

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 06

March

2019

DECISION

ZSOŚS.440.147.2018

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 160 sec. 1 and 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as the "Act" in connection with Art. 57 sec. 1 lit. a and f of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal UE L 119 of 04/05/2016, p. 1), hereinafter referred to as the "general regulation on the protection of personal data", after conducting administrative proceedings regarding the complaint of Ms M. and Mr ZJ, residing in W., for irregularities in the processing of their personal data on the portal "[...]" in connection with the bankruptcy proceedings conducted against them, the President of the Office for Personal Data Protection discontinues the proceedings

Justification

The Personal Data Protection Office received a complaint from Ms M. and Mr Z. J. residing in W., hereinafter referred to as the "Complainants", for irregularities in the processing of their personal data on the portal "[...]", which contains data on the bankruptcy proceedings conducted against them.

In the content of the above-mentioned complaints The applicants submitted that, in their opinion, there was no prerequisite authorizing the processing of their personal data on the portal "[...]", due to the fact that the bankruptcy proceedings pending before the District Court in Z. under the reference number [...], has been legally discontinued. In the opinion of the Complainants, further processing of their personal data without their consent violates their rights and freedoms, including the right to legal protection of private and family life, honor and good name, and the right to request rectification and removal of untrue, incomplete or collected data in a manner inconsistent with the law. The complainants added that in a letter of [...] June

2018, they demanded that their personal data be removed from the website "[...]".

Considering the above, the Complainants requested that the President of the Office undertake actions aimed at removing deficiencies in the processing of their personal data by deleting their personal data, made available by the website "[...]" to other entities, without their consent.

In the course of the proceedings initiated by the above-mentioned through the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, familiarized himself with the evidence and made the following arrangements.

By letters of [...] October 2018, the President of the Personal Data Protection Office informed the Complainants about the initiation of proceedings in the case and asked the President of the District Court in Z. (hereinafter: the "President of the Court") to comment on the content of the complaint and submit written explanations. On [...] November 2018, the Office for Personal Data Protection received a letter from the President of the Court ([...]) explaining that the District Court in Z. conducted bankruptcy proceedings concerning the applicants. The bankruptcy proceedings were pending after reference number [...] and [...], and these cases were joined for joint examination. Above the proceedings ended with a decision declaring the applicants bankrupt. The President of the Court also explained that the relevant bankruptcy proceedings were pending under the reference number [...] and [...], and the case [...] was joined for joint examination with the case [...]. The proceedings in this case have been legally closed. The President of the Court also explained that under the above-mentioned of the proceedings, the announcements required by bankruptcy law were published in Monitor Sądowy i Gospodarczy, such as the decision declaring bankruptcy of the Complainants, containing their personal data. The President of the Court also detailed that the above-mentioned the data was published in Monitor Sądowy i Gospodarczy and at the same time it explained that the Complainants' data had never been submitted for publication on the internet portal "[...]".

In view of the above, the President of the Office established that the administrator of the website "[...]" is M. sp. Z o.o. and turned to the abovementioned companies to provide explanations regarding the submitted complaint. By letter of [...]

December 2018 (date of receipt: [...] December 2018), member of the management board of M. sp. Z o.o. Mr. M. G. explained that the Complainants' personal data were processed in the the company on the website at [...] until [...] June 2018, pursuant to Art. 6 sec. 1 point f of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing

Directive 95/46 / EC (Journal UE L 119 of 04/05/2016, p. 1), because it was necessary for the implementation of the legitimate interests of the above-mentioned companies, i.e. for the reliable provision of IT services offered in bankruptcy and restructuring proceedings in Poland. The submitted explanations also indicated that on [...] June 2018 the company received a letter from the Complainants requesting that their personal data be removed from the website "[...]" and that on the same day the Complainants' personal data were removed from all subpages of the website, as evidenced by screenshots of the described subpages.

The President of the Personal Data Protection Office informed the Complainants, the President of the Court and the President of the Management Board of M. sp.z o.o. in letters of [...] February 2019 on conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and on the possibility to comment on the collected evidence and materials and reported requests in accordance with art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, hereinafter the Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

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

Article 57 of the General Data Protection Regulation sets out the basic tasks of the supervisory body, which is the President of the Office for Personal Data Protection, and generally defines the manner of performing these tasks. To the above-mentioned tasks, constituting the essence and the most important part of the body's activity, include: monitoring and enforcement of the application of the provisions of the Regulation (paragraph 1 (a)) as well as considering complaints and conducting proceedings in cases of complaints (paragraph 1 (f)).

As the explanatory proceedings showed, the President of the District Court in Z. never submitted the applicants' personal data for publication on the internet portal "[...]".

Referring to the processing by M. sp.z o.o. on the portal "[...]" of the Complainants' personal data, it should be indicated that, as a result of the investigation conducted in the case, it was found that this entity on [...] June 2018 removed the Complainants' personal data from all subpages of the portal "[...]".

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as hereinafter, the Administrative Procedure Code, when the proceedings for any reason have become groundless in whole or in part, the public administration body issues a decision to

discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CH Beck Publishing House, Warsaw 2016, p. 491).

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. . The irrelevance of the proceedings may also result from a change in the facts of the case.

The Supreme Administrative Court in its judgment of November 19, 2001 (file reference number II SA 2702/00) stated: "(...) since in the course of the conducted (...) administrative proceedings, the state of violation of the law to which the decision was to refer was removed, the proceedings became become pointless. In the light of the provision of Art. 18 sec. 1 of the Act, initiated by GIODO ex officio or at the request of the person concerned, the proceedings concerning the infringement of the provisions on the protection of personal data may only end with the issuance of an administrative decision ordering the data controller to restore the legal status, in particular: removal of deficiencies, supplementing, updating, rectifying, disclosing or not sharing personal data, applying additional security measures to the collected data, suspending the transfer of personal data to a third country, securing data or transferring it to other entities, deletion of personal data. In the facts of the case at hand, no such decision could have been issued, because the violation had previously been restored to the lawful state (...) ”.

In a situation where M. sp.z o.o. o not currently processing the personal data of the Complainants, examination of the legality, in the context of determining the possible existence of premises for the formulation of an order to delete personal data, would obviously be pointless.

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

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws

of 2018, item 1000, as amended) in connection with art. 13 § 2, art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended), from this decision, the party has the right to lodge a complaint with the Provincial Administrative Court, 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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