THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 28

May

2019

DECISION

ZSOŚS.440.49.2018

Based on Article. 105 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 12 point 2, art. 22 and art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), in connection with Art. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), following administrative proceedings regarding the complaint of Ms Z. T., residing in in O., for the processing of her personal data by the President of the District Court in O.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint [...] from Ms Z. T., residing in in O. (hereinafter the "Applicant"), regarding the processing of her personal data by the President of the District Court in O. (hereinafter the "President of the Court").

In the complaint, the applicant indicated that she had been a party (participant) in court proceedings pending before the District Court in O. (hereinafter referred to as the "Court") with file numbers: [...], [...] and [...], and that - in her opinion - the President of the Court, without a legal basis, provided legal counsel HN (hereinafter "legal counsel") with the complainant's personal data contained in the files of the proceedings conducted by the Court, with reference numbers: [...] and [...], and also in the court files review control located at the Court Customer Service Office. As the complainant pointed out when substantiating the complaint, "(...) neither the plaintiff nor his attorney were and are not parties / participants in the above-mentioned proceedings, therefore they should not have knowledge about them, in particular about their subject, course, and identity of persons participating in the proceedings. their participation or the content of court files. Meanwhile, the content of the letter (...) clearly shows that the plaintiff or his attorney knew the content of the court files in the above-mentioned cases. This is evidenced by the wording used in the letter (…) ". Moreover, in a letter to the President of the Personal Data Protection Office (hereinafter

"the President of the Personal Data Protection Office") of [...] March 2018, the complainant indicated that - in her opinion - taking into account the pleading of the legal advisor of [...] May 2014 attached to the complaint "(...) it should be assumed that already during its formulation, HN was familiarized with these court files and with the control of viewing court files other than the above-mentioned case (...)". In the above-mentioned In a letter to the President of UODO, the complainant also argued that - in her opinion - "(...) HN had obtained access to (...) the data of" the complainant "(...) in a manner inconsistent with the provisions of the law, by familiarizing itself with the files of the proceedings in which it does not appear in any nature and thus made them available [...] ". The applicant indicated in the letter that the categories of her personal data whose protection had been violated include: name, surname, reference number of the proceedings, PESEL number, address, age, procedural role, dates of viewing files and information included in the protocols of hearings drawn up in the course of the proceedings court proceedings before the District Court in O. (hereinafter the "Court"). In connection with the above allegations of the complaint, the complainant requested the President of the Personal Data Protection Office to initiate proceedings in the case.

It should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Inspector General for Personal Data Protection became the President of the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Office for Personal Data Protection on the basis of the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended). All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the course of the proceedings initiated as a result of the complaint, the President of UODO obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] March 2019 ([...]), the President of UODO asked the President of the Court to provide explanations as to whether, and if so, on what legal basis, for what purpose and to what extent they were made available legal adviser, the complainant's personal data concerning the proceedings conducted by the Court, with file number: [...] and [...], and whether, and if so, on what legal basis, for what purpose and to what extent they were made available legal adviser, the complainant's personal data contained in the court file review control located at the Court Customer Service Office. In addition, the President of UODO, in a letter of [...] March 2019 ([...]) asked the legal adviser to clarify whether, and if so, on what legal basis, for what

purpose and scope and what source did she obtain and process the complainant's personal data, in particular the data contained in the files of the proceedings before the Court, with reference numbers: [...] and [...], and whether, and if so, on what legal basis for what purpose and scope the attorney-at-law obtained and processed the complainant's personal data contained in the court files review control located at the Court Customer Service Office.

The President of the Court, referring to the letter of the President of the Personal Data Protection Office of [...] March 2019 ([...]), explained in his letter of [...] April 2019 ([...]) that "After reading the case files [...], [...] and [...] (...) and receiving (...) a statement from the Manager of the Customer Service Office (...)", it can be stated that "case files [...] and [...] (...) have never been made available to the legal adviser of HN ". The President of the Court also indicated that "(...) it should be ruled out that the personal data of Z.T. attorney-at-law H. N. included in the control of the court files reviewed at the Court's Customer Service Office (...) ". The President of the Court also argued that "(...) until [...] December 2015, the order of the Minister of Justice of 12 December 2003 on the organization and scope of operation of court secretariats and other judicial administration departments was in force as regards the method of drawing up the court lists. (Journal of Laws of MS of December 31, 2003). Pursuant to § 23 of the above-mentioned regulation, the court list included, inter alia, "the names and surnames of the parties and other persons summoned (...)". Explaining the facts of the case, the President of the Court indicated in the above-mentioned a letter of [...] April 2019 that "in the light of the above, the knowledge regarding the described cases could have been obtained, for example, from the analysis of the court order."

The letter of the President of the Personal Data Protection Office of [...] March 2019 ([...]) was also answered by a legal advisor who explained in a letter of [...] April 2019 that she was an attorney of one of the parties to the proceedings by the Court, marked with the file number: [...] and ended with the final judgment of [...] May 2014. Referring to the allegations in the complaint, the attorney-at-law indicated that the information on pending court proceedings and the complainant's access to the viewing control the act, she took "in connection with the performance of the profession of a legal advisor and the related frequent official stay at the seat of the District Court in O. in various cases". In a letter of [...] April 2019, the attorney-at-law denied that she had obtained the information in the above-mentioned scope from the President of the Court or from another employee of the Court, indicating that the information about the complainant's review of court files by the applicant at the Customer Service Office was "from personal observation while being in the Court at that time ", and information on the court proceedings with the file number: [...]" from the content of the publicly available list, hanging next to the courtroom (...) ".

According to the explanations of the legal counsel, the information about the proceedings pending in the Court with the file number: [...], she obtained in connection with the provision of legal services to the O. Commune, which was a participant in the above-mentioned proceedings.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The above-mentioned Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "PDA", creates legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 of the PDA and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the application, or discontinues the proceedings. The issuance of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing.

Pursuant to Art. 1 of the Act on Personal Data Protection, everyone has the right to the protection of personal data concerning him, and the processing of such data, as referred to in art. 7 point 2 of the Personal Data Protection Act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the Act. Therefore, in view of the above, when applying the provisions of the Personal Data Protection Act, it is necessary to weigh the underlying goods each time. In this case, the content of Art. 23 sec. 1 point 2 of the PDPA, which states that data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision.

The processing of personal data in common courts is carried out for the purpose of administering justice to the extent not belonging to administrative courts, military courts and the Supreme Court, and performing other tasks in the field of legal protection, entrusted by statutes, on the basis of the Act of 27 July 2001 Law on the system of common courts (Journal of Laws of 2019, item 52, as amended). The principles of the Court's operation result, inter alia, from from the provisions of the above-mentioned of the act and issued on the basis of art. 41 § 1 of this act of the Regulation of the Minister of Justice of 23

December 2015. Regulations of the operation of common courts (Journal of Laws of 2015, item 2316), which specifies, inter alia, the order of functioning of common courts and the order of actions taken in courts. The judicial activity of the Court is, in turn, determined by the provisions of, inter alia, in the Act of November 17, 1964, the Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended).

The collected evidence, including the explanations of the President of the Court, shows that, contrary to the complainant's assertion, the files of the proceedings pending before the Court and their personal data were not made available unlawfully to unauthorized persons, in particular a legal adviser. Therefore, the allegations raised in the complaint were not confirmed by the collected evidence. Moreover, it should be noted that the collected evidence allows us to conclude that the subject of the complaint relates to activities related to the administration of justice by the Court. The rules governing the disclosure of civil court records are governed by the above-mentioned Act of November 17, 1964, the Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended), and not the provisions on the protection of personal data. In such a situation, it should be stated that the President of the Personal Data Protection Office (UODO) lacks substantive competence in the field of data processing by courts as part of the administration of justice. The main purpose of the exemption in this respect is to protect the independence of courts. The exercise by the authority competent in data protection matters of supervision over the processing of data in the scope of adjudication could constitute an unacceptable interference in the judicial activity. The President of the Personal Data Protection Office, as part of the powers conferred on him by the Act, cannot therefore interfere in the course or in the manner of proceedings conducted by other authorities authorized under separate provisions. Thus, it cannot interfere with the rules of disclosing documents collected by the Court in the files of such proceedings. In other words, the President of the Personal Data Protection Office may not undertake activities related to proceedings conducted by other authorities under the relevant provisions of law. The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in its judgment of March 2, 2001 (file number II SA 401/00) stated that the Inspector General for Personal Data Protection (currently: President of the Office for Personal Data Protection) is not a controlling body nor overseeing the correct application of substantive and procedural law in matters falling within the competence of other authorities, services or courts, whose decisions are subject to review in the course of the instance or in any other manner determined by appropriate procedures. Therefore, due to the lack of competence of the President of the Personal Data Protection Office to substantively resolve this case, the proceedings initiated by the complaint lodged by the complainant had to be discontinued as redundant, pursuant to

Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure. The doctrine indicates that: "the objectivity of administrative proceedings", as provided for in Art. 105 § 1 of the Code of Civil Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that it is not possible to settle the matter by deciding on its merits. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. .

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 127 § 3 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the decision has the right to the party to submit an application for reconsideration of the case within 14 days from the date of its delivery to the side. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw, within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Office (address: ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2020-03-26