THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 24

July

2019

DECISION

ZSOŚS.440.49.2018. II

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and 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), after conducting administrative proceedings regarding the request of Ms ZT (residing at ul. [...]) for reconsideration of the case ended with the decision of the President of the Personal Data Protection Office of 28 May 2019 (ref. no .: ZSOSS.440.49.2018) regarding the complaint of Ms ZT about the processing of her personal data by the President of the District Court in O.

uphold the contested decision

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 w 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").

The complaint indicated that the applicant was a party (participant) to the court proceedings pending before the District Court in O. (hereinafter referred to as the "Court") with file numbers: [...], [...] and [...], and that the President of the Court, without a legal basis, made available to the legal adviser HN (hereinafter "legal adviser") the personal data of the complainant, contained in the files of the proceedings conducted by the Court, with reference numbers: [...] and [...], as well as in the review control court records, 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 matter, course, identity of persons participating in them 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 herself with the files of the proceedings, in which it does not appear in any capacity and thus made it available to SSR BW. " 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. 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.

In the course of the investigation in this case, the President of Personal Data Protection determined as follows:

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's Customer Service Office. In addition, the President of the Personal Data Protection Office, 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's 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 (...)", you can state that "the 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., legal advisor H. N., contained in the control of the court files reviewed at the Court's Customer Service Office, should be disclosed (...)". 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 departments was in force as regards the method of drawing up the court lists. court administration (Journal of Laws of the Ministry of Justice of December 31, 2003). Pursuant to § 23 of the above-mentioned regulation, the court dossier 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 letter of [...] April 2019 that "in the light of the above-mentioned knowledge regarding the described cases could have been obtained, for example, from the analysis of the court order. "

To the letter of the President of the Personal Data Protection Office of [...] March 2019 ([...], the answer was also provided by a legal counsel, who explained in a letter of [...] April 2019 that she was an attorney of one of the parties to the proceedings conducted 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 legal adviser indicated that the information on the pending court proceedings and the complainant's access to the inspection of files , 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 the information in the above in the above-mentioned scope, she obtained from the President of the Court or from another employee of the Court, indicating that she obtained the information about the complainant's review of court files at the Customer Service Office "from personal observation, while being in the Court", and information about the proceedings court with the reference number: [...] "from the content of the publicly available list, hanging next to the courtroom (...)". As the attorney-at-law explained, she had read the dossier "in connection with (...) my stay at the District Court in O." and, moreover, that she had noticed the applicant in front of the courtroom, when the applicant waited to enter the hearing. legal, information about the pending court proceedings with file number: [...], she obtained in turn in connection with the provision of legal services to the O. Commune, which was a participant in the above-mentioned proceedings.

After conducting the administrative procedure, on May 28, 2019, the President of the Personal Data Protection Office issued an administrative decision (reference number: ZSOSS.440.49.2018), discontinuing the procedure in this case.

Subsequently, within the statutory deadline, the complainant filed an application of [...] June 2019 for reconsideration of the case concluded in the above-mentioned decision. In the justification to the request, the complainant did not present any new circumstances, i.e. other than those reported so far in the case, which would affect the decision contained in the decision issued by the President of the Personal Data Protection Office. On the other hand, the complainant indicated that - in her opinion - the decision had been issued in breach of the provisions of the law, i.e. it had erroneously held that "that the substantive decision in the present case is inadmissible / pointless (...), where disclosure of the case file does not constitute part of of the judiciary, and at most material and technical activity, while H. N. case files with reference number [...] and [...] he did not act on the basis of and within the limits of the law ". The applicant further argued that the infringement of the provisions of the law in the decision also consisted in collecting, examining and assessing the evidence "contrary to the rules resulting from those provisions, in particular, the taking of evidence as witnesses of the President of the District Court in O., the head of the Customer Service Bureau, was omitted. (...) and H. N. which resulted in an erroneous, illogical and premature determination that the President of the Court (...) did not disclose H. N. in cases with reference number [...] and [...] (...) ".

After re-examining the facts of the case, including reading the entire evidence gathered in the case, the President of UODO considered the following:

It should be reiterated that the processing of personal data in common courts is carried out for the purpose of administering justice beyond the competence of administrative courts, military courts and the Supreme Court, as well as for the performance of other tasks in the field of legal protection, entrusted by statutes, on the basis of the Act of 27 July 2001, the Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended). The judicial activity of the Court is, in turn, determined by the provisions of, inter alia, in the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended). 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 provision of civil court proceedings records are governed by the above-mentioned Act of 17 November 1964, the Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended), hereinafter referred to as the "CCP", the provisions of which define the rules of court procedure, which is to lead to the issuance of a ruling by the court, and thus create a detailed legal framework for the administration of justice by the court in cases in the field of civil law relations. However, the issue of access to court files is not regulated by the provisions on the protection of personal data.

Moreover, it should be noted that the subject-matter of the complaint relates to the organization of the work of the Court in the field of its judicial activity. In a letter of [...] March 2018, the applicant indicated, inter alia, that the unauthorized persons for whom (...) the data had been disclosed were the Judge of the District Court in O. B. W. (...) ". It should be noted that the President of the Court as an administrator is responsible for the actions of a judge in the field of personal data processed within the framework of the administration of justice. In view of the above, it should be stated that it is not the competence of the President of the Personal Data Protection Office to interfere with the internal organization of the Court's work, and in particular with the rules of circulation of court files within this organization, the more so as this circulation takes place in connection with the administration of justice by the Court. In addition, access to court files in one proceeding referred to in Art. 525 of the Code of Civil Procedure, and the reference by the Court of a document from these files as evidence in other proceedings and the access of a given judge to files of a case other than the one examined by him, are two different issues from the legal point of view. In the latter case, when the Court admits documents from the files of another case as evidence, it acts within the scope of administering justice, as the activities in the above-mentioned their scope have a measurable impact on the content of the decision issued by the Court in the proceedings. Therefore, it cannot be considered that access by a judge to documents in a case other than the one he is examining, in the event of their admission as evidence, is an act of the General Court solely of a technical and organizational nature, having nothing to do with the administration of justice. On the other hand, by remedying the formal defects of the complaint in the letter of [...] March 2018, the applicant clearly and incorrectly indicated the judge of the Court, B. W., conducting the case with reference number act [...] as an unauthorized person to obtain the complainant's personal data, stating that the above-mentioned the judge conducting these proceedings had access to the files of cases with reference number [...] and [...] without a legal basis. It should therefore be stated that even if the above-mentioned a judge of the Court obtained access to the said files in connection with an application by the legal adviser for their admission as evidence in the proceedings, that judge is entitled to such access, and moreover, this access is related to the administration of justice by the Court and not to acts of a nature technical and administrative.

On the other hand, the alleged acquisition by the legal adviser of the complainant's personal data related to cases no. [...] and [...], through unlawful access to court files of these cases at the Court's Customer Service Office, should also be considered an issue in the field of administering justice. For when applying the systemic interpretation of the CCP, it should be stated that the very location of the regulation regarding the disclosure of case files in the CCP supports the statement that this activity is

related to the administration of justice, to which the provisions of this normative act apply in its entirety.

In view of the above, it should therefore be reiterated that the main reason for the discontinuation of the proceedings in the case in question is the lack of substantive jurisdiction of the President of the Personal Data Protection Office in the scope of considering cases related to the processing of personal data by courts as part of the administration of justice. According to Art. 175 dd § 1 of the Act of 27 July 2001 Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended), the supervisory body towards the Court as the administrator of personal data processed in court proceedings as part of justice or the implementation of tasks in the field of legal protection is not the President of the Personal Data Protection Office, but - in relation to the subordinate district court - the president of the regional court. On the other hand, pursuant to Art. 175 dd § 2 point 1, under the supervision referred to above, the president of the regional court (in the case of district courts) examines complaints from persons whose personal data is processed unlawfully.

It should be clarified that the main purpose of excluding the competences of the President of the Personal Data Protection Office in the above-mentioned scope is the protection of the constitutional independence of courts. The performance by the President of the Personal Data Protection Office (UODO) - as the authority competent in data protection matters - of supervision over the processing of data in the scope of judgments by courts, could constitute an unacceptable interference in their judicial activity. The President of the Personal Data Protection Office, within the framework of the powers conferred on him by the Act, cannot therefore interfere in the course of the proceedings or in the manner of its conduct by other authorities authorized under separate provisions, including in particular courts. Thus, the President of the Personal Data Protection Office may not interfere with the principles of drawing up, collecting or sharing by courts the files of such proceedings, including documents constituting part of the evidence material. The above view 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 Personal Data Protection Office) is not a controlling or supervising body 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 otherwise determined by appropriate procedures. It should be noted, however, that the rules governing access to court files set out in the Code of Civil Procedure are an integral part of procedural law.

Referring again the above argument to the established facts of the case, it should be emphasized that the complainant's

personal data were processed by the President of the Court in court proceedings and in connection with the administration of justice. This circumstance determines the lack of competence of the President of UODO to substantive examination of the complaint submitted by the Complainant. In this situation, the arguments put forward by the applicant in the request for reconsideration not only add to the case, but are irrelevant.

Regardless of the above argument, containing the main arguments for the discontinuation of the proceedings in the case, referring to the complainant's allegation that the decision of the President of the Personal Data Protection Office of May 28, 2019 was issued in breach of the provisions of Art. 7, art. 77 and art. 80 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), regarding the taking of evidence, it should be stated that this allegation is flawed. The applicant's argument that “in the present case there is a reasonable suspicion that the above-mentioned case files were disclosed in r. pr. HN disregarding the procedure and rules for disclosing court files ", and the President of the Personal Data Protection Office" by discontinuing this case, breached Art. 105 of the Code of Administrative Procedure. and [...] with her personal data no evidence, including no reference to e.g. the testimony of a witness or video surveillance of the Court building. questionable from the point of view of the logic of inference applied to the sequence of events occurring in the so-called chain of cause and effect and taking into account the principles of the so-called common sense and life experience.

In particular, one cannot agree with the complainant's allegation that the statements of the President of the Court and the legal adviser collected by the President of the Personal Data Protection Office as evidence "could not constitute the basis for the findings, as in fact they are intended to replace the evidence from the witness testimony and, as a result, to breach the principle of directness. ". Collecting written explanations from the President of the Court and the legal adviser sufficiently implements the disposition of Art. 77 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), in accordance with which the public administration body is obliged to comprehensively collect and consider all the evidence. The above assessment of these statements is based on life experience and the principles of logical thinking, including the surrounding area that the probative value of the explanations of the President of the Court is additionally multiplied by the tact of performing a responsible public function in the administration of justice and acting in the legal order as a person performing the profession of public trust. The latter category also includes persons practicing as a legal advisor, and thus also submitting Ms H. N. persons as witnesses would not bring anything new to the case, and the ruling of

the issued administrative decision would remain unchanged. In the case at hand, it is useless to question the head of the Court's Customer Service Office as a witness, since his explanations in the case have been verified and confirmed by his superior and also the personal data administrator, i.e. by the President of the Court. Hearing all the above-mentioned persons as parties or witnesses would be relevant only if the degree of complexity of the case and possible complexities and inaccuracies regarding the determination of the facts, and arose, for example, as a result of participation in the case of a larger group of people or the emergence of ambiguities and doubts regarding the explanations of the President of the Court or legal counsel would give cause to question the truth and completeness of their assertions. In the case at hand, the above-mentioned situation does not occur, and the applicant's firm assertion that the knowledge of certain circumstances by the legal adviser and a judge of the Court had and could only be the result of unlawful disclosure by the President of the Court or employees of the Court of the case files with reference number [...] and [...] and the applicant's data contained in them, is contrary to the logic and life experience, which make it necessary to consider other, potentially possible scenarios of the course of events, in no way coinciding with the the complainant's suggestions. It should be reiterated that the explanations of both the President of the Court and the legal adviser are logically consistent and contain a description of the tactical state of the case with a high degree of probability of occurrence, given the practice of courts, openness - as a rule - of court hearings and the rules of practicing the profession by legal advisers. As mentioned above, the President of the Personal Data Protection Office found nothing in the explanations of the President of the Court and the legal adviser that would raise doubts due to their truthfulness or logical correctness. For his sake, v. the explanations, in the opinion of the President of the Personal Data Protection Office, are credible, and therefore there is no reason to diminish or disregard their probative value in confrontation with the internal and unsubstantiated belief of the complainant that her version of the course of events is true, as evidenced by provide additional questioning as witnesses of the persons mentioned in the application of [...] June 2019. In other words, for the above-mentioned reasons, the applicant's presumptions cannot be more probative than the explanations of the President of the Court and the legal adviser. It should be noted that the complainant had the opportunity to comment on the evidence collected and to submit appropriate evidence applications earlier, in connection with the letter from the Personal Data Protection Office of [...] April 2019, informing her in the above-mentioned scope, but did not exercise her right.

In this situation, the proceedings conducted in the first instance were discontinued pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257), hereinafter referred to as "Kpa", as it is

irrelevant. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the authority conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Proceedings means that there is no specific material element of the legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Commentary", 7th edition, Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007). In the literature on the subject and in the jurisprudence of courts, it is assumed that the lack of substantive jurisdiction of the authority determines the pointlessness of the administrative procedure.

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliged him to discontinue the proceedings, because then there are no grounds for resolving the substance of the case, and further conduct of the proceedings in such a case would make it defective, having a significant impact on the result of the case. Therefore, the present proceedings have become redundant, and thus, it should be stated again that the President of the Office is not entitled to issue a substantive decision in the matter in question.

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

The decision is final. Based on Article. 21 sec. 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and in connection with joke. 3 § 2 point I, art. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against this decision, within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2019-08-06