THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

October

2018

DECISION

ZSOŚS.440.57.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) and Art. 22 and art. 27 sec. 2 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 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) after conducting administrative proceedings regarding the complaint of Mr. RK ([...]) to disclose his data personal data by the District Court for Ł. ([...])

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) on [...] October 2017 received a complaint from Mr. R.

In the content of the complaint, the applicant indicated that he was the defendant in a criminal case pending before the court since May 2002, in which the witness was L. K., who did not have the status of an aggrieved party and did not act as a party. The applicant submitted that by judgment of [...] September 2017 he had been found guilty by the District Court and the judgment was not final. As he further pointed out at the announcement of the judgment, witness L. K. was not present, who had no information about the conviction until the Court made it available to him, which took place as a result of its inclusion in the order of [...] September 2017 on the refusal to accept the witness's appeal. In the content of the above-mentioned of the order, which was attached by the complainant, it was indicated that the complainant “acts as a witness, his legal rights were not directly violated or threatened by the offenses for which by an invalid judgment of [...] September 2017 (...) and RK were In connection with the above, the applicant argued that the data on his non-final conviction "are sensitive data under Article 27 (1) of the Act on the Protection of Personal Data. the date of the judgment, case reference number) to an unauthorized person, i.e. a witness. Moreover, the applicant noted that the data on his conviction “... are in no way necessary for LK to assert his rights,

because as indicated by the District Court for Ł. : he is not [a witness] an aggrieved party within the meaning of Art. 49 (1) of the Code of Criminal Procedure ... "

In connection with the above, the Inspector General for Personal Data Protection, on [...] January 2018, sent an inquiry to the President of the District Court in Ł. With a request to submit explanations in this case. In a reply received by the Office of the Inspector General for Personal Data Protection on [...] January 2018, the Vice President of the Court explained that "in the case of [...] by an order of [...] September 2017, Mr. LK's complaint against the decision of [...] March 2017 on the refusal to admit to participate in the case as an auxiliary prosecutor, as inadmissible under the law. "Moreover, as indicated in the above-mentioned letter," in the last fragment of the justification of this ordinance it was indicated that LK is currently acting as a witness, and his rights, legal rights, were not violated or threatened by offenses for which they were convicted by an invalid judgment of [...] September 2017 (...) and RK. a copy of this decision was sent to Mr. LK pursuant to Art.100 par 4 of the CCP and Art.429 par 2 of the Code of the fact that in any way does not derogate from the principle of the presumption of innocence, and the announcement of the judgment is open and does not constitute a public secret. The fact that the judgment was not legally binding was clearly stated in the statement of reasons for the order of [...] September 2017 ".

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

The Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "Personal Data Protection Act", defines the rules of conduct in the processing of personal data and the rights of individuals, whose personal data are or may be processed in data filing systems (Article 2 (1) of the GDPR). In the event of a breach of any of these principles, in particular Art. 23 or 27 u.o.d.o., the President of the Personal Data Protection Office pursuant to Art. 18 sec. 1 u.o.d.o. issues an administrative decision. In this regard, it may order the data controller to remove deficiencies (Article 18 (1) (1) of the Act), supplement, update, rectify, disclose or not disclose personal data (Article 18 (1) (2) of the Act).

In the present case, Art. 27 sec. 2 point 2 u.o.d.o. which provides that the processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade union affiliation, as well as data on health, genetic code, addictions or sex life as well as data on convictions, judgments on punishment and penalty tickets as well as other judgments issued in court or administrative proceedings is admissible. when a special provision of another act allows the processing of such data without the consent of the data subject and provides full guarantees of their protection. This provision clearly defines the condition of admissibility of the processing of personal data.

Considering the above, as part of the analysis of the facts in question, attention should also be paid to the provisions contained in the Act of 6 June 1997 (i.e. Journal of Laws 2017.1904, as amended) Code of Criminal Procedure, hereinafter referred to as the CCP. Pursuant to Art. 100 § 4 of the Code of Criminal Procedure, a decision or order issued outside a hearing against which an appeal is entitled, is served on the entities authorized to bring such a measure, and the decision ending the proceedings to its parties, unless they were present at the announcement of the decision or order. The parties are also served with the order together with the justification in the case referred to in Art. 98 § 2. It should therefore be noted that, in the light of the above-mentioned provision, the court was obliged to provide the witness with this order in its full wording. Thus, the condition of Art. 27 sec. 2 point 2 u.o.d.o. The order was issued and delivered on the basis of generally applicable provisions of law. The data concerning the invalid judgment issued against the Complainant was its integral part, therefore they were subject to the same standards resulting from the provisions of the CCP.

Moreover, in the light of Art. 27 sec. 2 point 5 u.o.d.o. the processing of such data is permissible if it concerns those that are necessary to pursue rights in court. As the complainant pointed out, in the content of the justification of the discussed ordinance, the Court indicated that “the legal rights had not been directly violated or threatened by offenses”. The complainant argued that on this basis it could be inferred that the transfer of data about his invalid judgment had been transferred to an unauthorized person. However, it should be remembered that, as it is indicated in the doctrine, "in a broad sense, the phrase" pursuing rights "in court should be understood. It should be related to the actions of all litigants; it is about both bringing claims and accusations as well as defending rights. These can be private rights and public rights (e.g. related to elections). It is irrelevant in what mode the rights are asserted (in a procedural or non-procedural, ordinary or expedited manner). The pursuit of determining and securing claims in a civil lawsuit may also be considered an exercise of rights. In the light of Art. 27 sec. 2 point 5 u.o.d.o. both the judicial authority and the party appearing in the proceedings or their representative (attorney) are entitled to process personal data. Let us add that the discussed right applies to the personal data of all persons, insofar as it is necessary to assert rights; this means that, for example, the plaintiff's attorney may be entitled to process the defendant's personal data on the basis of this provision "(cf. Barta. Janusz. Fajgielski, Paweł i Markiewicz, Ryszard. Art. 27. In: Personal data protection. Comment, ed. VI. LEX, 2015). Therefore, taking into account the broad understanding of "claiming rights", it should be concluded that the processing of the Complainant's data met the condition set out in Article 27 (2) (5) of the Act on knowing the complexity of the case in which he issued the ordinance in question, he is able to assess the possible size and

nature of claims that may arise in the future, or, more broadly, to weigh and indicate what rights are protected. "It should also be remembered that also in this respect the assessment of the applied form and content of judgments used in court proceedings belongs to the Court, and not to the President of the Office. Personal Data.

Taking the above into account, it should also be noted that court decisions are subject to review within the framework provided for by the relevant procedural provisions in a given case, which is undoubtedly related to the principle of independence and independence of courts. An expression of this principle may be the judgment of the Supreme Administrative Court of March 2, 2001, which is extremely important from the point of view of this administrative act, according to which the Inspector General for Personal Data Protection (currently: President of the Personal Data Protection Office) within the scope of the powers conferred on him by the Act may not interfere with the conduct of proceedings conducted by other authorities authorized under separate provisions. Thus, it cannot interfere with the content of documents collected in the files of such proceedings, such as the content of a court order. The President of the Office is not an authority controlling or supervising the correct application of substantive and procedural law in matters falling within the competence of other authorities, services or courts, the decisions of which are subject to review in the course of the instance, or otherwise determined by appropriate procedures (file reference number II SA 401/00).

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 CAP, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. 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 Personal Data Protection Office. 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.

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