article 31 and Art. 58 sec. 1 lit. a) and e) of Regulation 2016/679, assuming that in the light of the criteria set out in Art. 83 sec. 1 and 2 of Regulation 2016/679, it will be effective and sufficient. It should be noted, however, that in the event of a similar event in the future, each reminder issued by the President of the UODO to the Entrepreneur will be taken into account when assessing the grounds for a possible imposition of an administrative penalty, in accordance with the principles set out in Art. 83 sec. 1 and 2 of Regulation 2016/679.

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

Instruction

The decision is final. 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, via the President of the UODO (address: ul. Stawki 2, 00 - 193 Warsaw).

The entry fee for a complaint is PLN 200. 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.

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