

**PRESIDENT
PERSONAL DATA
PROTECTION OFFICE**

Mirosław Wróblewski

Warsaw, 23 September 2025

ZWOS.440.5655.2019. [REDACTED]

DECISION

Pursuant to Article 105 § 1 of the Code of Administrative Procedure of 14 June 1960 (Journal of Laws 2024, item 572) (hereinafter: Kpa), Article 7(1) of the Act of 10 May 2018 on the protection of personal data (Journal of Laws 2019, item 1781), Art. 5 and Art. 60(9) 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) (hereinafter: RODO), concerning the complaint of [REDACTED] (residence: [REDACTED]) (hereinafter: Complainant) concerning irregularities in the processing of the Complainant's personal data by [REDACTED] (registered Office : [REDACTED]) (hereinafter: The Company) consisting in the processing of personal data in violation of the principle of transparency by failing to provide in Polish the forms for withdrawal of consent and objection to data processing, as well as failure to comply with the request for erasure of data, after the proceedings of Spanish supervisory authority Agencia Española de Protección de Datos (hereinafter: AEPD) in the scope of the complaint concerning failure to comply with a request for erasure of data and the adoption by the AEPD of a final decision pursuant to Art. 60(9) GDPR, President of the Personal Data Protection Office

- 1) discontinues proceedings in the scope of the complaint concerning the Company's violation of the principle of transparency by failing to provide forms for withdrawal of consent and objection to data processing in Polish.**

JUSTIFICATION

Personal Data Protection Office (hereinafter: Office) received the Complainant's complaint regarding irregularities in the processing of his personal data by the Company consisting in the processing of personal data in violation of the principle of transparency by failing to provide forms for withdrawal of consent and objection to data processing in Polish, as well as failure to comply with the request for erasure of data.

In the scope of the complaint concerning the Company's failure to comply with the request for erasure, on 1 August 2022 the President of the Office received the final decision from the AEPD pursuant to Article 60(9) GDPR. It stems from the decision that the President of the Office and the AEPD, acting on the basis of Article 60(9) GDPR,

agreed to dismiss part of the complaint regarding the processing of personal data in violation of the principle of transparency and to take action against the part of the complaint regarding the Company's failure to comply with the request for erasure of data. According to the final decision of the AEPD, this authority, acting on the basis of Art. 58(2)(b) GDPR, issued a reprimand to the Company for failure to comply with the Complainant's request for erasure of data pursuant to Article 17 of the GDPR, i.e. infringement of Article 12 of the GDPR.

In the course of the administrative proceedings concerning the complaint in the scope of the processing of personal data in violation of the principle of transparency by failing to provide withdrawal of consent forms and objections to the processing of data in Polish, the President of the Office established the following facts:

1. The complainant pointed out that the Company, as the operator of the [REDACTED] mobile application, does not allow the withdrawal of consent to the processing of personal data and the objection to the processing of data in Polish, as the relevant forms are available from the application level in Spanish. (evidence: Complainant's letter of 12.11.2019)
2. The President of the Office identified the case as being of a cross-border nature in accordance with Article 4(23) GDPR and 18.03.2020 through the Internal Market Information System (hereinafter: IMI) referred the case to the AEPD (evidence: notification report 61VMN with the number 117249.1 of 18.03.2020)
3. On 18 May 2020, the AEPD notified that it accepted the complaint as the lead supervisory authority for failure to comply with the request for erasure of the Complainant's data, while proposing that the complaint be dismissed in so far as it related to the availability of forms in Spanish only. (evidence: memo of 01.06.2020)
4. On 1 June 2020, the President of the Office sent the Complainant a letter in which it asked for evidence (e.g. in the form of screenshots) to confirm the information referred to by the Complainant in the complaint, according to which the forms for withdrawing consent to the processing of personal data and expressing objections to the processing of data were available in the [REDACTED] application only in Spanish. (evidence: letter of the President of the Office of 01.06.2020). The Complainant did not reply to the above-mentioned letter.
5. On 11 August 2020, the President of the Office informed the AEPD that the Complainant had not replied to the letter of 1 June 2020, therefore an agreement was reached to dismiss the part of the complaint concerning the processing of personal data in breach of the principle of transparency by failing to provide withdrawal forms and objections to data processing in Polish (evidence: e-mail of 11.08.2020)
6. On 1 August 2022, the AEPD adopted its final decision on the complaint concerning the failure to comply with the request for erasure of the Complainant's data. In its final decision of 1 August 2022, the AEPD explained that the proposal to dismiss part of the complaint in so far as it concerns the processing of

personal data in breach of the principle of transparency by not making the forms for withdrawing consent and objecting to the processing of data available in Polish, presented by the AEPD on 18 May 2020, resulted from the finding that the data protection forms were downloaded in the language of the city chosen on the homepage, so that the forms in Polish were available if the Polish city was chosen. (evidence: AEPD decision of 01.08.2022)

After examining all the evidence gathered in the case, the President of the Office weighed the following.

In accordance with Article 56(1) GDPR the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60. On the basis of Article 60(9) GDPR, where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter. The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller, shall notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint, and shall notify it to that complainant and shall inform the controller or processor thereof.

In view of the Complainant's failure to reply to the letter of the President of the Office of 1 June 2020, in which the President of the Office asked for evidence (e.g. in the form of screenshots) to confirm the information referred to by the Complainant in the complaint, according to which the forms for withdrawing consent to the processing of personal data and expressing objections to the processing of data were available in the [REDACTED] application only in Spanish, the President of the Office agreed with the AEPD on 11 August 2020 to dismiss part of the complaint in the above-mentioned scope and, moreover, to take action against the Company as regards the complaint concerning non-compliance with the request for erasure of data.

The AEPD, acting as lead supervisory authority pursuant to Article 56(1) GDPR, submitted on 01.08.2022 the final decision, under which, pursuant to Article 58(2)(b) GDPR issued a reprimand to the Company for failure to comply with the Complainant's request for erasure of data pursuant to Article 17 of the GDPR, i.e. infringement of Article 12 of the GDPR.

On the basis of Art. 60(9) GDPR President of the Office, as the complainant's supervisory authority, adopts a decision on the part concerning the dismissal or rejection of this complaint, notifies it to the complainant and informs the controller or processor about it.

The President of the Office took steps to clarify the matter. In the light of the AEPD's proposal to dismiss part of the complaint in so far as it related to the availability of the forms only in Spanish, the President of the Office sent a letter to the Complainant in which he asked for evidence (e.g. in the form of screenshots) to confirm the

information referred to by the Complainant in the complaint, according to which the forms for withdrawing consent to the processing of personal data and expressing objections to the processing of data were available in the [REDACTED] application only in Spanish. The Complainant did not reply to that letter.

At this point, it should be noted that the President of the Office, as a public administration body, when conducting proceedings on the basis of the provisions of the Kpa, assesses, on the basis of all the evidence, whether a given circumstance has been proven. Evidence in the proceedings may include, in particular, documents, witness statements, expert opinions and inspections (Article 75 § 1 Kpa).

In accordance with the principle of objective truth, as expressed in Article 7 of the Kpa, in the course of proceedings, public administration bodies shall uphold the rule of law and take all necessary steps to clarify the facts accurately and to settle the matter, having regard to the public interest and the legitimate interest of citizens. This is ensured in particular by the guarantees contained in the rules governing the gathering of evidence. As stated by the Supreme Administrative Court in its judgment of 9 July 1999 (file reference III SA 5417/98): "(...) That provision expresses both the principle of objective truth and the principle of the free assessment of evidence. The authority conducting the proceedings must seek to establish the substantive truth and, according to its knowledge, experience and internal conviction, assess the probative value of individual means of evidence, the impact of proving one circumstance on other circumstances.' In the same judgment, the Court held that the principle that the burden of proof rests on the person who derives legal effects from a particular fact also applies in administrative proceedings.

In accordance with Article 80 of the Kpa, a public authority assesses, on the basis of all the evidence, whether a given fact has been proved. A public authority may consider the facts of the case to be established only on the basis of unequivocal evidence and may not confine itself in that regard to plausibility.

The President of Office fully shares the position of the Supreme Administrative Court, which in its judgment of 26 October 1984 (ref. II SA 1205/84, ONSA 1984, No 2, item 98) has ruled: 'It follows from Articles 7 and 77 § 1 of Kpa that it is for the authority conducting the administrative procedure to conduct a comprehensive examination and examination of all evidence. This does not mean that a party is exempt from complicity in the fulfilment of that obligation, especially since failure to prove a specific fact may lead to results unfavourable to the party.'

It is also worth quoting the position of the Supreme Administrative Court expressed in the judgment of 29 September 2020 in case ref. II OSK 1452/20 (LEX No 3075574): 'Acquisition of full evidence is undoubtedly an obligation on the part of the authority, but that obligation is not absolute in the sense that the authority is not obliged to seek, as it were in place of a party, evidence intended to substantiate circumstances favourable to that party.'

Agreeing with the above considerations and taking into account the established circumstances of the case, it should be noted that the evidence gathered in the present case did not confirm the Complainant's allegation that the Company did not provide the forms for withdrawing consent and objecting to data processing in Polish and that the

forms were available only in Spanish. It is apparent from the evidence gathered in the case that, in accordance with the findings of the AEPD, the data protection forms are downloaded in the language of the city chosen on the main page, with the result that the forms in Polish are available in the case of the choice of the Polish city.

In view of the above, the proceedings are to be discontinued pursuant to Article 105 § 1 Kpa in view of being devoid of purpose. According to the above-mentioned provision, when proceedings have become devoid of purpose in whole or in part for any reason, the public administration authority shall issue a decision to discontinue the proceedings in whole or in part, respectively. The wording of that provision leaves no doubt that, if the proceedings are found to be devoid of purpose, the authority conducting those proceedings is obliged to discontinue them. At the same time, the subject-matter literature indicates that the devoid of purpose of the administrative procedure, as provided for in Article 105 § 1 of Kpa, means that one of the elements of the substantive legal relationship is missing, and therefore a decision dealing with the case cannot be issued by ruling on its substance. The condition of discontinuation of proceedings may exist even before the initiation of proceedings, which will be revealed only in the ongoing proceedings, and it may also arise during the proceedings, i.e. in a case already pending before a public administration body (comment to the article in question in the Code of Administrative Procedure: Adamiak, B. and Borkowski, J., 'Code of Administrative Procedure. Commentary', 17th edition, Legalis C.H. Beck, Warsaw 2021). This position is also reflected in the case-law (judgment of the Provincial Administrative Court in Gliwice of 22 December 2021, ref. I SA/GI 1165/21; judgment of the Provincial Administrative Court in Lublin of 7 December 2021, III SA/Lu 526/21; judgment of the Provincial Administrative Court in Poznań of 17 September 2021, II SA/Po 688/20).

The determination by a public authority of the existence of the condition referred to in Article 105 § 1 of Kpa obliges it, as is emphasised in legal literature and case-law, to discontinue the proceedings, since there are no grounds for resolving the case on the merits, and the continuation of the proceedings in such a case would constitute its defectiveness, having a significant impact on the outcome of the case.

In those factual and legal circumstances, the President of the Office ruled as in the operative part.

Under the authority of the President
of the Personal Data Protection Office
Head of the Cross-border Proceedings Unit
International Cooperation Department
[REDACTED]

The decision is final. On the basis of Article 7(2) of the Act of 10 May 2018 on the protection of personal data (Journal of Laws 2019, item 1781) and in conjunction with Articles 13 § 2, 53 § 1 and 54 of the Proceedings before Administrative Courts Act of 30 August 2002 (Journal of Laws 2024, item 935 as amended)., from this decision, a party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw, within 30 days from the date of notification of this decision, through the President of the Personal Data Protection Office (address: Personal Data Protection Office, ul. Stanisława Moniuszki 1A, 00 – 014 Warsaw). The entry for the complaint is 200 zlotys. The party has the right to claim the right to assistance.