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*Compensation for Illegal Processing of Personal Data from the Perspective of Polish Law**

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ABSTRACT The provisions of the Polish Data Protection Act supplement Regulation 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) to the extent that this act does not regulate the issue of compensation claims for unlawful processing of personal data. After a vigorous discussion that took place in the doctrine of civil law, it was concluded that the liability for damages referred to in Article 82 of the Regulation is in tort. This determination provoked far-reaching legal consequences, since the regime of liability for damages was based in Polish law on the principle of fault. For unlawful processing of personal data, the injured party may seek compensation for material damage or compensation for non-pecuniary damage. In addition to the liability for damages specified in Article 82 of the Regulation, the EU legislator has introduced administrative-legal liability for unlawful processing of personal data. On the basis of this liability regime, Polish public entities, including public-administration bodies, can act in a dual role. On the one hand, a public-administration body may be the entity responsible for the unlawful processing of personal data and will be subject to administrative-law sanctions, while on the other hand, it may be the entity that supervises public and private entities regarding the correctness of personal-data processing.

1. *Personal-data protection in Polish law: an introduction*

Issues of personal-data protection were first regulated in Polish law in 1997, in Article 51 of the Constitution of the Republic of Poland of 2 April 1997[1] (Constitution). Article 51 of the Constitution stipulates the right to the protection of personal data, which is one of the manifestations of the right to privacy. It regulates several important issues, namely an individual's information autonomy, i.e. their freedom to provide information concerning them, the permissibility of interference with this freedom by public authorities, and their rights in the event of its infringement.[2] According to the wording of the mentioned regulation, no one may be obliged other than under the law to disclose information concerning their person.[3]

Under the Constitution, the rules and procedures for collecting and sharing personal data are determined by law. At present, it is the Personal Data Protection Act of 10 May 2018[4] (PDPA). The PDPA applies to the protection of individuals regarding the processing of personal data within the scope of article 2 and article 3 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)[5] (Regulation). The law specifies, among other things, the competent authority for personal-data protection, proceedings for infringement of personal-data protection regulations, control of compliance with

* Article submitted to double blind peer review.

[1] In *Journal of Laws*,1997, No. 78, item 483.

[2] Article 51 (Right to protection of personal data) of the Constitution:
- No one may be obliged, except on the basis of statute, to disclose information concerning their person.
- Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law.
- Everyone shall have a right of access to official documents and data collections concerning themselves. Limitations upon such rights may be established by statute.
- Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.
- Principles and procedures for collection of and access to information shall be specified by statute.

[3] M. Florczak-Wątor, *Art. 51. [Prawo do ochrony danych osobowych]*, in P. Tuleja (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa, Wolters Kluwer Polska, 2023, 190.

[4] In *Journal of Laws*, 2019, item 1781.

[5] In order to implement the PDPA, seven implementing acts and fifty amending acts have been issued in Poland and are in force in law.

personal-data protection regulations, as well as (of relevance to this article) civil liability for infringement of personal-data protection regulations and proceedings before the courts.[6]

It is worth noting at this point that the PDPA is a national supplement to the EU's Regulation. The Regulation, in accordance with Article 288 of the Treaty on the Functioning of the European Union, is of general application, binding in its entirety and directly applicable in all EU member states. To the extent that the EU legislature does not have normative competence the Regulation does not regulate certain issues related to the protection of personal data. These include system issues related to the designation of the supervisory authority and procedural issues. In addition, the EU legislator left it up to the national governments to detail certain general provisions or to shape the indicated legal constructions differently. The Polish legislator took advantage of this opportunity, regulating, inter alia, the issues of defining public entities obliged to appoint a data-protection officer and the issues of liability for violations of data-protection regulations.[7]

As G. Sibiga rightly pointed out, "Member State legislation is an exception to the principle of uniform regulation of data protection in the general regulation and should not lead to the fragmentation of personal-data protection law, which, after all, was to be counteracted by the choice of the Regulation of the European Parliament and of the Council as the harmonizing act".[8] However, when considering the issue of compensation for unlawful processing of personal data from the perspective of Polish law, it is necessary to simultaneously refer to the provisions of the PDPA and the Regulation.

2. *Legal nature of a claim for compensation for damage caused by improper processing of personal data*

Article 82 of the Regulation provides for the right to compensation for damage suffered as a result of its violation. The processing of personal data may entail negative consequences for those whose data are subjected to this process. Thus, any person who has suffered property or non-property damage has the right to obtain compensation from the controller or processor for the damage suffered. Undoubtedly, compensation under the Regulation was conceived as a tool supporting the effectiveness of regulations protecting personal data. It has a preventive function, as it is intended to provide the addressees of the Regulation's norms with an appropriate degree of motivation to comply with its provisions, and consequently prevent violations. Regardless of the preventive function, compensation for infringement of the Regulation "performs, of course, the basic function of liability for damages - it serves to compensate for the harm caused to data subjects".[9]

The concept of damage should be interpreted broadly. "Thus, it is about damage to legally protected goods or interests, both material (e.g., the financial loss that a person suffered as a result of the data processing that violated the regulation) and non-material (e.g., the harm that a person suffered as a result of the unlawful disclosure of data about his or her health; violation of the sphere of privacy, good name). Property damage includes both incurred losses and lost profits, while non-property damage refers to various types of damage to nonpecuniary assets".[10]

The institution of compensation referred to in Article 82 of the Regulation is of a civil law (private law) nature and concerns the horizontal relationship between the controller or processor and the data subject. In turn, the very construction of Article 82 of the Regulation makes it possible to assume that this provision is an independent basis for compensation claims. However, since legal proceedings for damages are initiated before a court of competent jurisdiction under the law of a member state, the Polish legislator has

[6] In *Official Journal of the European Union*, 2016, item 119.

[7] P. Fajgielski, *General Data Protection Regulation. Personal Data Protection Act. Commentary*, II ed., Warszawa, Wolters Kluwer, 2022, 76.

[8] G. Sibiga, *General Data Protection Regulation. Current problems of legal protection of personal data*, Warszawa, C.H. Beck, 2016, 18.

[9] R. Strugała, *Principle of compensatory liability for damage caused by improper processing of personal data (Article 82 RODO)*, in J. Jezioro, K. Zagrobelny and K. Wesołowski (eds.), *Selected issues of Polish Private Law. A memorial book in memory of PhD Józef Kremis and PhD Jerzy Strzebińczyk*, Wrocław, EDITOR, 2019, 208.

[10] P. Fajgielski, *Komentarz do ustawy o ochronie danych osobowych*, in P. Fajgielski (ed.), *Ogólne rozporządzenie o ochronie danych. Ustawa o ochronie danych osobowych. Komentarz*, II ed., Warszawa, Wolters Kluwer Polska, 2022.

detailed the regulation of civil liability in Chapter 10 of the PDPA (articles 92, 93 and 100). These provisions stipulate, in particular, among other things, that to the extent not regulated by the Regulation, the provisions of the Civil Code shall apply to claims for infringement of personal-data protection regulations, the district court shall have jurisdiction over claims for infringement of personal-data protection regulations, and the provisions of the Code of Civil Procedure shall apply to proceedings to the extent not regulated by the Law.

In the doctrine of Polish civil law , due to the statutory reference to the provisions of the Civil Code to the extent that the Regulation does not regulate all issues of liability for damages for violation of the provisions on personal-data protection, a discussion has swept over whether this liability is based on the principle of fault or risk? A question was posed about the legal nature of the claim for damages, that is, is it tort or contractual in nature? Doubts arose over the Polish translation of Article 82 of the Regulation. In most, if not all, language versions of the Regulation, the wording of Article 82 predetermines that the administrator can be released from liability if they prove that they are not responsible for the event that caused the damage, while the Polish version uses the premise of no fault. Part of the doctrine of Polish civil law has advocated the concept of strict liability, arguing that it is not so much the absence of fault that should be considered an exonerating circumstance as the fact that the damage resulted from extraordinary events beyond the control of the administrator whose liability is under consideration. The reasonableness of this position was derived directly from the interpretation of the Polish version of the Regulation, where it referred to the phrase about "not being at fault for the event that led to the damage". In the end, the concept of fault-based liability prevailed, whose proponents referred directly to the wording of Article 82(3) of the Regulation. In fact, this provision stipulates that the controller or processor shall be exempted from liability if they prove that they are in no way at fault for the event that led to the damage.[11] Another argument in favor of assuming that liability for damages for violation of the Regulation is of a tort nature is that its basis is the violation of norms of a general nature, addressed to an indeterminable circle of addressees, rather than relative norms, existing between specific individuals.[12]

Determining that liability for damages under Article 82 of the Regulation is based on the principle of fault determines that in matters not regulated by the Regulation, the provisions of the Polish Civil Code on tort liability should be applied.

3. *Types of compensation claims for unlawful processing of personal data under Polish law*

The Regulation regulates the pursuit of data-breach claims in articles 79 and 82, but does not do so exhaustively. The Polish legislator has not decided to introduce a new measure into the legal system at the level of substantive law,[13] resolving, however, that the EU's data-subject claims regulations would be supplemented by the Civil Code. The reference to the provisions of the Civil Code means that the provisions of Article 415 et seq. and Article 448 et seq. of the Polish Civil Code of 23 April 1964, apply to claims for violations of data-protection regulations[14] (PCC). The norm of Article 415 of the PCC will be applied to cases claiming compensation for property damage suffered as a result of a violation of data-protection regulations, while from Article 448 of the PCC to claim compensation for non-pecuniary damage suffered.

Damage should be understood as any harm suffered against the will of the injured party in their legally-protected goods or interests.[15] The Polish legislator adopts the principle of full compensation for damage suffered for unlawful processing of personal data, regardless of whether it is of a pecuniary (on the basis of article 361 § 2 PCC[16]) or non-

[11] R. Strugała, *RODO and liability for damages. Basic problems of liability for damage caused by improper processing of personal data*, in *Legal Monitor*, vol. 17, 2018, 916-917.

[12] A. Pązik, *Damage resulting from violations of RODO. Selected issues*, in *Scientific Journals of the Jagiellonian University. Papers in Intellectual Property Law*, vol. 3, 2020, 127-146.

[13] In *Journal of Laws*, 2022, item 1360.

[14] Article 415 PCC states that: Anyone who by a fault on his part causes damage to another person is obliged to remedy it.

[15] A. Sinkiewicz, The concept and types of damage in Polish civil law, in Notary, vol. 2, 1998, 62.

[16] Article 361 PCC Causal relationship; damage.
1. A person obliged to pay compensation is liable only for normal consequences of the actions or omissions

pecuniary nature.[17] This means that, if nothing else follows from the provision of the law or the agreement between the parties, the injured party should be compensated for the full amount of the damage, and the court that decides on this compensation is under no discretion to measure it.

By the term pecuniary damage it is meant damage to property (directly conditioned by economic interest, the value of which is expressible in money). Non-pecuniary damage, on the other hand, is damage to non-material goods (it does not directly relate to the property sphere, and therefore - the value of intangible goods cannot be directly estimated in money). Damage resulting from unlawful processing of personal data can take several forms. It can be a property damage resulting directly from the infringement of goods of a pecuniary nature, a property damage resulting from the violation of goods of a non-pecuniary nature - but causing effects in the property sphere of the injured person, and a non-pecuniary damage in the form of harm, that is, relating to the mental sphere of the injured person.

Regardless of the form of damage, however, compensation claims essentially consist of the ability to demand damages (in the case of property damage) or monetary compensation for the harm suffered (in the case of non-property damage). In each case, the prerequisites for compensation will be the existence of unlawful damage, the occurrence of an event in which a provision of generally applicable law attaches liability to the debtor, a causal connection between the event and the damage, and fault.

Under Polish law, the limits of compensation for property damage are set by financial loss and lost profits. By the term financial loss (damnum emergens) is meant a decrease in assets or an increase in liabilities. Lost benefits (lucrum cessans) include the value of assets that did not become part of the estate as a result of the harmful act, and the value of liabilities that did not diminish as a result of the damage. There is a consensus that only those benefits should be taken into account, which with a high probability would be in the property of the injured party. If this probability is lower, there is a case of so-called "contingent damage" (loss of the chance to obtain benefits), which is not subject to compensation.[18] The determination of the existence and amount of damage is made by the differential method, which prescribes to take as damage the difference between the actual state of the injured party's property at the time of the determination and the hypothetical state that would have existed if the causal event had not occurred. Its characteristic feature is that it takes into account all the consequences of a specific event for the property of the injured party, so not only the direct effects on individual property, but also further consequences on the property of the injured party. On the other hand, the establishment of lucrum-cessans damages requires the demonstration in a particular case of a high degree of probability of loss of benefits, although proof of certainty of occurrence is not necessary.[19]

A claim for compensation as a form of reparation for non-pecuniary damage (harm) is available to the injured party only in cases specified by law. It provides a method of compensating for the harm resulting from the violation of personal rights. In other words, it is a matter of redressing the psychological suffering resulting from the unlawful processing of personal data.[20] This refers to non-material damage existing both at the time of the court's decision and that which the injured party will suffer in the future certainly or with a foreseeable high degree of probability. The amount of compensation depends on the totality of the circumstances of the particular case, concretizing in relation to the injured person. In the jurisprudence, an accurate view has been formed that the essential prerequisites for determining its amount are the type, nature and duration of

from which the damage arises.
2. Within the above limits, in the absence of a provision of the law or contract to the contrary, remedy of damage covers the losses which the aggrieved party has suffered, and the benefits which they could have obtained had it not suffered the damage.

[17] The provisions of Polish law stipulate compensation for non-material damage in the form of harm when a special provision governs it. In this case, the specific provision allowing compensation for non-pecuniary injury under Polish law will be Article 82(1) of the Regulation.

[18] G. Karaszewski, *Artykuł 361*, in J. Ciszewski and P. Nazaruk (eds.), *Kodeks cywilny. Komentarz aktualizowany*, LEX/el., 2022.

[19] Judgment of the Court of Appeal in Krakow from 15 July 2015 r., I ACa 483/15, LEX number 1934435.

[20] A. Szpunar, *Compensation for non-pecuniary damage*, Bydgoszcz, Oficyna Wydawnicza Branta, 2004, 164-169.

negative psychological experiences. Such indications also include the degree of guilt of the wrongdoer, the attitude of the person responsible for causing the damage, their behavior toward the injured party, in particular whether they took steps to compensate for the harm.[21]

4. *The administrative liability for unlawful processing of personal data*

In addition to the liability for damages provided for in Article 82 of the Regulation, the EU legislator has introduced administrative liability for unlawful processing of personal data. Administrative fines imposed in each member state by supervisory authorities, that is, public administrations, have been added to the catalog of sanctions for violations of the Regulation. Article 83[22] of the Regulation

[21] Judgment of the Supreme Court of 12 September 2002, IV CKN 1266/00, LEX number 80272.

[22] Article 83 [General conditions for imposing administrative fines].
1. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 5 and 6 shall in each individual case be effective, proportionate and dissuasive.
2. Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in points (a) to (h) and (j) of Article 58(2). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:
a) the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;
the intentional or negligent character of the infringement;
b) any action taken by the controller or processor to mitigate the damage suffered by data subjects;
c) the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
d) any relevant previous infringements by the controller or processor;
e) the degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
the categories of personal data affected by the infringement;
f) the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
g) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
h) adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
i) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.
3. If a controller or processor intentionally or negligently, for the same or linked processing operations, infringes several provisions of this Regulation, the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement.
4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
b) the obligations of the certification body pursuant to Articles 42 and 43;
c) the obligations of the monitoring body pursuant to Article 41(4).
5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
b) the data subjects' rights pursuant to Articles 12 to 22;
c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
d) any obligations pursuant to Member State law adopted under Chapter IX;
e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).
6. Non-compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.
7. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.
8. The exercise by the supervisory authority of its powers under this Article shall be subject to appropriate procedural safeguards in accordance with Union and Member State law, including effective judicial remedy and due process.
9. Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fine is initiated by the competent supervisory authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States

specifies the prerequisites for the application of an administrative fine, sets the amount of the fine and indicates the circumstances affecting it.

Considerations conducted in the science of Polish administrative law on the essence of the administrative fine as a type of administrative sanction for unlawful processing of personal data led to the introduction of a legal definition of this concept in the Polish legal order. According to Article 189b of the Polish Code of Administrative Procedure,[23] an administrative monetary penalty should be understood as a sanction of a pecuniary nature that is defined by law and is imposed by administrative decision by a public-administration body following a violation of the law consisting of a failure to comply with an obligation or a violation of a prohibition imposed on a natural person, a legal person or an organizational unit without legal personality. At the same time, it should be noted that the provisions of the Regulation are *lex specialis* in this case and take precedence over Polish administrative procedure. However, they are not complete and therefore must be augmented with selected provisions of the Polish Administrative Procedure Code and PDPA that do not contradict them.[24]

On the basis of the issue at hand, public entities, including public-administration bodies, can act in a dual role. On the one hand, the public-administration body may be the entity responsible for the unlawful processing of personal data and will be subject to administrative-law sanctions, while on the other hand, it may be the entity that exercises supervision over public and private entities in verifying the correctness of personal-data processing.

The responsible entity under the PDPA, as well as the Regulation, can be either a public entity or a private entrepreneur, as long as it is the personal data administrator. These entities are entirely responsible for the implementation of tasks and processes under data-protection laws, for their proper functioning and for the supervision of designated data-protection officers. It should be noted that the amount of administrative sanctions was determined separately for public entities and other subjects. Article 83(7) of the Regulagtion indicates that each member state may determine whether and to what extent administrative fines may be imposed on public authorities and entities established in that member state. Poland has taken advantage of this possibility by stipulating the maximum amount of administrative fines that can be imposed on public entities. The imposition of penalties on public finance-sector entities is regulated by article 102 of the PDPA. The central authority of the Polish public administration, which is the President of the Office for Personal Data Protection, may impose, by decision, administrative fines of up to PLN 100,000 - on units of the public finance sector referred to in article 9 points 1-12 and 14 of the Public Finance Act, research institutes, the National Bank of Poland, as well as fines of up to PLN 10,000 - on units of the public finance sector referred to in article 9 point 13 of the Public Finance Act.[25]

The legislator justified the differentiation of maximum penalties by the perpetrator on the grounds that public entities are financed from state-budget funds. In addition, imposing penalties on the public administration in significant amounts indirectly burdens tax-paying citizens. This position perfectly demonstrates the consciousness of the legislator in assigning a purely repressive function to administrative punishment imposed on public entities, including public-administration bodies. The justification for the introduction of lower fines that can be imposed on public entities is also that the financial administrative sanction can lead to the bankruptcy of public entities with low revenues.[26]

shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by 25 May 2018 and, without delay, any subsequent amendment law or amendment affecting them.

[23] Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws 2022, item 2000.

[24] J. Łuczak, *Artykuł 83 (Ogólne warunki nakładania administracyjnych kar pieniężnych)*, in E. Bielak-Jomaa and D. Lubasz (eds.), *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, Warszawa, Wolters Kluwer Polska, 2018.

[25] L. Staniszewska, *Model karania za przetwarzanie danych osobowych niezgodnie z przepisami*, in M. Jędrzejczak (eds.), *Ochrona danych osobowych w prawie publicznym*, Warszawa, Wolters Kluwer Polska, 2021.

[26] However, the Polish legislator has adopted an additional repression for public entities manifested in the mandatory publication on the website of the entity or on the website of the Public Information Bulletin of the final decision stating the violation, while with regard to entrepreneurs, publication takes place only if the author-

The introduction by the Regulation of a new power for supervisory authorities to impose administrative fines for violations of data-protection regulations is one of the most significant changes in the data-protection system. In this way, the EU legislator aims to increase the effectiveness of enforcement and thus improve the level of personal-data protection in the EU.

Pursuant to Article 101 of the PDPA, the supervisory authority with the power to impose an administrative fine in the event of unlawful processing of personal data, and thus the authority with the power to impose fines, is the President of the Office for Personal Data Protection. It is the central body of Polish public administration appointed and dismissed by the Sejm of the Republic of Poland with the consent of the Senate of the Republic of Poland for a four-year term.

The President of the Data Protection Authority exercises supervisory powers over both public and private entities. To the extent that the Authority examines the correctness of the processing of personal data by controllers who are public entities, including public administration bodies, it performs public-administration control in a broad sense.

The Polish supervisory authority has the power to impose an administrative fine by way of an administrative decision, the issuance of which should be preceded by a thorough administrative procedure. In connection with pending proceedings for the imposition of an administrative monetary penalty, the entity against which the proceeding is conducted shall be obliged to provide the President of the Office for the Protection of Personal Data, at any of their requests, within 30 days of receipt of the request, with the data necessary to determine the basis for the assessment of the administrative monetary penalty.

The President of the Office for Personal Data Protection, in assessing the facts surrounding the violation and determining the amount of the fine, evaluates each case individually (Article 83(2) of the Regulation). The Authority takes into account both the circumstances of the violation itself, including the attitude of the responsible entities toward the violation, and the general circumstances of the entities' compliance with the requirements of the Regulation, including the adjustment and precautionary measures taken previously and the behavior of the entities in the face of the President's previous instructions or sanctions. In addition, the President of the Office will take into consideration the profitability of the violation for those responsible and any other relevant circumstances.

5. *Summary*

The Regulation, which has been in force since 25 May 2018, besides a number of very severe sanctions of an administrative-legal nature, also provides for compensatory (civil) liability of entities involved in the processing of personal data. Article 82(1) of the Regulation grants any person who has suffered pecuniary or non-pecuniary damage as a result of a violation of the Regulation the right to obtain compensation from the controller or other processor.

The assumption under Polish law that the claim under Article 82 of the Regulation is a tort has significant legal consequences related to the pursuit of claims for damages for unlawful processing of personal data. That is because the provisions of the PCC relating to torts will be applicable here, and in particular those relating to the issue of claiming damages, or monetary compensation for harm suffered.[27]

In the course of the trial, the burden of proof is on the injured party, who, in addition to the prerequisites for tort liability, is required to indicate the amount of damage that will entail the amount of compensation or damages awarded. However, it is worth emphasizing that the Polish legislator regulates differently the conditions for claiming compensation for pecuniary damage and for compensation for non-pecuniary damage in connection with the unlawful processing of personal data.

In parallel with civil liability, the violator faces administrative liability for infringement of personal-data processing regulations. It can be borne by both public entities, including public authorities, and private entities to the extent that they unlawfully processed personal data. The administrative fine is imposed by

ity considers that the public interest warrants it, but the decision does not require anonymization (article 73 of the PDPA).

[27] N. Zawadzka, *Artykuł 92*, in D. Lubasz (ed.), *Ustawa o ochronie danych osobowych. Komentarz*, Warszawa, Wolters Kluwer Polska, 2019.

the supreme administrative body of public administration - the President of the Office for Personal Data Protection, after a thorough administrative investigation. Its amount varies and depends on whether the violator of the Regulation and the PDPA is a public or private entity. The establishment of lower administrative penalties that can be levied against a public entity is dictated by the fact that its funds come mainly from taxes, which consequently is also severe for citizens.