Case ref. I Ca 58008/20



 **JUDGMENT**

**ON BEHALF OF THE REPUBLIC OF POLAND**

 31 April 2020

District Court in Bielsko-Biała, I Civil Division,

composed of: District Court Judge Miłosz Gapsa - presiding (reporting)

 District Court Judge Magdalena Węgłowska

 District Court Judge Anna Nowak

after examining the case on 31 April 2020 in Bielsko-Biała

at the hearing

of the case brought by: **Adam Adamowski**

against: **GelderFreeRide with its registered office in Český Těšín**

for the protection of personal rights:

1. dismisses the claim in its entirety
2. awards the amount of PLN 2,022 from the Claimant in favour of the Respondent as reimbursement of legal costs.

The claims of damage invoked by the Claimant were based on two grounds of liability. The first of these relates to the provisions on the protection of personal rights (Article 24 of the Civil Code in conjunction with Article 448 of the Civil Code), while the second is based on the provisions on the protection of personal data (Article 79 of the GDPR in conjunction with Article 92 of the Personal Data Protection Act as well as Article 24 of the Civil Code and Article 82 of the GDPR). These grounds are alternative in nature and the Claimant can only obtain damages under one of them.

The prerequisites necessary to demonstrate a violation of personal rights include: 1) the existence of a personal right, 2) the threat or infringement of that right, 3) the unlawfulness of the threat or infringement. The Court agreed with the Respondent’s position that the claimed personal dignity, understood as self-esteem and the right to privacy, belong to the catalogue of legally protected rights. However, the alleged violation of personal rights was presented by the Claimant only in subjective terms, and not in objective terms, as required by law. As regards the threat or violation of personal dignity, the Court did not share the Claimant’s position, finding that the algorithm is guided by objective considerations of functionality and not by consumer characteristics. According to the doctrinal position, the right to privacy is narrowly construed and, in the present case, the Respondent’s action was legitimate due to its business activities. Finally, it was held that the Respondent could not directly invoke Article 21 of the Charter of Fundamental Rights in the facts stated, due to the lack of dual regulation of the non-discrimination condition in Article 21 of the said Charter as well as Article 19 of the Treaty on the Functioning of the European Union; thus, Article 21 of the aforementioned Charter does not have horizontal effect here.

The Court accepted the Claimant’s reasoning insofar as it alleged that the Respondent had breached Article 22 and Article 13(2)(f), and thereby violated the transparency principle contained in Article 5(1)(a) of the GDPR as well as the principle contained in Article 25 of the GDPR. The Claimant has failed to prove that his personal rights were violated and therefore all the prerequisites under Articles 23, 24, and 448 of the Civil Code have not been met. Therefore, it became unjustified to analyze the concurrence of the aforementioned provisions with respect to the damages claimed by the Claimant as well as the request for modification of the algorithm. In the opinion of the Court, the Claimant failed to prove the premise of the existence of non-economic damage that would entitle him to formulate a claim for compensation.

The ruling was **unanimous**.