

POLAND

Facts:¹

- **Data Protection Authority (DPA):**
Prezes Urzędu
Ochrony Danych
Osobowych (Prezes
UODO)
- **Budget of DPA in 2021:**
PLN 39.246.000,--
- **Employees in 2021:**
Somewhere between
267 and 274
- **Overview of complaints filed by noyb:** [link](#)

What doesn't work? – Practice vs. law:

1. ***Go to Warsaw to Get Your Paper Files:*** The Polish Code of Administrative Procedure (KPA) provides that a party has the right to inspect the case file but this has to be done on the premises of a public authority. Adopted in 1960s, this provision is clearly outdated and does not adapt to the 21st century. The KPA was revised in 2019 adding a provision that the authorities may ensure access to the case file via the authority's information and communication system. The word "may" gives the DPA the option but does not commit the DPA to action. The Polish DPA therefore uses this soft formulation to reject requests to get access to the procedural files electronically, pointing out that five of the submitted cases are on paper and not in the system of electronic document management. According to the DPA, making the documents available to the complainant electronically would require the DPA to disassemble the documents from the file folders and scan them. Such "implementation of the Complainant's request would cause significant delays in carrying out the necessary actions", says the Polish DPA.
2. ***Snail Mail for the Win:*** Unlike in other Member States, in Poland a complainant cannot file a complaint electronically via email. Instead, a complainant must ensure that they have an account on ePuaP - an electronic mailbox to communicate with the Polish authorities. However, to receive and sign the correspondence electronically, a complainant must have the online certificate. Alternatively, they can submit a complaint via traditional post and the DPA will communicate with them using paper letters.
3. ***Doubts about DPA's political independence:*** Just before taking over as Prezes UODO in 2019 Jan Nowak resigned from the Law and Justice party (the ruling party in Poland). During his last term, he made two particularly controversial decisions that may raise concerns about his independence. Both cases are political in nature. In our opinion, regardless of the possible legal arguments presented by the DPA, this raises huge concerns about the body's political independence.
4. ***The DPA failed to investigate and pursue evidence:*** The Supreme Administrative Court has overturned the decision of the DPA in the *Morele.net* case. In its justification, the court noted that the DPA cannot limit itself to collecting evidence only to the disadvantage of a party. It must actively pursue the evidence and, where necessary, take into account the parties' requests for evidence. 3.5 years after the decision, the proceedings began from the beginning. In the recent *Fortum Marketing and Sales* case Voivodship Administrative Court of Warsaw

¹ 2021 UODO report: <https://uodo.gov.pl/pl/487/2279>

has overturned the highest fine imposed by the DPA – PLN 5 million, because the DPA failed to investigate the circumstances of a potential data leak from the company. The DPA did not even establish the facts.

5. ***Immediate decisions – or not?:*** Under the Polish Code of Administrative Procedure (KPA), the Polish DPA should decide cases "immediately"; in cases requiring an investigation - no later than within one month; and in particularly complicated cases - no later than within two months. The Polish DPA hardly meets these deadlines and most cases are protracted by at least 6 months.