

Dr. Adam Bodnar
Commissioner for Human Rights
Aleja Solidarności 77
00 - 090 Warszawa
Poland

Brussels, 24 May 2017

Dear Dr. Bodnar,

The European Humanist Federation is the largest federation of secularist and freethinker's associations from over 20 European countries. We promote separation of Church and State and defend equal treatment of everyone regardless of religion or belief or any ground of discrimination.

It has been brought to our attention that the Polish authorities had been involved in a long and overly complex judicial examination of what seems to be a relatively simple question – whether the Catholic Church parishes are subject to the 1997 Personal Data Protection Act. At the center of the problem, at least from the legal point of view, is a single digit “3” in the article 43.2 of that act, referring to another clause, combined with the word “and” (hence “i 3”).

While there has been a very large number of rulings by the Voivodship Administrative Court in Warsaw and the Supreme Administrative Court, regrettably, none of them ever examined this now notorious „i 3” question from the angle of equality before the law (Article 32.1 of the Polish Constitution) or limitation to statutory restriction in exercising civil rights (Article 31.3). This is even less understandable since incompatibility over this matter between the 1997 Personal Data Protection Act and the EU Directive 95/46/EC has been openly admitted by Dr Maciej Kawecki, a former officer of the Bureau of GIODO, in a debate held in December 2014 on Racjonalista.tv. The last of three rulings was delivered in March by the first-instance court and offered no progress, just “agreeing” with the last rulings by the Supreme Administrative Court of February 2016 which even the General Inspector for Personal Data Protection had deemed to be unsatisfactory and deserving further clarification.

We are informed that the identity of three individuals concerned by these rulings is known to our member organisation, the Polish Rationalist Association.

We understand that the Polish Rationalist Association has strong and compelling evidence, gathered over the years, that the civil rights of the claimants, which in fact form the cornerstone of the case, were deliberately ignored by the Polish authorities and omitted from the rulings in order to prevent a different outcome. This leads them to the disturbing conclusion that their right to a decision



(settlement of a dispute) had been reduced to merely “de lege ferenda postulates” (see rulings II SA/Wa 2026/11 and II SA/Wa 2493/11) and that the preservation of the status quo is a goal per se.

While we would welcome resolving of this problem at domestic level, we are committed to support our member organisation which, after seven years, exhausted every opportunity to convince the Polish authorities that the privilege of this de facto exemption from the act, rashly granted to churches in 1997, probably even without their influence, and disguised as “i 3”, fell into disrepute. It seems that while no one is able or willing to defend this “clause” any longer, no one is able or willing to state the obvious either.

For these reasons we would be extremely grateful if you could, within a reasonable time, inform us whether you initiated proceedings before the Supreme Administrative Court aimed at a clarification of the 1997 Personal Data Protection Act. We shall then carefully examine the legal grounds for supporting our Polish colleagues, should they conclude that they are victims of systemic human rights violations unresolved at the domestic level.

Yours sincerely,

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Executive Director

Giulio Ercolessi
President

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