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GLOSS ON THE RULING OF THE SUPREME ADMINISTRATIVE COURT OF 25 MAY 2022, CASE REFERENCE NUMBER III OSK 2273/21

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Abstract
The glossed ruling covers two key issues concerning the application of the autonomous and comprehensive rules of the protection of natural persons with regard to the processing of personal data applied by organisational units of the Catholic Church in the territory of the Republic of Poland. The first issue concerns the possibility of further application of these autonomous, comprehensive rules after the GDPR came into force. The second issue concerns the ability to designate and grant a legal status to an independent separate supervisory authority: the Ecclesiastical Data Protection Officer. Approving the stance presented in the ruling of the Supreme Administrative Court, the gloss presents arguments confirming the fact that when the GDPR came into force, a regulation concerning the processing of personal data existed in the Catholic Church (it was primarily contained in the standards of the Code of Canon Law of 1983), which the Catholic Church, by the time specified in Article 91(1) GDPR, harmonised with the provisions of that legal act. Moreover, the mode of operation, the manner of designating or dismissing the Ecclesiastical Data Protection Officer does not have to be derived from the universally binding law. It may arise from the internal law of the Catholic Church, provided that the requirements laid down in Chapter VI GDPR, i.e. independence, fulfilment of general conditions concerning data protection supervisory authorities, secrecy, performance of tasks and exercise of the powers laid down in the GDPR (relevant competences), are met. This argument originates from the principle of autonomy and independence of churches and other religious organisations, guaranteed by the provisions of the Constitution of the Republic of Poland. The reasoning is also confirmed in recital 165

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of the GDPR preamble, which states that "This Regulation respects and does not prejudice the status under the constitutional law of churches and associations or religious communities in the Member States, as recognised in Article 17 TFEU".

Keywords: data protection, Catholic Church, GDPR, autonomous and comprehensive rules of data protection

MAIN THESES

(1) When the GDPR entered into force, a regulation concerning the processing of personal data existed in the Catholic Church and it was primarily contained in the standards of the Code of Canon Law of 1983, which the Catholic Church harmonised with the provisions of that legal act by the time specified in Article 91(1) GDPR.
(2) The mode of operation, manner of designating or dismissing the Ecclesiastical Data Protection Officer does not have to be derived from the universally binding law; it may arise from the internal law of the Catholic Church, provided that the requirements laid down in Chapter VI GDPR, including Article 54 GDPR, are met.[1]

Having heard a cassation complaint about the judgment of the Voivodeship Administrative Court in Warsaw of 9 September 2019, case No. II SA/Wa 865/19, concerning decision of the President of the Personal Data Protection Office of March 2019 as regards a refusal to start a proceeding, during a closed session of the General Administrative Chamber on 25 May 2022, the Supreme Administrative Court dismissed the cassation complaint.[2] The Supreme Administrative Court expressed its stance on two issues. The first one referred to the moment the GDPR provisions entered into force[3] and the related possibility of applying autonomous comprehensive rules of protection of natural persons with regard to the processing of their personal data by organisational units of the Catholic Church in Poland. The second one referred to the possibility of designating and granting status of an independent supervisory authority to the Ecclesiastical Data Protection Officer. The Supreme Administrative Court resolved the two matters in the glossed ruling properly and in the way that deserves universal approval.

With regard to the first issue, it is necessary to point out that in accordance with Article 91(1) GDPR, "Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation". What is of key importance in the above-cited provision is the moment of entry

1 The ruling published, inter alia, in Lex No. 3347701.
2 Lex No. 2769411.
3 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), OJ L 119, 4.5.2016, p. 1.

into force of the GDPR and the application of the comprehensive rules of protection of natural persons with regard to the processing of personal data by churches and religious associations or communities at this moment. The provisions should be interpreted in the light of recital 165 to the GDPR preamble and Article 9(2)(d) GDPR. In accordance with recital 165, "This Regulation respects and does not prejudice the status[4] under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 TFEU". The provision of Article 9(2)(d) GDPR stipulates that the processing of specific categories of personal data shall not be prohibited,[5] provided that:

> "processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects".

The literal interpretation of the provision of Article 91(1) GDPR leads to a conclusion that if at the moment of entry into force of the GDPR, i.e. on 24 May 2016, in a given church and a religious association or community, there were no comprehensive rules of protection of natural persons with regard to the processing of their personal data, they have no possibility of referring to them and adjusting to the rules laid down in the GDPR.[6] Therefore, churches and religious associations or communities that did not apply such rules at the moment of entry into force of the GDPR are directly subject to the GDPR provisions.[7] It is also applicable to churches and religious associations or communities that were founded after that date. There is also a contrary stance presented in the doctrine, i.e. one stating that the time limit referred to in Article 91(1) GDPR only constitutes a confirmation of the *status quo* of churches and religious associations or communities and a directive on the expected changes. This in turn leads to a conclusion that they should not be deprived of the right to develop their internal laws. According to this stance, even the EU Regulation application date (25 May 2018) could not be the final deadline for harmonising the internal rules of a given church and a religious association or community with the GDPR provisions.

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4 Article 17 TFUE uses the phrase "The Union respects the status".

5 The category includes personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

6 Sakowska-Baryła, M., 'Komentarz do art. 91', in: Sakowska-Baryła, M. (ed.), *Ogólne rozporządzenie o ochronie danych osobowych. Komentarz*, Warszawa, 2018, accessed via Legalis, nota bene 3.

7 Zawadzka, N., 'Komentarz do art. 91', in: Bielak-Jomaa, E., Lubasz, D. (eds), *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, Warszawa, 2018, accessed via Lex, paras. 3 and 6; Fajgielski, P., 'Komentarz do art. 91 RODO', in: Fajgielski, P., *Ogólne rozporządzenie o ochronie danych. Ustawa o ochronie danych osobowych. Komentarz*, Warszawa, 2021, accessed via Lex, paras. 5 and 11–13; Litwiński, P., 'Komentarz do art. 91', in: Litwiński, P. (ed.), *Rozporządzenie UE w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i swobodnym przepływem takich danych. Komentarz*, Warszawa, 2021, accessed via Legalis, nota bene 2.

It would have been a breach of Articles 20 and 21 of the Charter of Fundamental Righ[8] concerning equality before the law and non-discrimination.[9] Moreover, if the deadline for GDPR application had been final, it would lead to a direct discrimination against religious associations that will be founded in the future. Taking into account the systemic interpretation of the provisions in question, one should agree with the above interpretation.[10] However, it is worth pointing out that until a given church and a religious association or community meets the requirements laid down in the GDPR, i.e. it establishes in its internal law autonomous comprehensive rules of personal data protection matching those stipulated in the GDPR, the GDPR provisions will be applicable directly. Moreover, if churches and religious associations or communities that apply autonomous comprehensive rules of personal data protection but apart from their statutory (religious) activities, i.e. activities conducted "within its scope" and as a rule regulated by internal laws, also conduct activities regulated by the law of the Member State and/or the EU (e.g. cultural, educational and social activities), the GDPR provisions shall be also directly applied to those activities. It concerns e.g. processing of personal data by churches and religious associations or communities in connection with schools awarded the rights of public schools or by charitable organisations they keep, e.g. social welfare homes, nursing care facilities etc. By analogy, the same applies to a case when the entities indicated process personal data within the business activity they are involved in.

In the complainant's opinion, substantive law, inter alia, Article 91(1) in conjunction with Article 99(1) and (2) GDPR, was breached by means of erroneous interpretation consisting in the assumption that the date of entry into force of the GDPR is the date determined in Article 99(2) GDPR, i.e. 25 May 2018, while the provision of Article 91(1) GDPR unambiguously refers to the definition of a legal term of "entry into force". Under Article 99(1) GDPR, this legal act entered into force on 24 May 2016. As a result, the mistake let the Voivodeship Administrative Court

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[8] OJ C 202, 7.6.2016, p. 1.

[9] Hucał, M., 'Reforma ochrony danych osobowych w Kościołach mniejszościowych w Polsce: projekt regulacji wewnętrznych i wspólnego organu nadzoru', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*, Warszawa, 2019, pp. 53–55.

[10] It is strengthened by the fact that in accordance with the information available at the Personal Data Protection Office (https://www.uodo.gov.pl/pl/138/721; accessed on 12.08.2022), the churches and other religious associations or communities that informed the President of the Personal Data Protection Office directly or via the government of the Republic of Poland about the application of autonomous comprehensive regulations concerning personal data protection include the Evangelical Methodist Church in the Republic of Poland based in Cracow (registry No. 185), which obtained a formal status of a church in the Republic of Poland after the entry into force of the GDPR. The online registry of churches and other religious associations or communities operates based on Act of 17 May 1989 on the guarantees of freedom of conscience and religion (consolidated text, Journal of Laws of 2017, item 1153) and Regulation of the Minister of Internal Affairs and Administration of 31 March 1999 concerning the registry of churches and other religious associations or communities (Journal of Laws No. 38, item 374). At present (as of 12 August 2022), 171 churches and other religious associations entered into it, https://www.gov.pl/web/mswia/rejestr-kosciolow-i-innych-zwiazkow-wyznaniowych (accessed on 12.08.2022). After the entry of the GDPR into force, successive seven churches and other religious associations entered the registry.

in Warsaw unjustifiably assume that the Catholic Church in the Republic of Poland met the time limit required to keep being able to apply autonomous comprehensive rules of protection of natural persons with regard to the processing of their personal data. What is more, in the complainant's opinion, at the time of the GDPR entry into force, the Catholic Church did not have such comprehensive rules at all and thus, it was not possible to harmonise them with the GDPR provisions. As a result, the Catholic Church in the Republic of Poland did not fulfil the requirement laid down in Article 91(1) GDPR, and delayed the introduction of the internal provisions for two years. That is why the internal regulations adopted are insignificant and organisational units of the Catholic Church in the Republic of Poland are subject to general rules laid down in the GDPR.

In its ruling, the Supreme Administrative Court rightly pointed out that contrary to the complainant's opinion,

> "before the entry into force of the GDPR, the Catholic Church had certain binding rules regarding personal data protection, e.g. in relation to parish archiving systems which, with the use of personal data, recorded such facts in the life of the religious community members as christening, marriages or deaths. (…) It does not matter whether it resulted from the application of codified rules or universally adopted common law because Article 91(1) GDPR does not determine any requirements concerning the types of the sources of law. Nevertheless, it should be highlighted that the norms laid down in canon law, including the ones concerning the protection of privacy and intimacy laid down in the Code of Canon Law[11] (in particular in Canon No. 220) were a basis for those principles."

It should be emphasised that apart from the above-mentioned Canon 220, CCL contains a series of legal norms concerning the processing of personal data. And thus, in Canons 482–491 and Canon 535, the ecclesiastical legislator obliges every parish to keep records in accordance with the regulations of the Bishops Conference and a bishop of a diocese, and obliges a parish priest to develop and retain them properly, as well as imposes an obligation to keep an archive on diocesan curiae and parishes, and regulates the rules of keeping them. Canons 1067 and 1069 concerning preparation for marriage determine rules of providing information about circumstances that are important for getting married. It is also worth pointing out non-statutory ecclesiastical documents (of different legal weight and value, and detailed subject-matter of regulation), which in practice have created an autonomous system of personal data protection applied in the Catholic Church in the Republic of Poland. For example, the norms of motu proprio *La cura vigilantissima* of 21 March 2005,[12] Regulations of the Polish Episcopal Conference concerning the christened, confirmed, married and deceased, and registries of parishioners of 26 October 1947,[13]

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[11] *Codex Iuris Canonici* auctoritate Ioannis Pauli PP. II promulgatus, 25/01/1983, *Acta Apostolicae Sedis* (hereinafter "AAS") 75(1983) pars 2, pp. 1–317; Latin-Polish text: *Kodeks prawa kanonicznego*, translation approved by the Polish Episcopal Conference, Poznań 1984 (hereinafter "CCL"). For practical reasons of clear disquisition, reference to the canon law of the Eastern Catholic churches is excluded.

[12] AAS 97(2005), pp. 353–376.

[13] Text in: Baron, J., Bączkowicz, F., Stawinoga, W., *Prawo kanoniczne. Podręcznik dla duchowieństwa*, Vol. 2, 3rd edition, Opole, 1958, pp. 597–604. The regulations have been in force since 1 January 1948.

the instruction developed by the General Inspector of Personal Data Protection and the Polish Episcopal Conference Secretariat of 23 September 2009: "Ochrona danych osobowych w działalności Kościoła katolickiego w Polsce",[14] or the General Decree of the Polish Episcopal Conference concerning apostasy and a return to the Church community of 7 October 2015.[15]

In accordance with the GDPR provision in analysis, there is no obligation to include detailed rules of natural persons' data protection with regard to their personal data processing in one legal act. P. Fajgielski makes accurate observations on the issue:

> "The term 'comprehensive rules' used in the discussed provision does not mean that a church and a religious association or community must have a uniform, comprehensive internal regulation (a single normative act of the internal law of a given church and a religious association or community) that covers the issues concerning personal data protection in this church or association, but that they have their own regulations resulting in comprehensive rules of protecting persons with regard to data processing and apply those rules. The requirement for successive application of the rules consists in their adjustment to the provisions commented on".[16]

The provision does not mean that those comprehensive rules must be determined in a Member State legislation, although there is such a possibility. As M. Sakowska-Baryła rightly notices, the addressees of the regulation contained in the provision analysed "include first of all the national legislator and relevant bodies of churches and religious associations that possess the competence to introduce relevant internal norms in order to adjust their solutions to the requirements laid down in the GDPR".[17] A two-year period between the entry into force of the GDPR (24 May 2016) and the start of its application (25 May 2018) was aimed at serving to bring the Member States' regulations and the law of churches and religious associations or communities into line with the EU new regulations, as well as to enable data controllers and processors to get prepared for the fulfilment of new obligations.[18]

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[14] https://giodo.gov.pl/data/filemanager_pl/wsp_krajowa/KEP.pdf (accessed on 12.08.2022).

[15] *Akta Konferencji Episkopatu Polski*, 2007, No. 27, pp. 101–104. The Decree has been in force since 19 February 2016. Also see Majer, P., 'Ochrona prywatności w kanonicznym porządku prawnym', in: Majer, P. (ed.), *Ochrona danych osobowych i prawo do prywatności w Kościele*, Kraków, 2002, pp. 83–123; Kacprzyk, W., *Prawo do prywatności w prawie kanonicznym i w prawie polskim. Studium prawnoporównawcze*, Lublin, 2008; Skonieczny, P., 'Pojęcie dobrego imienia (bona fama) w Kodeksie prawa kanonicznego z 1983 r. Jana Pawła II na podstawie kan. 220', *Prawo Kanoniczne*, 2009, No. 1–2, pp. 59–84; Gręźlikowski, J., 'Realizacja prawa do dobrego imienia i ochrony własnej intymności w Kościele (kan. 220 KPK) w świetle ustawy i instrukcji o ochronie danych osobowych', *Teologia i Człowiek*, 2012, pp. 229–255; Czelny, M., 'Prawo do prywatności w ustawodawstwie Kościoła katolickiego', in: *Prawo do prywatności w kościołach i innych związkach wyznaniowych…*, op. cit., pp. 373–400.

[16] Fajgielski, P., 'Komentarz do art. 91 RODO…', op. cit., para. 5.

[17] Sakowska-Baryła, M., 'Komentarz do art. 91…', op. cit., nota bene 2.

[18] For more on the issue see Hucał, M., 'Szczegółowe lub kompleksowe zasady ochrony danych osobowych stosowane przed wejściem w życie RODO na przykładzie Kościoła Ewangelicko-Augsburskiego w RP', *Studia z Prawa Wyznaniowego*, 2019, Vol. 22, pp. 255–288; Walencik, D., 'Dekret ogólny Konferencji Episkopatu Polski w sprawie ochrony osób fizycznych w związku

For this reason, the substantiation of the cassation complaint referring to Article 99 GDPR is groundless; paragraph 1 indicates the moment of the entry into force of the Regulation (24 May 2016) while paragraph 2 indicates the moment when the Regulation starts being applied, i.e. 25 May 2018. As it was shown earlier, the moment the GDPR entered into force, the Catholic Church possessed a series of regulations concerning personal data processing, first of all contained in CCL. As a result, the Catholic Church fulfilled the requirement to have autonomous comprehensive rules of protecting personal data before the entry of the GDPR into force.[19]

Successive application of autonomous comprehensive rules of protecting data by churches and religious associations or communities that applied them when the GDPR entered into force depends on their harmonisation with the GDPR provisions. This means that, as a result of the EU law, regardless of constitutional or, in case of churches and religious associations or communities, treaty (concordat) arrangements, the Member States are obliged to ensure that detailed rules of protecting natural persons with regard to the processing of their data by those entities are really implemented in accordance with the GDPR. For the meantime, however, neither a mechanism for verifying this conformity has been developed nor an entity that might do this has been indicated.

According to P. Litwiński,

> "the scope of such harmonisation should cover the entirety of the GDPR provisions because there is no provision limiting the scope of rules conformity with the provisions of the GDPR. What is important, some differences are admitted but they cannot be significant. (…) In this case, expecting complete conformity with the GDPR provisions (…) would reflect a contradiction between respect for the status granted to churches and religious associations or communities based on the constitutional law binding in the Member States and their subjection to the GDPR provisions (…). If the status of churches and religious associations or communities is respected, one cannot speak about whatever adjustment of the rules to the GDPR provisions."[20]

Undoubtedly, the new EU regulations forced the application of improved data protection standards, in particular on data security. It is due to the fact that a church and religious association or community has no right to process data in the way that goes beyond the general purpose of processing or serves that aim but uses those data in a disproportionate (excessive) manner. Undoubtedly, the provisions concerning

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z przetwarzaniem danych osobowych w Kościele katolickim', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*…, op. cit., pp. 15–48; Filak, A., 'Nowe regulacje ochrony danych osobowych w Kościele Ewangelicko-Augsburskim w RP', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*, Warszawa, 2019, pp. 117–142.

[19] Thus also Fajgielski, P., 'Komentarz do art. 91 RODO…', op. cit., para. 5; Litwiński, P., 'Komentarz do art. 91…', op. cit., nota bene 4. Private and contrary opinion on this issue is expressed in: Zawadzka, N., 'Komentarz do art. 91…', op. cit., nota bene 3.

[20] Litwiński, P., 'Komentarz do art. 91…', nota bene 3. Also see Fajgielski, P., 'Komentarz do art. 91 RODO…', para. 6; Sakowska-Baryła, M., 'Komentarz do art. 91…', nota bene 1; Morawska, K., 'Rola oraz status prawny motywów preambuły ogólnego rozporządzenia o ochronie danych – klucz do wykładni przepisów nowego prawa unijnego', in: Kawecki, M., Osiej, T. (eds), *Ogólne rozporządzenie o ochronie danych osobowych. Wybrane zagadnienia*, Warszawa, 2017, pp. 40–41.

protection of personal data in churches and religious associations or communities do not enjoy absolute legal autonomy, and like the provisions on the protection of personal data in other entities (associations, foundations and trade unions), must in general match the principles laid down in the GDPR. It is worth pointing out that the analysed GDPR provision lays down a comprehensive regulation, i.e. in-depth, absolute, entire, complete, precise principles being a complex alternative to the GDPR but at the same time adjusted thereto. They are principles that specify the general rules expressed in the GDPR provisions but also determine exceptions taking into account the specificity of a particular church and religious association or community. Thus, it does not aim to ensure full conformity with the provisions of the EU Regulation but to establish autonomous comprehensive rules of ensuring data protection in the general areas indicated by the GDPR. The Supreme Administrative Court is right to conclude that:

> "While the aim of the legislator [ecclesiastical one – D.W.] could have been to ensure complete conformity, there would have been no logical justification for the establishment of a given special regulation in the GDPR. This is so because churches and religious associations, as a rule, are subject to the commonly binding law. (…) As it can be assumed based on the content of Article 91 GDPR, the EU legislator intended to take into account the specificity of the processing of personal data in connection with religious practices and dogmatic teaching conducted by churches and other religious communities, thus, recognised respect for their distinctiveness and autonomy as well-grounded and admitted the application of different rules of personal data protection that ensure the accomplishment of the GDPR objectives (cf. judgment of the Voivodeship Administrative Court in Warsaw of 16 October 2019, Case No. II SA/Wa 907/19)".

As a result, the Supreme Administrative Court was right to recognise that the Polish Episcopal Conference issued *Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim* in the term laid down in Article 91(1) GDPR.[21] By means of the Decree, without prejudice to the former legal regulations, the Polish Episcopal Conference harmonised the autonomous comprehensive rules of protecting natural persons with respect to the processing of their data that were applied in the Catholic Church in the Republic of Poland at the moment of the GDPR entry into force with the Regulation provisions. The Polish Episcopal Conference adopted the Decree on 13 March 2018. However, its promulgation took place, after obtaining *recognitio* of the Holy See on 30 April 2018, by means of entering it on the official website of the Polish Episcopal Conference, which was a certain novelty but is admitted in canon law. On the same day, the Decree entered into force. By the way, it is worth mentioning that the Supreme Administrative Court was right to determine that the assessment presented in the cassation complaint and the way of the Decree promulgation, which is an internal matter of the Catholic Church resulting from its right to self-organisation and self-governance, go beyond the scope of its cognition.

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[21] https://episkopat.pl/wp-content/uploads/2018/06/DekretOgolnyKEPWSprawieOchronyOsobFizycznychWZwiazkuZPrzetwarzaniemDanychOsobowychWKoscieleKatolickim.pdf (accessed on 12.09.2022); *Akta Konferencji Episkopatu Polski*, 2018, No. 30, pp. 31–45.

Going on to the assessment of the second issue resolved by the Supreme Administrative Court in the glossed ruling, it is necessary to refer to the provision of Article 91(2) GDPR, in accordance with which churches and religious associations or communities that applied comprehensive rules of protection of personal data at the moment of entry into force of the GDPR may establish a separate independent supervisory body, provided that it fulfils the requirements laid down in Chapter VI GDPR, applied *mutatis mutandis*. However, the provision does not determine whether it should be one body common to all churches and religious associations or communities or whether every entity can establish a separate body. It seems that both solutions are admissible, however, from the practical point of view and taking into account the specificity of particular churches and religious associations or communities, the second solution should be opted for. It should also be assumed that in accordance with the provision analysed, also a Member State might appoint a supervisory body. However, if an independent supervisory body were not established, the application of autonomous comprehensive rules of personal data protection by a given church and religious association or community would not be excluded. The provision does not determine the relationship between a national supervisory body and separate supervisory bodies. It does not seem, however, that a separate supervisory body should be subordinate to a national supervisory body. Their jurisdiction should be independent because the establishment of an independent supervisory body by a church and a religious association or community results in the exclusion of that church and a religious association or community from the jurisdiction of a national supervisory body.[22] Data processing in churches and religious associations or communities that do not apply autonomous comprehensive rules of personal data protection or did not establish a separate supervisory body is subject to supervision by a national supervisory body. The supervision by this body also covers data processing in churches and religious associations or communities to which the GDPR is applicable directly.

The requirements that separate supervisory bodies established by churches and religious associations or communities should fulfil include: independence, fulfilment of general conditions concerning data protection supervisory authorities, secrecy, performance of tasks and exercise of the powers laid down in the GDPR (relevant competences). It is pointed out in literature that "the GDPR does not let us expect that the state and ecclesiastical supervisory bodies will be shaped in the same way. There may also be differences between particular separate bodies",[23] i.e. the bodies designated by different churches and religious associations or communities. Nevertheless, like analogous national bodies, each separate data protection body should possess appropriate "human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers" (Article 52(4) GDPR). Separate supervisory bodies should "be appointed by means of a transparent procedure" by appropriate authorities of churches and religious associations or communities (Article 53(1) GDPR). A holder or member

[22] Litwiński, P., 'Komentarz do art. 91…', op. cit., nota bene 7; Fajgielski, P., 'Komentarz do art. 91 RODO…', op. cit., para. 12–13; Sakowska-Baryła, M., 'Komentarz do art. 91…', op. cit., nota bene 5.

[23] Łukańko, B., *Kościelne modele ochrony danych osobowych*, Warszawa, 2019, p. 223.

of such a body (it may be a single-person body or a collective one) must have "the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform its duties and exercise its powers" (Article 53(2) GDPR) and may be "dismissed only in case of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties" (Article 53(4) GDPR). The rules of appointing data protection authorities and their qualifications, selection requirements, the term of office and secrecy regulations that their holders or members must comply with shall be determined in the internal law of a given church and a religious association or community, which should possibly reflect the law of the Member State concerned,[24] *mutatis mutandis* (Article 54 GDPR). Thus, they do not have to be based on the universally binding law but must meet the requirements of Chapter VI GDPR. Finally, the provisions of the internal law of churches and religious associations or communities may include a caveat that data protection authorities of those entities shall not be competent to supervise processing operations of courts acting in their judicial capacity (Article 55(3) GDPR).

Under Article 51(1) GDPR, each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of the Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union. In Poland, at present, the issues related to the protection of personal data are within the competence of President of the Data Protection Office (Article 34(1) Act of 10 May 2018 on the Protection of Personal Data[25]). It is also necessary to point out that Article 51(4) GDPR imposes an obligation on the Member States to notify the European Commission of the provisions of its law which they adopt pursuant to Chapter VI GDPR, by 25 May 2018 and, without delay, any subsequent amendment affecting them. There are no legal grounds, however, for imposing an obligation on churches and religious associations or communities to notify a national supervisory authority of the appointment of independent supervisory bodies or the content of internal regulations concerning the processing and protection of personal data. That is why it is postulated in literature that such an obligation is introduced. According to B. Łukańko, the consequence of the "regulatory freedom of the states and religious associations may consist in the creation of significant differences between a state authority's and individual independent ones' norms (provided that there are more than one body)" ,[26] which is confirmed in the legal solutions adopted by the churches and other religious associations functioning in the Republic of Poland.

In accordance with Article 35 of the Decree of the Polish Episcopal Conference, the Ecclesiastic Data Protection Officer is an independent authority monitoring and ensuring the compliance with the provisions on the protection of personal data within and pursuant to the functioning of the Catholic Church and its structures. The Ecclesiastical Data Protection Officer, within the area of performing his

[24] It should be remembered that the provisions of Chapter VI GDPR include numerous norms leaving much legislative freedom to the Member States, e.g. Article 51(1) and (3); Article 52 (6); Article 53(3) and (4); Article 54(1)(b)–(f).

[25] Consolidated text, Journal of Laws of 2019, item 1781.

[26] Łukańko, B., *Kościelne modele ochrony danych osobowych…*, op. cit., p. 224.

supervisory duties, is not subject to any orders issued by other entities. The function of the Ecclesiastical Data Protection Officer is an authority within the meaning of Canon 145 CCL. A person holding the position of the EDPO is obliged to refrain from any activities that cannot be reconciled with the function. The Polish Episcopal Conference is obliged to ensure conditions and measures necessary to effective fulfilment of tasks by the EDPO. The Plenary Assembly of the Polish Episcopal Conference elects the Ecclesiastical Data Protection Officer for a four-year term of office. The same person can be elected for subsequent terms (Article 36(1) of the Decree). The person performing the function of EDPO should possess appropriate knowledge, experience and skills in the area of personal data protection necessary to properly carry out his tasks (Article 36(2) of the Decree). The Ecclesiastical Data Protection Officer may be dismissed from his function only in case of serious misconduct or if he no longer fulfils the conditions required for holding the office (Article 36(3) of the Decree). He may also hand in his resignation in writing, which takes effect the moment the President of the Polish Episcopal Conference is notified of it (Article 36(4) of the Decree). The EDPO's tasks include, inter alia, monitoring and ensuring the compliance with the provisions on the protection of personal data within and pursuant to the functioning of the Catholic Church and its structures; popularising the knowledge of personal data protection in the Church; advising data controllers and processors in the Church in the field of personal data protection; providing information to data subjects about the rights they have in connection with the processing of their personal data; dealing with complaints about *the provisions laid down in the Church within the scope of the protection of personal data*; cooperating with the national supervisory authority, including sharing information and providing assistance in order to ensure the compliance with the provisions on the protection of personal data (Article 37(1) subsections 1–5 and 7 of the Decree). In order to fulfil the tasks, the EDPO has the power to demand that the data processors in the Church provide information about the data processing and protection; to check the activities of the data processors in the Church; to order that the legitimate state be restored in case he finds incorrect data processing; to order the controller to inform data subjects about their personal data breach; to undertake other measures necessary to ensure effective protection of personal data in the Church (Article 38 Decree). The Ecclesiastical Data Protection Officer shall develop annual reports on his activities, which shall be submitted to the Polish Episcopal Conference and published in *Akta Konferencji Episkopatu Polski* (Article 39 Decree). That is why the Supreme Administrative Court is right to state that the "power" within the meaning of CCL, granted to the EDPO's office, consists in the lack of its subjection to the orders of external entities within the scope of performance of supervisory tasks. "This way, the Ecclesiastical Data Protection Officer is provided with legal regulations that guarantee his independence in the performance of his function".

Thus, contrary to complainant who stated in the cassation complaint that, pursuant to Article 91(2) GDPR, only a state (public) entity that meets the requirements laid down in Chapter VI GDPR can be recognised as an independent supervisory authority. On the other hand, what is right is the stance of the Supreme Administrative Court, which believes that

> "The autonomy granted to the Catholic Church in the field of organisational matters, including the processing of personal data of its members, also entitles it to designate a body responsible for the protection of personal data within its own structure; and in this case it is the Ecclesiastical Data Protection Officer (…). Thus, the supervisory authority may be based within the Church structures, however, it must be obliged to submit reports and be provided with appropriate organisational facilities and the right to freely select personnel. With respect to this, the regulations of the Catholic Church laid down in the above-mentioned Decree contain relevant provisions under Article 33 and Article 39."

Taking into account the above-discussed provisions, the national supervisory authority, as well as administrative courts are right to recognise that the President of the Data Protection Office has no powers to deal with a complaint about the processing of personal data that is within the competence of the Ecclesiastical Data Protection Officer.[27] For those reasons, the charges in the cassation complaint were found groundless and the Supreme Administrative Court rightly decided to dismiss the case.

The arguments in justification of the Supreme Administrative Court's ruling has its source in the principle of respect for the autonomy and independence of churches and other religious organisations, which the Constitution of the Republic of Poland guarantees (Article 25(3) of the Constitution). It is also confirmed in recital 165 of the GDPR preamble, in accordance with which the regulation respects and does not prejudice the status under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 TFEU. It should be emphasised that, in the glossed ruling, the Supreme Administrative Court clearly recognised the right of the Catholic Church in the Republic of Poland to exercise the powers laid down in Article 91(1) GDPR and pass its own legal act concerning the protection of personal data, which is an updated and more detailed specification of the former norms. This way, the legitimacy of the issue of *Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim* as a form of harmonisation of the former rules binding in the Catholic Church with the requirements of the GDPR within the time limit determined in Article 91(1) GDPR was confirmed in the judicature. Moreover, the Supreme Administrative Court analysed the Decree of the Polish Episcopal Conference and clearly pointed out that the regulation meets the requirements of Article 91(1) GDPR, and the Ecclesiastical Data Protection Officer is guaranteed independence in the performance of his function.

However, the ruling did not resolve all doubts, inter alia, those concerning the effectiveness of the legal measures that natural persons are entitled to in order to exercise their rights. The issue that remains unsolved is whether the right to autonomous regulation of personal data protection, granted to churches and religious

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[27] Thus: judgments of the Voivodeship Administrative Court in Warsaw: of 9 September 2019, case No. II SA/WA 865/19, Lex No. 2769411; of 16 October 2019, case No. II SA/Wa 907/19, Lex No. 3022683; of 21 November 2019, case No. II SA/Wa 1001/19, Lex No. 3047357, of 30 January 2020, case No. II SA/WA 1773/19, Lex No. 2976924; of 5 March 2021, case No. II SA/Wa 1325/20, Lex No. 3176741; of 14 May 2021, case No. I SA/Wa 2510/20, Lex No. 3209081; of 8 December 2021, case No. II SA/Wa 3437/21, Lex No. 3349877.

associations or communities by the Union legislator, covers only substantive legal issues or procedural ones as well. Pursuant to the GDPR provisions, a negative resolution of a complaint by the national supervisory authority shall be subject to examination by an independent court and the given person is entitled to a parallel mode of claiming the exercise of his rights before a court. In accordance with the Decree of the Polish Episcopal Conference, the appeal proceeding covers the possibility of filing an appeal defined as an application addressed to the author of a given administrative act, in this case to the Ecclesiastical Data Protection Officer, for cancelling or amending it, and then a hierarchical appeal addressed to the appropriate dicastery of the Roman Curia, and even an administrative court appeal filed to the Tribunal of the Second Section of the Apostolic Signatura. Thus, the question about the possibility of exercising the right to simultaneously bring a claim for compensation before a state court remains open, especially in the context of Article 82(6) in conjunction with Article 79(2) GDPR. And, is a state court bound by the EDPO's resolution or can it only take one into consideration, or is it completely insignificant? Apart from that, should the Member States stipulate an efficient measure of legal protection before a state court in case of the illegitimate application of procedures or a failure to exercise the rights by an independent supervisory authority of a church and a religious association or community? In addition, a question is raised whether entities operating within the structures of a church and a religious association or community that possesses comprehensive rules of personal data protection may be charged with offences connected with the processing of personal data within the state system of criminal law. On the one hand, if the provision of Article 91(2) GDPR clearly grants churches and religious associations or communities the right to appoint an independent supervisory authority, the consequences of this body's activities cannot be ignored at the state forum. On the other hand, if an act of the internal law of a church and religious association or community does not ensure effective protection within the scope of accepting claims under Article 82 GDPR, it would be difficult to assume that the requirements of Article 91(1) GDPR have been fulfilled.

BIBLIOGRAPHY

Baron, J., Bączkowicz, F., Stawinoga, W., *Prawo kanoniczne. Podręcznik dla duchowieństwa*, Vol. 2, 3rd edition, Opole, 1958.

Czelny, M., 'Prawo do prywatności w ustawodawstwie Kościoła katolickiego', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*, Warszawa, 2019, pp. 373–400.

Fajgielski, P., 'Komentarz do art. 91 RODO', in: Fajgielski, P., *Ogólne rozporządzenie o ochronie danych. Ustawa o ochronie danych osobowych. Komentarz*, Warszawa, 2021, accessed via Lex.

Filak, A., 'Nowe regulacje ochrony danych osobowych w Kościele Ewangelicko-Augsburskim w RP', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*, Warszawa, 2019, pp. 117–142.

Gręźlikowski, J., 'Realizacja prawa do dobrego imienia i ochrony własnej intymności w Kościele (kan. 220 KPK) w świetle ustawy i instrukcji o ochronie danych osobowych', *Teologia i Człowiek*, 2012, pp. 229–255.

Hucał, M., 'Szczegółowe lub kompleksowe zasady ochrony danych osobowych stosowane przed wejściem w życie RODO na przykładzie Kościoła Ewangelicko-Augsburskiego w RP', *Studia z Prawa Wyznaniowego*, 2019, Vol. 22, pp. 255–288.

Hucał, M., 'Reforma ochrony danych osobowych w Kościołach mniejszościowych w Polsce: projekt regulacji wewnętrznych i wspólnego organu nadzoru', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*, Warszawa, 2019, pp. 53–55.

Kacprzyk, W., *Prawo do prywatności w prawie kanonicznym i w prawie polskim. Studium prawnoporównawcze*, Lublin, 2008.

Litwiński, P., 'Komentarz do art. 91', in: Litwiński, P. (ed.), *Rozporządzenie UE w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i swobodnym przepływem takich danych. Komentarz*, Warszawa, 2021, accessed via Legalis.

Łukańko, B., *Kościelne modele ochrony danych osobowych*, Warszawa, 2019.

Majer, P., 'Ochrona prywatności w kanonicznym porządku prawnym', in: Majer, P. (ed.), *Ochrona danych osobowych i prawo do prywatności w Kościele*, Kraków, 2002, pp. 83–123.

Morawska, K., 'Rola oraz status prawny motywów preambuły ogólnego rozporządzenia o ochronie danych – klucz do wykładni przepisów nowego prawa unijnego', in: Kawecki, M., Osiej, T. (eds), *Ogólne rozporządzenie o ochronie danych osobowych. Wybrane zagadnienia*, Warszawa, 2017, pp. 40–41.

Sakowska-Baryła, M., 'Komentarz do art. 91', in: Sakowska-Baryła, M. (ed.), *Ogólne rozporządzenie o ochronie danych osobowych. Komentarz*, Warszawa, 2018, accessed via Legalis.

Skonieczny, P., 'Pojęcie dobrego imienia (bona fama) w Kodeksie prawa kanonicznego z 1983 r. Jana Pawła II na podstawie kan. 220', *Prawo Kanoniczne*, 2009, No. 1–2, pp. 59–84.

Walencik, D., 'Dekret ogólny Konferencji Episkopatu Polski w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim', in: Zieliński, T.J., Hucał, M. (eds), *Prawo do prywatności w kościołach i innych związkach wyznaniowych*, Warszawa, 2019, pp. 15–48.

Zawadzka, N., 'Komentarz do art. 91', in: Bielak-Jomaa, E., Lubasz, D. (eds), *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, Warszawa, 2018, accessed via Lex.

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