THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

July

2019

DECISION

ZSPR. 440.985.2019

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and pursuant to Art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 6 sec. 1 letter f) 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 Laws UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. PP, . w O., represented by the attorney-at-law Sz. F., to order O. with its registered office in P., regarding the disclosure of personal data in the field of first names, surnames and addresses of the users of the portal www. [...] .pl, who, using the IP addresses [...] and [...], posted comments on the above-mentioned the website under the articles: "[...]" and "[...]", the President of the Office for Personal Data Protection

orders O. with its registered office in P. to provide personal data in the field of names, surnames and addresses of the users of the portal www. [...] .pl, who, using the IP addresses [...] and [...], posted comments on the above-mentioned website under the articles: "[...]" and "[...]".

Justification

The Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. in O. (hereinafter: the "Complainant"), represented by the attorney of attorney Sz. F., to order O. with its seat in P. at ul. (hereinafter referred to as: the "Company"), regarding the provision of personal data in the field of names, surnames and addresses of the users of the website [...] .pl who, using the IP addresses [...] and [...], posted comments on the above-mentioned website under the articles: "[...]" and "[...]". The applicant's representative submitted that, as quoted: “(...)”.

The indicated comments were posted on the website www. [...] .pl from accounts with IP numbers [...] and [...] (...) ". In connection with the above, the Complainant requested an administrative decision ordering the restoration of lawfulness by making the above-mentioned data in the field of names, surnames and addresses of the users of the website […] .pl who, using the IP addresses […] and […], posted comments on the above-mentioned website under the articles: "[...]" and "[...]". In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

1. On […] August 2016, the Company received a letter from the Complainant's attorney for information on the personal data of users of devices to which IP numbers […] and […] are assigned. These numbers were provided in an incorrect format.

2. On [...] September 2016, the Company refused to disclose personal data, indicating that the personal data requested by the Complainant's attorney are covered by telecommunications confidentiality.

3. The company processes personal data of users of IP addresses […] and […]. The company has the personal data of the users of the above-mentioned IP addresses in the scope of first names, surnames and address of residence.

In this factual state, the President of the Personal Data Protection Office considered the following.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2018, item 1000, as amended), i.e. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Data Protection Office Personal. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as: Kpa. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective. On May 25, 2018, the provisions 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 began to be applied in the national legal order and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2), hereinafter referred to as further: Regulation 2016/679, the provisions of which regulate issues related to the processing of personal data of natural persons. From that date, the President of the Office is obliged to apply the provisions of

the above-mentioned of Regulation 2016/679 to all administrative proceedings that it conducts. When issuing a decision in a given case, the President of the Office takes into account the legal status in force at the time of issuing the decision.

At the time when the event described by the Complainant took place, the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended; hereinafter also referred to as the "Act") was in force. Above the act defined the rules of conduct in the processing of personal data and the rights of natural persons whose data is or may be processed in data files (Article 2 (1) of the Act). The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 of the Act. Pursuant to Art. 23 sec. 1 point 5 of the Act, data processing was allowed when it was necessary to fulfill legally justified purposes carried out by data administrators or data recipients, and the processing does not violate the rights and freedoms of the data subject.

Above the premise for the processing of personal data in accordance with the law (equivalent to Art. 23 (1) (5) of the Act) is currently specified in Art. 6 sec. 1 (f) of Regulation 2016/679. Pursuant to this provision, processing is lawful only in cases where the processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by interests or fundamental rights and freedoms data subjects who require protection of personal data, in particular when the data subject is a child. As demonstrated by the conducted administrative proceedings, the Complainant has grounds to obtain the personal data of the users of the portal www. [...] .pl, who, using the IP addresses of […] and […], posted entries that are the subject of the complaint.

In the case in question, the Company confirmed that it processes the names, surnames and addresses of the users of the above-mentioned IP addresses. In addition, the Company made this personal data available to the supervisory authority, which is the President of the Office for Personal Data Protection.

Pursuant to the wording of Art. 18 sec. 6 of the Act of 18 July 2002 on the provision of electronic services (Journal of Laws of 2019, item 123, i.e.), the service provider provides information on the data referred to in para. 1-5, to state authorities for the purposes of their proceedings. The above provision significantly shapes the obligation on the part of the service provider providing services by electronic means to disclose personal data of persons using these services to state authorities for the purposes of their proceedings. Thus, Art. 18 sec. 6 of the Act on the provision of electronic services is a legal provision referred to in Art. 23 sec. 1 point 2 of the Act (currently Article 6 (1) (c) of Regulation 2016/679), directly imposing certain rights and obligations on certain entities in the field of personal data processing of recipients of services provided electronically. The

authorities of the state referring to the purposes of the proceedings, are therefore entitled to obtain the personal data of persons using electronic services necessary for these purposes, and processed by entities providing these services - they have the condition that allows such processing, specified in Art. 23 sec. 1 point 2 of the Act (currently Article 6 (c) of Regulation 2016/679). The existence of the discussed Art. 18 sec. 6 of the Act on the provision of electronic services, however, does not in any way exclude the processing of personal data of users of services provided electronically in a situation where other conditions for the processing of such data specified in the provisions of the Act are met, independent and independent of the premises of Art. 23 sec. 1 point 2 of the Act (currently Art. 6 (c) of Regulation 2016/679) - e.g. the premise from Art. 23 sec. 1 point 5 of the Act (currently the equivalent of the above-mentioned condition is Article 6 (1) (f) of Regulation 2016/679).
Referring the above to the circumstances of the case under consideration, it should be pointed out that, in the opinion of the President of the Personal Data Protection Office, the Complainant's request for disclosure of personal data in the scope of names, surnames and addresses of users of the portal www. [...] .pl, who using IP addresses [...] and [...] posted entries that are the subject of the complaint, found legal grounds in Art. 23 sec. 1 point 5 of the Act, and currently has a justification in Art. 6 lit. f of the Regulation 2016/679, and as such should be taken into account by the entity. The complainant justified the application with the intention to take legal action against the authors of the entries and the necessity of the requested data from the point of view of the possibility of pursuing legal claims against that person for the protection of personal rights. Pursuant to Art. 24 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025), the person whose personal interests are endangered by someone else's action, may demand that such action be discontinued, unless it is not unlawful. In the event of an infringement, he may also require the person who committed the infringement to perform the actions necessary to remove its effects, in particular, to submit a declaration of appropriate content and in an appropriate form. On the terms provided for in the code, he may also demand monetary compensation or payment of an appropriate amount of money for a specified social purpose (§1). If, as a result of the breach of personal interest, property damage has been caused, the aggrieved party may demand its repair on general principles (§2).
Individualizing the authors of the questioned entries is a necessary condition for pursuing a claim against them related to the alleged unlawful interference in the sphere of the complainant's personal rights. The provisions governing the civil procedure require that each pleading should contain the designation of the court to which it is addressed, the name and surname or the name of the parties, their statutory representatives and attorneys, designation of the type of the pleading, the basis of the

application or declaration, and evidence in support of the circumstances cited, the signature of the party or its statutory representative or attorney, listing the attachments, and when the pleading is the first letter in the case, it should also include the place of residence or seat of the parties, their statutory representatives and attorneys, and the subject of the dispute, and further letters - the file reference number, which results from Art. . 126 § 1 and 2 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360).

There is no doubt that the Complainant must have individual information on the persons against whom he intends to bring an action in connection with the allegation of unauthorized interference in the sphere of his personal rights. In a situation where the Complainant has essentially no information about persons who, using the IP addresses [...] and [...], posted entries that are the subject of the complaint, only except those that resulted from their publication (i.e. - apart from the date, time, content publications) used by these persons to conceal their identity, it is reasonable to assume that the actions taken by the Complainant serve to establish the identity of these persons, in order to bring them to civil liability in relation to the content of the publication and fall within the concept of a legally justified purpose. It is obvious that the acquisition (processing) of personal data in the above-mentioned of the purpose will in each case be considered by the data subjects to be contrary to their interests. This circumstance - especially taking into account the legal guarantees of defense against the claims of the opposing party - does not, however, prove that their rights and freedoms have been violated. Adopting the opposite position would result in unjustified protection of those who may have unlawfully interfered with the sphere of legally protected interests of another person (especially those convinced of the anonymity guaranteed by the Internet) against possible liability for their actions.

In the opinion of the President of the Personal Data Protection Office, the Company unjustifiably refused to disclose the requested data to the Complainant regarding the names, surnames and addresses of the authors of the entries in question, thus preventing him from taking further actions to identify these persons in order to initiate court proceedings. To confirm the correctness of the position presented in this case, it is worth reiterating the judgment of the Provincial Administrative Court in Warsaw of February 3, 2010 (file reference number II SA / Wa 1598/09), in which in particular the quotation was indicated: "(.. .) the right to free, anonymous expression cannot protect people who infringe the rights of others from responsibility for the words they say. Nobody is and cannot be anonymous on the web. Although it may be difficult to determine the identity of a given person, due to the fact that every computer leaves a trace on the Internet - the IP address by means of which the

computer from which the alert was made can be determined, it makes it possible to indirectly establish the identity of the person who made the alert (...) a participant in the proceedings has information about the login date, nicknames of persons performing this activity and the content of entries. In the opinion of the Court, the above information, combined with the IP numbers, makes it possible to unequivocally identify the persons who violated the personal rights of the participant in the proceedings. (...) the IP addresses requested by the participant in the proceedings constitute personal data in this case within the meaning of Art. 6 sec. 1 of the Act on the Protection of Personal Data, and ordering them to be made available constitutes the implementation of the instructions of para. 2 of this provision, i.e. it will enable the identification of a person or persons whose identity can be indirectly determined. (...) the computer's IP address alone is not enough to indicate the person who used it, but in combination with other information it allows to assume that its identity can be established. In the opinion of the Court, the identification of this person does not have to be associated with excessive costs, time or activities (...) ".

Moreover, the Supreme Administrative Court in the judgment of 21 August 2013 emphasized that "(...) the person committing these violations must be aware that he cannot abuse his rights by violating the rights of others. This has nothing to do with restricting the principle of freedom of speech. The freedom to express one's views is related to taking responsibility for those views. Anyone who speaks in public, outside the Internet, is aware of the possible consequences of statements that violate the fundamental, statutorily protected rights of others. However, it is unjustified to say that someone speaking anonymously, in a way that violates the interests of other entities, is to be subject to special protection and that his personal data is a good that the legislator intended to protect in the first place ".

To sum up, the President of the Personal Data Protection Office is of the opinion that the Company unjustifiably refused to disclose the requested data to the Complainant regarding the names, surnames and addresses of the authors of the entries in question, thus preventing the Complainant from taking further actions that would allow for the effective initiation of court proceedings against them.

Pursuant to Art. 18 sec. 1 point 2 of the Act, in the event of violation of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the disclosure of the requested personal data. Taking into account the circumstances of the case, the President of the Personal Data Protection Office is authorized to order the Company to disclose to the Complainant the personal data of the authors of the questioned entries to the extent to which the entity has these data - i.e. information on

the names, surnames and addresses of these persons.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2019-08-30