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III OSK 2776/21 - Judgment

Date of ruling	2022-07-14
Date of receipt	2021-01-04
Court	Supreme Administrative Court
Judges	Olga Żurawska - Matusiak Tamara Dziełakowska /rapporteur/. Zbigniew Ślusarczyk /Chairman/
Symbol with description	647 Data protection issues
Subject headings	Data protection
Reference Related	II SA/Wa 1773/19
Complained authority	Inspector General for the Protection of Personal Data
Content of the result	The appeal in cassation was dismissed
The provisions referred to	Journal of Laws. 2019 no. 0 item 2325; art. 18, art. 19, art. 134 § 1, art. 141 § 4; Act of 30 August 2002. Law on proceedings before administrative courts - t.j.

Sentence

The Supreme Administrative Court, composed of: Chairman: Judge of the Supreme Administrative Court Zbigniew Ślusarczyk Judges Judge of the Supreme Administrative Court Tamara Dziełakowska (spr.) Judge of the Supreme Administrative Court Olga Żurawska - Matusiak having examined, on 14 July 2022 at a closed session in the General Administrative Chamber, the cassation appeal of L. L. against the judgment of the Provincial Administrative Court in Warsaw of 30 January 2020, ref. no. II SA/Wa 1773/19 in a case involving a complaint by L. L. against the decision of the President of the Office for Personal Data Protection of 26 June 2019 No. ZWOS/POST-50/2019 refusing to initiate proceedings dismisses the cassation appeal.

Justification

In a contested judgment of 30 January 2020. The Voivodship Administrative Court in Warsaw (ref. II SA/Wa 1773/19) dismissed the complaint of L. L. against the decision of the President of the Office for Personal Data Protection of 26 June 2019 refusing to initiate proceedings.

In the grounds for the above judgment, the Court of First Instance indicated that Mr L. L. had complained to the Office for Personal Data Protection against the Roman Catholic Parish [...] in R. and the Roman Catholic Parish [...] in R. about the processing of his personal data. By letter of 17 August 2018, the complainant requested information from the above-mentioned Parishes as to the processing of his personal data, the way in which it was stored and secured, and a copy of the data. He obtained the requested information from the indicated entities and therefore requested the deletion of all his data from any records held.

By order of 26 June 2019. The President of the Office for the Protection of Personal Data pursuant to Article 61 a § 1 of the Code of Civil Procedure in conjunction with Article 7(1) of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000 as amended) and in conjunction with Article 91 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) (Official Journal of the EU L 119 of 04.05.2016, p. 1, as amended - hereinafter referred to as RODO), refused to initiate

proceedings in the case.

In justification of the above order, the authority stated that on 25 May 2018, the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) entered into force. As of 25 May 2018, the provisions 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 (Official Journal of the EU L 119 of 04.05.2016 as amended) (Article 99 RODO) are directly applicable in the Polish legal order. Pointing to Article 91(1) and (2) of the RODO and the 'General Decree on the Protection of Individuals with regard to the Processing of Personal Data in the Catholic Church' issued on 13 March 2018 by the Polish Bishops' Conference, the authority noted that the Decree provides for the appointment of a Church Data Protection Officer and defines his or her tasks and powers. The Decree was approved on 22 March 2018 by the Holy See (it received recognitio of the Congregation for Bishops' Affairs), and on 30 April 2018 its legal promulgation (announcement) took place by posting on the official website of the Polish Bishops' Conference. On the same day, the Decree entered into force. Pointing then to the person of the Ecclesiastical Data Protection Supervisor and the tasks entrusted to him/her as set out in Article 37(1)(1), (3) and (5) of the above-mentioned Decree and Article 52(1) of the RODO, the authority considered that it was not competent to investigate and resolve a complaint concerning the processing of personal data within the scope of the competence of the Ecclesiastical Data Protection Supervisor.

An action against the above order was brought by Mr L. L., alleging a flagrant breach of substantive law, i.e. Article 91(1) in conjunction with Article 99(1) and (2) RODO. According to the applicant, the Catholic Church was almost two years late in introducing internal regulations.

In response to the complaint, the authority requested that the complaint be dismissed.

Dismissing the above complaint pursuant to Article 151 of the Act of 30 August 2002. Law on Proceedings before Administrative Courts (consolidated text Dz. U. of 2019, item 2325 as amended - hereinafter referred to as P.p.s.a.), the Voivodship Administrative Court in Warsaw held that, in issuing the contested decision, the authority correctly applied the provisions of Article 61a § 1 of the Code of Administrative Procedure in connection with Article 7(1) of the Act of 10 May 2018 on the protection of personal data, assuming that, in the light of the legal regulations expressed in Article 91 of the RODO, it does not have the authority to consider the case concerning the processing of personal data in databases maintained within the structures of the Catholic Church.

As explained by the Court of First Instance, on 25 May 2018, the Act of 10 May 2018 on the protection of personal data entered into force and the provisions 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 (RODO) are directly applicable in the Polish legal order. Pursuant to Article 99(1) of the RODO, it entered into force on the twentieth day following its publication in the Official Journal of the European Union, which took place on 4 May 2016. (Dz.U.UE.L.2016.119.1). In contrast, the said regulation has been applicable in the Member States since 25 May 2018. (Article 99(2) RODO).

Referring then to Article 51(1) of the RODO, Article 34(1) of the Personal Data Protection Act of 10 May 2018 and Article 91(1) and (2) of the RODO, the Court of First Instance explained that the Polish Bishops' Conference on 13 March 2018. issued a "General Decree on the protection of natural persons in relation to the processing of personal data in the Catholic Church" (the Decree), in which the Church legislator took into account both the principles of

protection of natural persons in relation to the processing of their personal data applied so far in the Catholic Church in Poland, as well as "the need to reconcile the protection of personal data with the exercise of the fundamental right to religious freedom, also guaranteed by positive law, including in its institutional dimension". The regulations contained in the Decree detail the provisions of general canon law and update the provisions of particular canon law. The Decree also provides for the appointment of the Ecclesiastical Data Protection Officer and defines his tasks and powers (Ch. V of the Decree). 22 March 2018. The Decree was approved by the Holy See (it obtained recognitio of the Congregation for Bishops' Affairs), while on 30 April 2018 its legal promulgation took place by posting on the official website of the Polish Bishops' Conference. On the same day, the Decree entered into force (Article 44 of the Decree). The tasks of the Church Data Protection Officer are set out, inter alia, in Article 37(1), (3) and (5) of the Decree.

Moreover, the Court of First Instance emphasised that the Roman Catholic Church is an institution with a regulated legal situation, regulated, inter alia, in the Constitution of the Republic of Poland, in an international agreement, namely the Concordat between the Holy See and the Republic of Poland signed in Warsaw on 28 July 1993. (Journal of Laws of 1998, No. 51, item 318) and in laws, including the Act of 17 May 1989 on the relationship of the State to the Catholic Church in the Republic of Poland (Journal of Laws of 2013, item 1169, as amended), in Article 2.

Since - in accordance with Article 52(1) of the RODO - each supervisory authority, when performing its tasks and exercising its powers in accordance with this Regulation, acts in a fully independent manner, as the Church Data Protection Supervisor does on the basis of the aforementioned legal regulations, the authority is not competent to hear and decide on a complaint concerning the processing of the complainant's personal data within the scope of the aforementioned Supervisor's competence.

The Court of First Instance assessed as unfounded the complainant's position that the Catholic Church was almost two years late in introducing internal regulations. The decree regulating the processing of personal data in the Catholic Church entered into force on 30 April 2018, thus even before the period in which the regulations introduced by the RODO, which allow churches and religious associations or communities to apply detailed rules for the protection of natural persons in relation to the processing of personal data, are in force in our country. The process of application of the aforementioned principles is subject to supervision by an independent supervisory authority, which may be a separate body, provided that it meets the conditions set out in Chapter VI of RODO. In Poland, the function of such supervisory authority is performed by the Church Data Protection Supervisor.

An appeal in cassation against the above judgment was lodged by L. L., challenging it in its entirety and alleging:

- infringement of substantive law, viz:

1. gross violation of the substantive law provisions: article 51(1)-(4) in connection with article 77 in connection with article 78 and in connection with article 91(1)-(2) in connection with article 99(1)-(2) of the Regulation (EU) 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) (RODO) by their misinterpretation and non-application;

2. Article 51(1) in conjunction with Article 51(2) and Article 52(1), (4), (5) and (6) of the RODO by misinterpreting it to mean that a natural person (in this case, the acting EDPS), who is not a

public authority, does not have the human, technical and financial resources, premises and infrastructure provided by a Member State, necessary for the effective performance of its tasks and powers, may be considered an independent public supervisory authority within the meaning of Article 51(1) of the RODO. EDPS), which is not a public authority, does not have at its disposal the human, technical and financial resources, premises and infrastructure provided by the Member State necessary for the effective performance of its tasks and the exercise of its powers, is not subject to state financial control and does not have a separate public annual budget, which may be part of the general state or national budget, whereas RODO unequivocally provides in Art. 51(1) that the independent supervisory authority can only be an 'independent public authority ' which, in accordance with Article 52(1), (4), (5) and (6) of the RODO, has at its disposal the designated resources, staff and budget provided by the Member State;

3. Article 54 (1) lit. 3. Article 54(1)(a) of the RODO by way of its erroneous interpretation, resulting from the assumption that an independent public supervisory authority may not only not be a "public" authority, but may also not be established by means of rules of general application adopted by a Member State, but rather by way of autonomous and legally effective actions of an entity subject to the RODO (including the "legal promulgation on a website" considered by the Court of First Instance as effective and refreshing the ossified legal system) and the consequent unlawful recognition of Mr KIODO as an independent supervisory authority within the meaning of Article 51(1) of the RODO, even though the RODO explicitly provides in Article 54(1)(a) of the RODOActing EDPS as an independent supervisory authority within the meaning of Article 51(1) of the RODO, whereas the RODO unambiguously provides in Article 54(1)(a) for the requirement that a supervisory authority must be established only by means of legislation of the Member States, and therefore the acting EDPS cannot be an independent supervisory authority within the meaning of the RODO;

4. Article 54(1)(b-f) of the RODO by misinterpreting it to mean that the qualifications and conditions for the selection of the members of the supervisory authorities, the rules and procedures for their appointment, their term of office, their re-election and the rules governing their duties may not be laid down by means of rules of general application by a Member State, but by independent action of one of the entities subject to the RODO, whereas the RODO expressly provides in Article 54(1)(b) to (f) for the determination of such matters by means of rules of law by the Member States;

5. Article 77(1) of RODO by its non-application and refusal to grant legal protection to the applicant in a situation where both the President of UODO and the WSA in Warsaw had previously (erroneously) assumed the existence of another supervisory authority within the meaning of Article 51(1) of RODO with regard to the processing of personal data by the Catholic Church, while in Poland no other supervisory authority than the President of UODO exists (it was not established by the state through universally binding provisions of law, and thus the applicant was not granted legal protection. 1 RODO with regard to the processing of personal data by the Catholic Church, while in Poland no other supervisory authority than the President of the Office for Personal Data Protection exists (it was not established by the state through universally binding provisions of law), and therefore Article 77(1) RODO should have been applied, which resulted in the unlawful refusal by the President of the Office for Personal Data Protection to initiate proceedings and in the contested judgment of the WSA in Warsaw failing to find this fault;

6. Article 91(1) in conjunction with Article 99(1) and (2) of the RODO by misinterpreting it to the effect that the moment of entry into force of the RODO is the date set out in Article 99(2) of the RODO, i.e. 25 May 2018, whereas the provision of Article 91(1) of the RODO unambiguously refers to the legal definition of the concept of 'entry into force', which under Article 99(1) of the

RODO is 24 May 216, which led, consequently, to the WSA in Warsaw's unlawful assumption of the fulfilment by the Catholic Church of the temporal prerequisite required for the possibility of applying specific rules for the protection of natural persons in relation to the processing of their personal data;

7. Article 91(1) in conjunction with Article 99(1) and (2) of the RODO by misinterpreting it to the effect that from the date of application of the RODO set out in Article 99(2) it is possible to apply rules on the protection of personal data which are not in conformity with the RODO, whereas the provision of Article 91(1) of the RODO 1 of the RODO unequivocally provides that the specific rules referred to in that provision may continue to apply after that date, provided that they are adapted to the RODO - where, in the case of the Catholic Church, they did not exist at the time of the entry into force of the RODO and, consequently, there were no specific rules that could be adapted;

8. Article 91(2) of RODO by misinterpreting it in the sense of assuming that the 'separate body' referred to in that provision and supervised by churches and religious associations may be the acting DPA, i.e. an entity other than an independent public supervisory authority, within the meaning of Article 51(1) of RODO, which fulfils the conditions set out in Chapter VI of RODO, whereas only a public body which fulfils all the conditions set out in Chapter VI of RODO, i.e. which is separate from the churches and religious associations, may be regarded as an independent supervisory separate body. 1 RODO, which fulfils the conditions set out in Chapter VI RODO, whereas only a public authority which fulfils all the conditions set out in Chapter VI RODO, i.e. separate from the main authority established pursuant to Article 51(1) RODO, indicating that 'a Member State shall ensure that one or more independent public authorities are responsible for monitoring the application of this Regulation', can be considered a separate independent supervisory authority;

9. Article 18(2), in conjunction with Articles 18(1) and 2(1), of the 1966 International Covenant on Civil and Political Rights, establishing the freedom to have, change or adopt a religion or belief of one's choice, by refusing to protect that right in a situation in which the President of the Office for Harmonisation in the Internal Market (OHIM) unreasonably refused to initiate proceedings concerning the exercise of that right by the applicant;

10. Article 9(1) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms establishing the freedom to have, change as well as adopt a religion or belief of one's choice, by refusing to protect this right in a situation in which the President of the Office for Harmonisation in the Internal Market (OHIM) unjustifiably refused to initiate proceedings concerning the exercise of this right by the applicant;

11. Article 10(1) of the Charter of Fundamental Rights of the European Union (2016/C 202/02) establishing the freedom to have, change as well as to adopt a religion or belief of one's own choice, by refusing to protect this right in a situation where the President of the Office for Harmonisation in the Internal Market (OHIM) unjustifiably refused to initiate proceedings concerning the exercise of this right by the applicant;

- infringement of procedural rules having a significant impact on the outcome of the case, i.e:

1. Article 1 § 1 and 2 of the Act of 25 July 2002. Law on the system of administrative courts (Journal of Laws of 2019, item 2167), hereinafter referred to as "P.u.s.a.", in connection with Article 3 § 1 and § 2(1) in connection with Article 145 § 1(2) of the P.p.s.a., by not accepting the complaint and not declaring the decision of the President of the Office for Competition and Consumer Protection invalid in its entirety in a situation where the reasons specified in Article 156 § 1(2) of the P.p.a. existed, despite the absence of this allegation in the complaint to the

WSA,

2. Article 1(1) and (2) of Ustawa o zwalczaniu nieuczciwej konkurencji (the Act on Combating Unfair Competition) in conjunction with Article 3(1) and (2)(1) in conjunction with Article 145(1)(a) of Ustawa o zwalczaniu nieuczciwej konkurencji (the Act on Combating Unfair Competition) by not accepting the complaint and not revoking the decision of the President of OPA in its entirety in a situation where there was a violation of substantive law by the President of OPA which affected the outcome of the case - the substantive law infringements indicated above,

3. Article 1(1) and (2) of Ustawa o zwalczaniu nieuczciwej konkurencji (the Act on Combating Unfair Competition) in conjunction with Article 3(1) and (2)(1) in conjunction with Article 141(4) of Ustawa o zwalczaniu nieuczciwej konkurencji (the Act on Combating Unfair Competition) by way of defective reasoning in the contested decision not meeting the requirements set out in Article 141(4) of Ustawa o zwalczaniu nieuczciwej konkurencji (the Act on Combating Unfair Competition), consisting in a complete failure to examine and assess the legal aspect of the contested decision of the President of the Office for Harmonisation in the Internal Market in the context of the abovementioned inconsistencies with the provisions of substantive law, in particular the allegation raised in the appellant's complaint concerning the infringement by the body of Article 91 of the PDPA and legal definitions contained in the PDPA and the statement of reasons for that infringement in the grounds of the judgment under appeal, whereas the court should have comprehensively assessed the issue of the correctness of the administrative decision, including from the point of view of the application of the provisions of substantive law, and duly substantiated it, which it failed to do;

4. Article 134 § 1 of the P.p.s.a. consisting in the failure of the Provincial Administrative Court in Warsaw to adjudicate within the limits of the case, going beyond the charges and motions formulated in the complaint and the legal basis invoked, in a situation in which the court was not bound by them and should have done so in view of the gross infringement of legal provisions by the body and the failure of the appellant to notice all infringements in its complaint to the Court of First Instance;

5. Articles 18 and 19 of the P.p.s.a. by having the case adjudicated by judges who are members of the Roman Catholic Church - and thus have a personal relationship with the entity affected by the outcome of this case.

Referring to the above pleas, the applicant requested that the contested judgment be set aside in its entirety and that the case be referred back to the Provincial Administrative Court in Warsaw for re-examination, that the cassation appeal be heard and that the costs of the proceedings be awarded in its favour in accordance with the legal provisions.

The response to the cassation appeal was filed by the President of the Office for Personal Data Protection, requesting that the appeal be dismissed.

By order of the Chairperson of Division III of the General Administrative Chamber of the Supreme Administrative Court of 13 May 2022, pursuant to Article 15 zzs4(1) and (3) of the Act of 2 March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 1842), the case was referred to a closed hearing due to the fact that it is not possible to conduct the hearing remotely with simultaneous direct video and audio transmission (lack of consent of all parties to conduct the hearing remotely), of which the parties were informed.

The Supreme Administrative Court has considered the following:

The cassation appeal does not contain any justified grounds.

Assessing the lodged cassation appeal within the limits set by the content of Article 183 § 1 of the Act of 30 August 2002. First of all, it should be noted that Article 18 of the P.p.s.a., which lists the prerequisites for excluding a judge by virtue of the Act itself, does not include among them the judge's membership in a religious association or other religious organisation. In turn, Article 19 of the Code of Civil Procedure, which provides for the possibility to exclude a judge from adjudicating in a case due to the existence of circumstances that could raise justified doubts as to his or her impartiality, was not applied in the proceedings before the Court of First Instance, as none of the judges hearing the case had made such a request, nor had such a request been submitted by the appellant. The allegations that the judges on the bench are members of the Roman Catholic Church are also arbitrary and are not supported by the case file. This issue, moreover, could not be examined by the Court of Cassation in view of the express wording of Article 53(7) of the Polish Constitution, according to which: "[n]o one may be obliged by the organs of public authority to disclose his or her worldview, religious beliefs or confession". It should therefore be deemed inadmissible to examine the question of a judge's affiliation to a particular church or religious association in the context of the prerequisites for his or her exclusion set out in Article 19 of the P.p.s.a. Freedom of conscience and professing a particular religion is a constitutional right of every citizen, including a judge, is absolute and cannot be restricted in any way. It must be emphasised that a judge, being independent, is subject only to the Constitution and laws (Article 178(1) of the Constitution of the Republic of Poland). This means that a judge, when adjudicating a case, is not subject to any external pressures or dependencies (cf. the decision of the Supreme Administrative Court of 15 November 2018 ref. I OSK 366/18). As was also pointed out in the case law, a reasonable doubt could be raised by a situation in which a judge would give expression to emotional involvement, e.g. through statements or behaviour indicating his or her directional attitude towards the recognition of the case (cf. decisions of the Supreme Administrative Court of 31 July 2018, file no. I OZ 705/18 and 23 November 2018, file no. I OSK 1294/17). However, the existence of such specific circumstances was not indicated in the cassation appeal under consideration.

Turning to the assessment of the remaining allegations of infringement of procedural provisions, it should be noted that some of them were linked to the premise of "gross violation of law" referred to in Article 156(1)(2) of the Code of Civil Procedure (allegations 1, 4). However, the author of the cassation appeal did not indicate which provision was alleged to have been violated in this qualified manner, all the more so as the proceedings under review were conducted under the jurisdictional (ordinary) procedure, and not under the extraordinary procedure. On the other hand, the linking of the provision of Article 156(1)(2) of the Code of Administrative Procedure with Article 1(1) and (2) of the P.u.s.a. or with Article 3(1), (2)(1), 145(1)(2) of the P.p.s.a. or Article 134(1) of the P.p.s.a. does not indicate in what the appellant alleges a gross violation of law. The above provisions, apart from Article 134 § 1, cannot, as a rule, constitute an independent cassation ground, except when the court adopts a criterion other than legality for the control of the challenged act or other action of the public administration, taking into account other directives or applying non-statutory measures (Art. 1 § 1 and 2 of the P.p.s.a.) or when the court considers a case other than a court-administrative case, assesses the activity of an entity outside the public administration or applies legal measures unknown to the provisions of the Act (art. 3 § 1, § 2 item 1 of the P.p.s.a.). The provision of Article 145 § 1(2) of the P.p.s.a. is, in turn, a consequential provision, referring to the prerequisites of invalidity from Article 156 of the P.p.a. or contained in other provisions, while with regard to the provision of Article 134 § 1 of the P.p.s.a., the appellant limited himself to a mere vague indication that the Court of First Instance overlooked the case of a gross

violation of law and did not consider "all violations [indicated] by the Appellant in the complaint to the court of first instance".

The allegation of the infringement of Article 1 § 1 and 2 of the P.u.s.a., in conjunction with Article 3 § 1 and § 2(1) in connection with Article 141 § 4 of the P.p.s.a. (plea 3) also did not merit consideration. Indeed, the grounds of the appealed judgment contain all the elements listed in Article 141 § 4 of the P.p.s.a., including the allegation of a violation of Article 91 of the RODO. The correctness of its application, on the other hand, will be assessed within the framework of the allegations of infringement of substantive law, similarly to the allegation of infringement of Article 1 § 1 and 2 of the P.u.s.a. in conjunction with Article 3 § 1 and § 2 (1) in conjunction with Article 145 § 1 (1)(a) of the P.p.s.a. (allegation 2), the effectiveness of which depends on the correctness of the formulation of the allegations of substantive law. In fact, on its own, it could not constitute grounds for setting aside the judgment under review in the case.

Turning to the assessment of the allegations of substantive law infringement, it should be noted that against their background, the applicant referred to two issues revealed by the facts of the present case. The first, concerned the timing of the entry into force of the provisions of the RODO and the related possibility for the Catholic Church to apply specific rules for the protection of natural persons in relation to the processing of personal data, while the second issue concerned the possibility of creating and the status of the Church Data Protection Officer.

Analysing the first issue, it should be pointed out that, according to Article 91(1) of the RODO, "[i]f, in a Member State at the time of entry into force of this Regulation, churches and religious associations or communities apply specific rules for the protection of individuals with regard to processing, such rules may continue to apply provided that they are brought into line with this Regulation". However, contrary to the complainant's assessment, prior to the date of entry into force of the RODO, the Catholic Church had certain rules on the protection of personal data, such as, for example, with regard to the keeping of parish registers, where the facts of baptism, marriage or death of members of a religious community were recorded using personal data. There was no principle of universal, unrestricted access to this information - the possibility to inspect the books or obtain copies or to request any changes to them. It is irrelevant whether this was the result of the application of codified rules or generally accepted customary law, as no strictures as to the nature of the sources of law are set out in Article 91(1) RODO. Nevertheless, it should be noted that the basis for these rules was the norms contained in canon law, including the provisions on the protection of privacy and intimacy contained in the Code of Canon Law (especially Canon 220). In addition, many of the provisions contained in the Code of Canon Law set out the rules for the collection and use of data and the rights of data subjects, and thus - the processing and protection of data, taking into account ecclesiastical specificities. This also applies to the maintenance of archives, preparation for sacraments, etc. (P. Fajgielski. Commentary to Article 91 of the RODO [in:] Commentary to Regulation 2016/679 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), [in:] General Data Protection Regulation. Personal Data Protection Act. Commentary, 2nd edition, LEX/el).

Thus, the condition of the existence of detailed, separate rules in the Catholic Church - prior to the entry into force of RODO - has been fulfilled. The important question is therefore whether these rules have been adapted to the requirements of RODO. In order to answer this question, it is necessary to determine how the European legislator understands the term "adaptation" used in Article 91(1). Is it a question of ensuring full compliance with the provisions of a new legal instrument (of the level of the Regulation) or is it possible - in their framework - to establish different rules, while ensuring data protection in the general areas covered by the RODO. Taking into account the presumption of rationality of the European legislator, which is

indispensable for interpretation, the second alternative should be favoured. Insofar as the legislator's objective would be to ensure full compliance, the establishment of a specific regulation in the RODO would not be logically justified. Indeed, churches and religious associations are - in principle - subject to generally applicable law. The entry into force of a directly applicable EU regulation (Regulation) would therefore have the effect that the entities concerned - as directly bound by it - would have to comply with it without exception. However, as can be inferred from the wording of Article 91 of the RODO, the EU legislator intended to take into account the specificity of the processing of personal data relating to religious practices and dogmatic teaching of churches and other religious communities. Therefore, it considered it legitimate to respect their distinctiveness and autonomy and allowed the application of different rules of personal data protection ensuring the achievement of the objectives of the RODO (cf. the judgment of the WSA in Warsaw of 16 October 2019 ref. II SA/Wa 907/19).

While sharing the above view, it should also be noted that this interpretation of Article 91(1) of the RODO also takes into account the constitutional principle of autonomy of the Catholic Church guaranteed by the Constitution of the Republic of Poland, the Concordat between the Holy See and the Republic of Poland and the Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland (consolidated text Dz. U. of 2019, item 1347).

Therefore, the argumentation of the cassation appeal referring to Article 99 of the RODO, which in paragraph 1 indicates the moment of entry into force of that regulation and in paragraph 2 the moment from which it will apply, i.e. from 25 May 2018, is unfounded. As indicated above, at the time of the entry into force of the RODO, the Catholic Church had a regulation on the processing of personal data, primarily in the Code of Canon Law, which the Catholic Church, within the timeframe set out in Article 91(1) of the RODO, adapted to the provisions arising from the RODO - the General Decree on the Protection of Individuals with regard to the Processing of Personal Data in the Catholic Church, issued by the Polish Bishops' Conference, on 13 March 2018, during the 378th Plenary Meeting in Warsaw, on the basis of can. 455 of the Code of Canon Law, in connection with Article 18 of the Statutes of the EPC, following the special permission of the Holy See of 3 June 2017. As an aside, it should only be pointed out that it is beyond the scope of the Court's assessment that is raised in the cassation appeal as to the assessment and manner of its promulgation, which remains an internal matter of the Catholic Church, arising from its right to self-organisation and self-government.

For the reasons set out above, the allegations of infringement of Article 51(1) to (4) in conjunction with Article 77, Article 78, Article 91(1) to (2) and Article 99(1) to (2) RODO (allegation 1), Article 91(1) in conjunction with Article 99(1) and (2) RODO (allegation 6 and 7) proved unfounded.

Turning to the assessment of the second issue revealed in the present cassation appeal, it should be noted that Article 91(2) RODO provided for the possibility for churches and religious associations to set up an independent supervisory authority as part of their supervision, which may be a separate body provided that it meets the conditions set out in Chapter VI of the Regulation. As noted in the literature, such a separate body must provide a standard of protection as close as possible to that of a state body and be characterised by independence, secrecy (Article 52(4) RODO), perform the tasks and exercise the powers set out in the RODO. The fulfilment of these objectives is served by requirements as to the qualifications of the member of the body, its independence, appropriate personnel and organisational equipment. However, the RODO regulation does not allow to expect the formation of the state supervisory authority and the church supervisory authority to be the same. Differences are also possible

between the separate bodies (B. Łukańko. Ecclesiastical models of personal data protection. Wolters Kluwer Polska sp. z o. o., Warsaw 2019, pp. 222 - 224).

It is therefore not the case, as stated in the cassation appeal, that in the light of Article 91(2) of the RODO, only a public authority which fulfils the conditions set out in Chapter VI of the RODO can be recognised as a separate, independent supervisory authority. The autonomy left to the Catholic Church in organisational matters, including the processing of its member's personal data, also gives it the power to establish a data protection authority within its own structure, in this case a Church Data Protection Supervisor, although the internal regulations adopted in this regard should contain guarantees of independence corresponding to the assumptions made in Article 52 RODO. The supervisory authority may therefore be located within the structure of the church, albeit it must be obliged to report and be provided with adequate organisational equipment and the right to freely select personnel. In this regard, the provisions of the Catholic Church contained in the aforementioned Decree contain the relevant regulations contained in Articles 33, 39.

For these reasons, the allegations of infringement of Article 91(2) of the RODO (allegation 8), of Article 77(1) of the RODO (allegation 5), of Article 51(1) in conjunction with Article 51(2) and Article 52(1), (4), (5) and (5) of the RODO (allegation 2) and of Article 54(1)(a) and (b) to (f) of the RODO (allegation 3 and 4) proved unfounded. With regard to the latter, it should be emphasised once again that the modus operandi, the method of appointment or dismissal of the Church Data Protection Officer does not have to have a basis in common law and may derive from the internal law of the Catholic Church, provided that the requirements of Chapter VI, and therefore also Article 54 RODO, are respected. With regard to the argumentation of the cassation complaint regarding the questioning of the independence of the holder of the authority of the Ecclesiastical Data Protection Supervisor by virtue of being a priest and the related norms of Canon Law, including the rule of obedience, it should be noted that Canon 145 § 2 provides that "[t]he duties and rights proper to every ecclesiastical office are determined either by the law itself by which the office is established or by a decree of competent authority by which it is at the same time established and conferred". In turn, according to Article 35, paragraph 1, sentence 2 of the aforementioned Decree: "The ecclesiastical Data Protection Officer, in the performance of his supervisory tasks, shall not be subject to the instructions of other entities". According to Article 35(2) of the Decree: "The function of the Church Data Protection Officer is an office within the meaning of can. 145 of the Code of Canon Law". It follows, therefore, that it is a "right" within the meaning of the Code, attributed to the office, that the Data Protection Officer is not subordinated, in the performance of the related activities, to the instructions of external entities. Thus, the Church Data Protection Officer has legal regulations guaranteeing his independence, in the exercise of his function. The assessment of the moral qualifications or the manner in which a particular person holds this position goes beyond the limits of the cassation control of the present case, if only because the subject of the judicial assessment was the decision refusing to initiate proceedings by the President of the Office for Personal Data Protection. On the other hand, the appellant failed to challenge the correct assessment of the Court of first instance that the President of the Office for Personal Data Protection is not competent to examine and resolve the complaint concerning the processing of the appellant's personal data within the scope of the competence of the Church Data Protection Supervisor.

The court hearing the present appeal in cassation also found no violation in the circumstances of this case of the right to freedom of thought, conscience and religion (Article 18 of the 1966 International Covenant on Civil and Political Rights. - ground 9; Article 9(1) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. - allegation 10; Article 10(1) of the Charter of Fundamental Rights of the European Union - allegation 11). The freedom to hold and form the religion or belief of one's choice is autonomous and depends on

the will of the individual. Membership of a church is arbitrary in nature and therefore it must also be possible to withdraw from that community. It should be noted that in the case of the Convention for the Protection of Human Rights and Fundamental Freedoms, at the same time, the same regulation of Article 9 of the Convention provides the religious group with autonomy to organise its own functioning and forms of integration of the faithful. This autonomy includes in particular the right to: the determination of doctrine (religious canons), the freedom of the religious group to decide on its composition, the freedom to take acts concerning the rights and status of the faithful (Convention for the Protection of Human Rights and Fundamental Freedoms, Volume I, Commentary to Articles 1-18 edited by Prof. Leszek Garlicki pp. 556-583). With regard to the Church-State relationship, this autonomy implies the prohibition of interference by public authorities in the freedom to hold and form a religion and includes the prohibition of state determination of what the beliefs and convictions of citizens are to be, as well as the imposition of public sanctions for adherence to a particular religion or worldview, the prohibition of imposing only the right view (cf. the judgment of the Supreme Administrative Court of 6 March 2019 ref. I OSK 1294/17). As, in turn, the European Court of Human Rights in Strasbourg pointed out in its judgment of 12 June 2014. 56030/07 in Martinez vs. Spain (www.echr.coe.int), the principle of religious autonomy prevents the State from obliging a religious community to allow or exclude a person or to entrust a person with a specific religious duty. In this judgment, the Court also recalled that it has regularly emphasised in its case law the role of the State as a neutral and impartial organiser of the practice of different religions, faiths and beliefs, and pointed out that this role is a guiding one for public order, religious harmony and tolerance in a democratic society, especially between groups in opposition to each other.

In view of the above, the Supreme Administrative Court, pursuant to Article 184 of the P.p.s.a., decided to dismiss the cassation appeal.

The case was heard in closed session in a panel of three judges pursuant to Article 15zzs4(1)-(3) of the Act of 2 March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws, item 374, as amended), as amended by Article 4(3) of the Act of 28 May 2021 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws 2021, item 1090). Pursuant to the aforementioned regulation, '[i]n the period of the state of epidemic emergency or the state of epidemic declared due to COVID-19 and within one year from the cancellation of the last one, the Supreme Administrative Court shall not be bound by a party's request to hold a hearing (...)', during which period 'provincial administrative courts and the Supreme Administrative Court shall hold a hearing by means of technical devices enabling the hearing to be held remotely with simultaneous video and audio transmission, with the provincial administrative courts and the Supreme Administrative Court not being required to be present in the court building'. Pursuant to paragraph 3 of the aforementioned article, "[t]he presiding judge may order a hearing to be held in camera if he deems it necessary to hear the case and it is not possible to hold the hearing remotely with simultaneous direct video and audio transmission". In the opinion of the Supreme Administrative Court, the hearing of the case was necessary due to the length of the pending court proceedings. In addition, for technical reasons, it is not possible in all cases where the hearing has not been waived to be conducted remotely with simultaneous direct video and audio transmission. In this particular situation, the hearing of the cassation complaint in closed session was, in the opinion of the Supreme Administrative Court, a reasonable compromise between the right of the parties to have the case heard in public and the right to have the case heard without undue delay (Article 45 of the Constitution of the Republic of Poland) and the principle of proportionality, which implies the possibility of limiting constitutional rights due to the need to protect health. The parties were warned of this mode of case hearing and given the opportunity to take a final position on the case in writing.