

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

of December

2018

DECISION

ZSOŚS.440.124.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and art. 22 and art. 27 sec. 2 point 5 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, item 1000, as amended) after conducting administrative proceedings regarding the complaint of Mr. RS against the processing of his personal data by the President of the Provincial Administrative Court in R. and attorney-at-law of Mr. AK from Kancelaria [...] sp. k. with its registered office in R.

I refuse to accept the application

Justification

The Inspector General for Personal Data Protection (currently: President of the Personal Data Protection Office) [...] in March 2016 received a complaint from Mr. RS about the processing of his personal data by the President of the Provincial Administrative Court in R. and the legal advisor of Mr. AK from Kancelaria [...] sp. k. with headquarters in R.

In the above letter, the applicant indicated that he had received a letter from the District Court in R. prepared by the defendant's attorney in the case [...]. As the complainant further argued: "in this letter the attorney quotes facts which he had no idea of, e.g. the defendant's attorney knows that I was a party to the proceedings which were pending before the District Court in K. (file number [...]), the Court District Court in C. (file no. [...]), District Court in B. file no. Act [...]" According to the Complainant, "the above courts made available to an unauthorized person the personal data of participants in the proceedings, or such data were provided to the attorney of the defendant in the case [...], ie the President of the Provincial Administrative Court in R."

In connection with the above, the Inspector General called in letters of [...] November 2015, [...] March 2016, to supplement the formal shortcomings of the application and to pay the stamp duty. In connection with the Complainant's letter of [...] April 2016,

the attached certificate of [...] March 2016, which indicated the funds held on the deposit account, on [...] May 2016, the Inspector General for Personal Data Protection again called for payment of stamp duty. In response to the Complainant's letter of [...] May 2016, the Inspector General for Personal Data Protection on [...] September 2016 took steps to consider the request. Then [...] September 2016, the Inspector General for Personal Data Protection called on the attorney-at-law, Mr. AK, to submit explanations that were received by the Office of the Inspector General for Personal Data Protection [...] September 2016. In connection with the above, the President of the Office for Personal Data Protection [...] October 2018, called on the President of the Provincial Administrative Court in R. to submit explanations received in response to the Personal Data Protection Office [...] November 2018. Then the President of the Personal Data Protection Office in a letter of [...] November 2018 informed the parties about collecting evidence sufficient to issue an administrative decision, setting a seven-day deadline for commenting on the collected evidence and for exercising the right to inspect the files.

On the basis of the collected evidence, the President of the Office for Personal Data Protection established the following facts: In connection with the complainant's claim, his personal data was transferred by the President of the Provincial Administrative Court in R. to the legal advisor, Mr. A. K. from Kancelaria [...] Sp. k. in R. as an attorney. The said data was included in the copy of the statement of claim in the case no. [...] and copies in cases with reference number [...] And [...].

As part of the above documentation, data on the proceedings pending before the District Court in K., the District Court in C. and the District Court in B., and the data were not processed in any other way by the President of the Provincial Administrative Court in R ..

The cover letter of the defendant's attorney of [...] September 2015 in the case of [...] contains information about the judgments issued before the District Court in K., the District Court in C. and the District Court in B.

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

Pursuant to the wording of Art. 160 paragraph. 1 and sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Office Protection of Personal Data on the basis of the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960. - Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, items 149 and 650).

In connection with the above, it should be noted that the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "PDA", defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data are or may be processed in data filing systems (Article 2 (1) of the Act on Personal Data Protection). In the event of a breach of any of these principles, in particular Art. 23 or article. 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 5 of the PDPA, which provides that the processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or union affiliation, as well as data on health, genetic code, addictions or sex life and data on convictions, judgments on punishment and fines, as well as other judgments issued in court or administrative proceedings, is permissible when the processing concerns data that are necessary to pursue legal rights. This provision clearly defines the condition of admissibility of the processing of personal data.

As indicated by the doctrine of "Pursuing rights" within the meaning of Art. 27 sec. 2 point 5 covers all actions before the court in the given meaning, taken by the parties and other entities of the proceedings, including attorneys. It should be emphasized once again that, on the basis of the discussed premise, it is legal to process only sensitive personal data necessary for pursuing legal rights in the above broad sense". (cf. Drozd, Andrzej. Art. 27. In: Act on the Protection of Personal Data. Comment. Specimens of letters and regulations, 4th edition. Wydawnictwo Prawnicze LexisNexis, 2008).

In the case at hand, the processing of the complainant's data was aimed at pursuing his rights in court. In line with the above-mentioned position, the above provision cannot be applied only to the claimant. Both the President of the Provincial Administrative Court in R., as well as his attorney, legal advisor, Mr. A. K., are in the present case among the above-mentioned entities.

Referring to the issue of the processing of the complainant's personal data by the President of the Provincial Administrative Court in R., it should be noted that, according to the explanations of [...] October 2018, "RS's personal data was transferred to the defendant's attorney - the legal counsel of AK, and they resulted from primarily from a statement of claim (...) in order to take procedural steps in the interests of the defendant and the possibility of redressing the summons of the District Court in R. Data indicated in the letter of [...] October 2018 on the proceedings pending before the District Court in K., the Court The

District Court in C. and the District Court in B., were not processed because the Provincial Administrative Court in R. did not have such information ". Therefore, in the case at hand, it should be stated that the complainant's personal data were processed by the President of the Provincial Administrative Court in R. on the basis of the provisions of generally applicable law. Therefore, it is impossible to agree with the Complainant's statement that "such data were provided to his attorney by the defendant in the case [...], ie the President of the Provincial Administrative Court in R.", as it is not reflected in the collected evidence.

Considering the above, as part of the analysis of the factual state of affairs, one should also pay attention to the content of explanations by the legal advisor of Mr. AK, who indicated that "in the era of the current state of technology, it was easily established that there were also other cases pending before common courts with a similar subject matter. as in the case before the District Court in R., file no. Act: [...]".

Therefore, taking into account the entirety of the case, it is impossible to deny that the above explanations are correct. It is understandable that the attorney-in-fact should strive to best represent the interests of his client. Thus, it becomes necessary to establish all the circumstances that will be helpful in this. This means that, as in the case at hand, when drafting pleadings, the attorney will use the available Internet resources, which make it easy to search for judgments issued in cases with a similar factual and legal status. It should be remembered that one of the consequences of the fundamental principles of the legal system, such as equality before the law, is the expectation that a court in a similar case will decide in a similar way. Thus, the processing of the above data can be considered necessary for the purpose of pursuing rights in court, and therefore fulfilling the provisions of Art. 27 sec. 2 point 5 u.o.d.o.

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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