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PROCESSING OF PERSONAL DATA IN PETTY OFFENCE PROCEEDINGS

Abstract. The subject of the article is the issue concerning the material scope of personal data processed in petty offence cases and the problem of their protection. The author points out that such data are processed by the authorities conducting these proceedings without any form of external audit. The provisions of the 2018 Personal Data Protection Act, as well as the provisions of the 2016 Regulation (EU) of the European Parliament and of the EU Council on the processing and protection of such data (GDPR), do not apply to them. It is noted that such data are processed on the basis of the provisions of Directive (EU) 2016/680 of the European Parliament and of the Council of 2016, as well as national procedural regulations (i.e. the Code of Procedure in Petty Offence Cases and the Code of Criminal Procedure), which provide a certain level of protection – however, this protection is insufficient. Courts are free to decide which data they obtain, record, and disclose. The author argues that an excessive amount of such data is processed in these proceedings and postulates, de lege ferenda, that the scope should be limited to data that serve to identify the participant in the proceedings. He further contends that the current legal framework for the protection of personal data in petty offence cases is inadequate and fails to ensure legal certainty.

Keywords: petty offence proceedings, personal data, protection.

Introduction

Proceedings in petty offence cases may be conducted either through judicial proceedings or non-judicial (penalty notice) procedure. However, regardless of the procedure applied, various types of personal data are processed in the course of such proceedings. These include the personal data of the parties to the proceedings as well as other participants. In many cases such data may also include the personal information of members of the public and representatives of the media attending the proceedings. Personal data processed in petty offence proceedings are obtained and recorded already at the stage of explanatory activities, which constitute a preliminary (preparatory) phase of such proceedings, in which the grounds for referring the case to the court are established, namely the identification of the perpetrator and the circumstances of the offence. During this phase, the competent authorities process the personal data of the individual for whom there exists a justified basis to initiate proceedings by filing a motion for punishment (of the suspect), along with the personal data of identified victims and witnesses of the offence. Whereas in the judicial phase of the proceedings, the personal data processed include those of the parties to the proceedings and their legal representatives, as well as individuals acting as personal sources of evidence, such as witnesses, experts, and specialists. The right to process their personal data does not generally raise any fundamental doubts. However, concerns do arise with regard to the substantive scope of such data, as well as the collection and recording of personal data of members of the public attending court proceedings.

The aim of this article is to analyse the issue concerning the scope of personal data processed by procedural authorities for the purpose of determining an individual's liability for the alleged petty offence. The current scope of personal data processed by procedural authorities (courts and pretrial bodies) is exceedingly broad and does not correspond to the objectives of these proceedings, which – unlike criminal proceedings – are aimed at protecting interests of lesser gravity. The structure of this article is divided into three parts. The first part will outline the legal grounds for processing personal data in petty offence proceedings; the second part will undertake an analysis regarding the scope of personal data processed during the explanatory activities conducted prior to the initiation of judicial proceedings; and the third part will examine the scope of personal data processed during the course of the court proceedings. As a result of these analyses, conclusions of a *de lege ferenda* nature will be drawn.

To achieve the stated research objective, a dogmatic-legal method will be applied to analyze the legal provisions regulating the subject matter, alongside an inductive method that will enable the formulation of conclusions based on the analyzed data. Additionally, an empirical research method will be used to illustrate the issue from the practical perspective.

1. Legal grounds and purpose of processing personal data of participants in petty offence proceedings

There is no doubt that personal data processed in the course of petty offence proceedings are subject to legal protection. However, the protection of such data falls outside the material scope of the Act of 10 May 2018 on the Protection of Personal Data and, consequently, outside the scope of protection provided by the GDPR. The processing of these data does not fall under the supervision of the President of the Personal Data Protection Office. The provisions of the Act of 14 December 2018 on the Protection of Personal Data Processed in Connection with the Prevention of and Fight Against Crime do not apply to the protection of these data either. Article 3 of this Act provides that its provisions do not apply to the protection of personal data contained in case files, procedural documents, or registration systems – including those created and processed using information technology – maintained, inter alia, pursuant to the Act of 24 August 2001 – Code of Procedure in Petty Offence Cases.

The personal data of participants in petty offence proceedings are protected under Directive (EU) 2016/680 of the European Parliament and of the EU Council of 27 April 2016, as well as by specific provisions, namely the Code of Procedure in Petty Offence Cases and the provisions of the Code of Criminal Procedure, which apply accordingly. Directive (EU) 2016/680 acknowledges that it does not prevent Member States from defining, in their national criminal procedural law, the operations and procedures for the processing of personal data by courts and other judicial authorities – in particular, personal data included in judicial decisions or case files relating to criminal proceedings (no. 20). Furthermore, in criminal matters, Member States may ensure the exercise of the rights to information, access, rectification, erasure, and restriction of processing of personal data in accordance with national rules on judicial proceedings (no. 49). It also provides that the competence of supervisory authorities should not extend to the processing of personal data by courts when acting in their judicial capacity, in order to safeguard the independence of judges in the performance of their judicial functions (no. 89).

National provisions, in particular the Code of Procedure in Petty Offence Cases, regulate matters related to the collection, recording, storage, and disclosure of personal data of participants in petty offence proceedings. These provisions impose, among other things, an obligation on the authorities conducting such proceedings to obtain the personal data of the accused, identify injured parties, and establish personal sources of evidence. As noted in the relevant literature, obtaining this data enables the court to fulfil the directives imposed upon it (Kania, 2016, p. 119) – which, in petty offence cases, stem from Article 33 of the Petty Offence Code. This provision requires the court, when adjudicating, to take into account not only the social harm of the act, the purposes of the penalty, and the type and extent of the damage and degree of guilt, but also the personal and financial characteristics and circumstances of the offender. The court may therefore process this information in the course of the proceedings (These data – although there is no explicit legal provision to that effect – may also be processed by penalty-imposing authorities, Grzegorczyk, 2013, p. 164; Judgment of the Constitutional Tribunal, 2014), and the right to process such data is justified, inter alia, by the fact that the absence of such data may prevent the authorities from carrying out certain procedural actions (Wolska-Bagińska, 2018, p. 91).

2. Personal data processed in the course of preliminary proceedings and the manner of their collection

In the course of preliminary proceedings, personal data of the perpetrator of the petty offence are collected, which – according to the legislator – serve the purpose of establishing the individual's identity and gathering the data necessary to submit a motion for punishment to the court (Sadło-Nowak, 2014, p. 30). Article 54 §1 of the Code of Procedure in Petty Offence Cases provides that: 'For the purpose of determining whether there are grounds to file a motion for punishment and of gathering the data necessary to draft such a motion, the police shall, ex officio, carry out preliminary proceedings. These actions constitute a pre-trial stage of proceedings in petty offence cases (Wójcicka, 2004, p. 199). They are intended to serve purposes similar to those defined for preparatory proceedings in criminal cases; however, they are significantly less formalized, as they are essentially limited to carrying out the two fundamental tasks mentioned above (Lewiński, 2011, p. 85).

The scope of personal data collected by the authorities conducting preliminary proceedings is defined in Article 57 §§2–3 of the Code of Procedure in Petty Offence Cases, which, by setting out the formal requirements for a motion for punishment, specifies that these authorities are obliged to establish the following data i.e.:

- first name and surname,
- address, as well as other data necessary to establish the individual's identity,
- place of employment,
- data concerning material, family and personal conditions,
- data relating to previous convictions for similar crime or offence (Dąbkiewicz, 2017, p. 274).

Moreover – pursuant to the amendment of the Code of Procedure in Petty Offence Cases introduced by the Act of 16 September 2011, and the corresponding application of Article 213 §1 of the Code of Criminal Procedure – a requirement was introduced to establish the following information regarding a person against whom there are justified grounds to file a motion for punishment, namely:

- PESEL number, or in the absence thereof, the number and name of the identity document and the name of the issuing authority;
- the age of the accused,
- their family and financial situation
- education,
- profession,
- sources of income and
- criminal record information and if possible:
- phone and fax number as well as e-mail address enabling contact with the accused and
- tax identification number (NIP), if assigned (Article 54 §8 of the Code of Procedure in Petty Offence Cases).

Therefore, the above indicates that the scope of personal data processed during investigative proceedings is exceptionally extensive. This raises the question of the legitimacy of collecting such data for the purpose of preparing a motion for punishment. After all, the purpose of the investigative proceedings is to collect the "necessary data" for its preparation. It therefore appears that information concerning the material and living conditions as well as the personal and family circumstances of the offender does not fall within such necessary data. However, the literature notes that establishing the identity of the suspect (accused) is a fundamental issue, whereas determining their personal data is always secondary (supplementary) (Izydorczyk, 2013, p. 39). Therefore, it would be advisable to propose, *de lege ferenda*, a limitation of the catalogue of information concerning the offender included in the motion for punishment to personal data identifying their identity.

Pursuant to Article 54 §1 of the Code of Procedure in Petty Offence Cases, the data necessary for preparing the motion for punishment should, whenever possible, be established at the place where the offence was committed, immediately after its detection. This provision aims both to uphold the principles of speed and economy in petty offence proceedings (Skowron, 2010, p. 327), and the principle of immediacy – that is, the possibility for the authority conducting the investigative proceedings to directly engage with the sources and means of evidence intended to support the charge formulated in the motion.

The basic method of obtaining the above mentioned data is the interrogation of the suspect, which should take place immediately after the offence has been disclosed (Mezglewski, 2013). Article 54 §6 of the Code of Petty Offences Procedure provides that "the person against whom there are reasonable grounds to draw up a motion for punishment shall be interrogated without delay". Under the current legal framework, the interrogation of the person referred to in Article 54 §6 of the Code of Petty Offences Procedure is mandatory, except in the situation specified in §7 of the same provision. The interrogation of the person referred to in §6 may be waived if it would involve significant difficulties; such person may submit written explanations to the competent authority within 7 days from the waiver of the interrogation, of which they must be duly informed. The waiver of the interrogation and the instruction given shall be documented in an official note (Tunia, 2018, pp. 11–24). The interrogation of this person begins with notifying them of the content of the charge recorded in the interrogation protocol. However, such a person has the right to refuse to provide explanations and to submit evidentiary motions, of which they must be duly informed. The interrogation shall be recorded in the form of a protocol, which should include the specification of the charge, the instruction regarding the right to refuse to give explanations and the right to submit evidentiary motions, as well as the most material statements made by the person being interrogated. It is also possible to prepare a protocol limited to the record of the most material statements of the interrogated person (Article 54 §4 of the Code of Petty Offences Procedure) (Ważny, 2025). As indicated, the authority may refrain from interrogating the person referred to in Article 54 §6 of the Code of Petty Offences Procedure only if doing so would involve significant difficulties (Article 54 §7 of the Code of Petty Offences Procedure) (Grzegorczyk, 2012, p. 216), which means that this obligation is of a relative nature. The legislator does not define what should be understood by the term "significant difficulties," and the manner in which the provision is formulated gives rise to considerable interpretative doubts. The question arises whether the "significant difficulties" refer to those encountered by the authority responsible for conducting the interrogation, or to those concerning the person to be interrogated. The views in legal doctrine on this issue are divergent (Grzegorczyk, 2012; Mezglewski, 2007, p. 17; Tunia, 2018, pp. 11–24).

This gives rise to specific consequences for the scope of personal data processed by the authority conducting the proceedings. The volume of such data may be greater in situations where the person referred to in Article 54 §6 of the Code of Petty Offences Procedure submits explanations to the competent authority, as provided for in Article 54 §7 of the said Code.

It should be emphasized, however, that obtaining certain identifying personal data from the suspect during their interrogation as part of the explanatory proceedings is possible, provided that the suspect does not exercise their right to refuse to give explanations.

When assessing the above phenomenon from a practical perspective, it should be noted that authorities conducting explanatory proceedings often fail to inform the suspect of their right to refuse to give explanations or to answer questions prior to commencing the interrogation. Instead, they employ a technique that creates the impression that providing such information is mandatory on the part of the suspect. In practice, this typically takes the form of obtaining the suspect's signature on a pre-prepared form listing their rights and obligations. However, it must be emphasized that the personal information and other data requested from the suspect by the authority conducting the interrogation under Article 54 §6 of the Code of Petty Offences Procedure fall within the scope of the right to refuse to provide explanations. The suspect must be informed of this right before any questions concerning such data are asked (the suspect does not testify under a legal duty to do so, but instead provides statements, which they are entitled to refuse).

The identifying personal data obtained during explanatory proceedings are recorded in the form of interrogation protocols, official notes, as well as in the motion for punishment itself (in the latter case – of course – provided that the authority conducting the proceedings decides to submit such a motion to the court). In addition to the record of the suspect's interview, during the course of explanatory proceedings, records of the interview of a witness or of the person filing a report of the offence may also be drawn up, as well as records of the inspection of a place, person, or object. Personal data obtained during explanatory proceedings may be recorded both in paper form and on electronic media. These materials constitute what is referred to as the case file of the explanatory proceedings, which is subject to disclosure.

The disclosure of the case file from explanatory proceedings has been possible since 1 August 2015, following the judgment of the Constitutional Tribunal of 3 June 2014 (Case No. K 19/11), which found Article 38 of the Code of Petty Offences Procedure to be unconstitutional insofar as it did not provide the person against whom there were reasonable grounds to file a motion for punishment with the right of access to the case file. As a result, Article 156 §5 of the Code of Criminal Procedure was incorporated into the Code of Petty Offences Procedure, providing the legal basis for granting access to the case file from explanatory proceedings, as well as for making copies and photocopies thereof, subject to the consent of the authority conducting the proceedings. In case of refusal to grant access to these files, the person concerned is entitled, pursuant to Article 38 §1a of the Code of Petty Offences Procedure, to a remedy in the form of a complaint to the court. Furthermore, it should be noted that since 1 July 2015, the injured party has also been granted the right to access the case file of the explanatory proceedings. This right applies in the event that the prosecutor withdraws from submitting a motion for punishment.

3. Personal Data Processed in Judicial Proceedings

In judicial proceedings, the scope of personal data processed is expanded – compared to pre-trial proceedings – to include information regarding the health condition of the accused, which justifies the application of mandatory defence (Pursuant to Article 21 of the Code of Petty Offences Procedure, mandatory defence (i.e. the obligation to have a defence counsel) applies when the accused is deaf, mute, or blind, or when there is doubt as to their mental capacity), including data obtained in connection with the appointment of a forensic psychiatrist, as well as provisions of substantive law that set out sentencing guidelines. In practice, however, the scope of personal data processed depends on the discretion of the court, and such processing is carried out – as previously mentioned – outside the supervision of the President of the Personal Data Protection Office (UODO). The President of UODO does not have the authority to assess the purposefulness and justification of actions taken by the court involving the processing of personal data – both in terms of the objectives of the petty offences proceedings and the necessity of documenting actions undertaken in such proceedings. The court (specifically, the presiding judge of the adjudicating panel) bears the duty to conduct the proceedings in a manner that most fully realizes the principle of substantive truth, while simultaneously ensuring that other procedural principles are upheld, including the principle of transparency, with due respect for the protection of the personal data of individuals participating in the process. Any allegations concerning the correctness and legality of actions taken by the court in connection with the processing of personal data are subject to assessment based on the provisions of the Code of Petty Offences Procedure and, to the extent applicable, the provisions of the Code of Criminal Procedure incorporated therein (Mezglewski, 2015, p. 40).

Generally speaking, the court's discretion regarding the processing of the personal data of the accused is very broad. The court obtains such data both from the accused themselves and from other legal entities (offices, institutions, businesses, natural persons). Practice shows that the court obtains personal data from the accused at the very outset of the trial – before the commencement of the evidentiary hearing, and thus prior to the formal reading of the motion for punishment and the delivery of instructions regarding the rights and obligations of the accused. The court performs this task as part of verifying the so-called personal roll call, that is, checking the presence of persons summoned and notified of the trial date (Article 71 §1 of the Code of Petty Offences Procedure). Already at this stage, courts conduct a detailed "examination" of the accused not only regarding their personal data (identity) but also their family, health, and financial status, as well as earning capacity, including the financial data of the spouse.

In particular, the courts obtain the following data concerning the accused:

– first name and surname,
– names of parents,
– mother's maiden name,
– date and place of birth,
– PESEL number,
– name and number of ID card,
– place of residence (mailing address),
– place of employment (source of income, amount of income),
– job,
– citizenship,
– family status (number of dependents),
– financial status (owned real estate and valuable movable property – such information was obtained, for example, by the District Court in Sucha Beskidzka in the case file no. II W 248/20),
– health status (instances of psychiatric, neurological, or addiction treatment;
– use of intoxicating substances, or even sleeping medications (questions regarding the use of intoxicating substances were posed to the accused, for example, by the District Court in Otwock in the case file no. II W 388/23 – regarding the use of sleeping medications, such inquiries were made, for example, by the District Court Lublin-West in Lublin in the case file no. II W 818/20),
– prior convictions for petty offences and crimes.

Of course, under the applicable provisions, courts are obligated to obtain many of these data in order to ensure the proper conduct of proceedings against an individualized perpetrator of a petty offence (such as personal data and identity-related information). However, concerns arise regarding the circumstances under which sensitive data are collected – particularly those relating to prior medical treatment or detailed financial information and its sources (detailed information concerning the financial status of the accused was requested, for example, by the District Court for Łódź-Śródmieście in Łódź in the case file no. IV W 1423/23), as well as data concerning other individuals (such as the spouse or children). A detailed inquiry regarding the family and financial status of the accused was conducted, for example, by the District Court in Garwolin in the case file no. II W 1135/22. The practice of obtaining such data is sometimes met with acceptance among representatives of the relevant literature (Świecki, 2012); however, it should be noted that these individuals are also representatives of the judiciary.

A notable phenomenon is that courts, when demanding the provision of the above mentioned data, do not first inform the accused of their right to refuse to give explanations or to refuse to answer questions (Chankowska, 2005, p. 125). Responses to the court's questions regarding identifying personal data constitute a category of explanations of the accused. The explanations provided by the accused are not limited solely to statements concerning the charge and the circumstances of its commission, but also relate to the accused party, including their family and financial status. The accused may refuse to provide such explanations (Jabłoński, 2014, p. 111).

Personal data processed by the court conducting proceedings in petty offence cases are recorded in the form of a trial (or session) transcript, which may be in written form or in both written and electronic form, including audio and video recordings or audio recordings alone (Article 37 §2 of the Code of Petty Offences Procedure). Access to these transcripts (case files) is granted to the parties and their legal representatives; moreover, with the consent of the presiding judge, these files may be made available to other persons (such as journalists or researchers) upon their duly justified request (Article 156 of the Code of Criminal Procedure in connection with Article 38 §1 of the Code of Petty Offences Procedure). A journalist granted access to the case files should be mindful of the obligations associated with reviewing and using the information contained therein. The restrictions in this regard are primarily set forth in the Press Law (Articles 12–14 of the Press Law. After the conclusion of the proceedings, these files and the personal data contained therein may be disclosed in accordance with the provisions of the Act of 6 September 2001 on Access to Public Information. In connection with the collection and recording of personal data of participants in petty offence proceedings, it should also be noted that such data may be recorded by means of electronic sound and image media by members of the press attending the hearing, pursuant to Article 358 §1 of the Code of Petty Offences Procedure in conjunction with Article 70 §5 of the same Code, and subject to the requirements of press law. Such data are also accessible to members of the public present at the hearing. A hearing in a case concerning a petty offence is, pursuant to Article 70 §1 of the Code of Petty Offences Procedure, conducted in open court, unless the court has excluded its publicity for specific reasons. The public nature of the hearing means that interested persons have the right to attend, i.e., members of the public, who may hear or make notes of the personal data of participants processed during the course of the hearing (Hoffmański, 2004, p. 119).

In addition to the personal data of the accused, the court also processes the personal data of other entities participating in the judicial proceedings. These include data of officers representing the authority entitled to act as a public prosecutor, auxiliary prosecutors, victims, witnesses, expert specialists, interpreters, members of the media, as well as members of the public. However, the processing of personal data of members of the public should be regarded as an abuse of authority by the court. When members of the public are present in the courtroom, the court should limit itself to establishing the nature of their presence, which is necessary to determine whether a given individual is not going to participate in the proceedings as a witness. Determining the nature of the presence of members of the public does not, however, require the court to collect their personal data or to record such data in the hearing protocol. In practice, however, courts very often (in approximately 50% of observed cases) go beyond merely establishing the nature of an individual's participation in the hearing and request that the person provide personal data – either by verbally stating their name and surname, or by presenting an identity document. These data are then recorded in the hearing protocol, which should not occur (Tunia, 2018, p. 93).

Conclusions

In the course of proceedings in cases concerning petty offences, the personal data of numerous participants are processed. The discretion of the courts in this respect is, in principle, unrestricted, and the data processed by the courts are handled without any form of external audit. It is the court that decides which data to collect, which to record, and which to disclose. This solution is inappropriate and does not serve the security of legal transactions. The scope of data processed both during preliminary explanatory proceedings and in court proceedings is excessively broad. Too much sensitive data may become accessible to unauthorised third parties. Therefore, it is necessary to take actions that will guarantee better protection of such data. This protection will certainly be supported by limiting the scope of data collected, recorded, and disclosed by the authorities conducting proceedings in cases concerning petty offences.

The conducted research and observed practice of authorities handling petty offence proceedings allow for the postulation *de lege ferenda* of a legal limitation on the scope of personal data of the accused processed by these authorities (especially by pre-trial proceedings bodies), particularly regarding private aspects of life of the accused. This includes data concerning family relationships, health (except in cases where verification of the health condition is necessary in the context justifying mandatory defence), as well as education, occupation, sources of income, and earning capacity, along with data relating to family members (such as the spouse's assets and employment), and also personal data of members of the public.

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