THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

February

2019

DECISION

ZSOŚS.440.155.2018

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) 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), art. 100 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), after conducting administrative proceedings regarding the complaint of Mr. D. L., residing in in Ż., to disclose his personal data to the staff of [...] the hospital [...] with the SP ZOZ outpatient clinic in Ż. by the President of the District Court in Ż.,

I discontinue the proceedings

Justification

On [...] October 2018, the Office for Personal Data Protection received a complaint from Mr. DL (hereinafter: "the Complainant") about disclosure of his personal data to the staff of [...] the hospital [...] with the SP ZOZ clinic in WITH. by the President of the District Court in Ż.

In the complaint, the applicant accused the President of the District Court in Ż. disclosure of his personal data in the scope of reporting the status of "accused" to the staff of [...] the hospital [...] with the SP ZOZ outpatient clinic in Ż., where he was undergoing treatment. He indicated that, after being admitted to hospital treatment, he handed over to his attorney for delivery to the court a certificate confirming his inability to appear at the District Court in Ż. at a hearing scheduled for [...] September 2018 in a criminal case. Additionally, the registry of the 2nd Criminal Division of the District Court in Ż. by telephone, he confirmed the applicant's stay in treatment, and moreover, he sent to the Head of the Department [...] of the [...] Hospital with an outpatient clinic for SP ZOZ in Ż. a letter indicating his status as an accused.

In the course of the administrative procedure initiated by the complaint, the following findings were made.

1) by letters of [...] November 2018, the President of the Personal Data Protection Office informed the applicant and the

President of the District Court in Ż. to initiate explanatory proceedings in the case and asked the President of the District Court in Ż. for submission of written explanations regarding the charges presented in the complaint;

2) on [...] December 2018, a letter from the representative of the District Court in Ż. Was received, explaining that there were no irregularities in the processing of the applicant's personal data. It also indicated that the purpose of data collection by the District Court in Ż. is to conduct court proceedings pursuant to Art. 6 sec. 1 lit. c), e) 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 (general Data Protection Regulation) (Journal of Laws UE.L.2016.119.1, as amended) (hereinafter: GDPR). Additionally, the attorney argued that the disclosure of the Complainant's status as an accused did not constitute a violation of the processing of personal data, as it does not fall within the scope of the definition of personal data referred to in Art. 4 point 1 of the GDPR. In a court letter of [...] September 2018, addressed to the Head of the Department [...] of the Hospital [...] with the SP ZOZ Outpatient Clinic in Ż. - the indication of the applicant's status as an accused was necessary and justified by the specificity of the proceedings. Pursuant to Art. 117 § 2 of the Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended), the activities are not carried out if the entitled person did not appear and there is no evidence that he was notified about it, and if there is a justified supposition that the failure to appear was due to natural obstacles or other exceptional reasons, as well as when the person duly justified the failure and requests not to perform activities without his presence. In the event of an improperly justified failure to appear, the Court is obliged to investigate the circumstances that prevent the party from appearing at the hearing, which was expressed by writing a letter to the Head of the [...] Hospital Department [...] with the SP ZOZ Clinic in Ż. Article 117 § 2a of the Act of June 6, 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended) distinguishes between procedural roles and states that justifying failure to appear due to the defendant's illness requires the submission of a confirmation certificate inability to appear when summoned or notified by the authority conducting the proceedings, issued by a medical examiner. The applicant did not provide a certificate issued by a medical examiner pursuant to the Act of 15 June 2007 on the medical examiner (Journal of Laws of 2007, No. 123, item 849, as amended). Such action was forced by the District Court in Ż. to take steps to determine the cause of hospitalization and the duration of the applicant's stay in hospital. The letter of [...] September 2018, as stated by the attorney, was addressed to the Head of the [...] Department of the Hospital [...] with the SP ZOZ Outpatient Clinic in Ż., I.e. to a professional entity, obliged to maintain professional secrecy;

3) The President of the Office for Personal Data Protection, in letters of [...] December 2018, informed the applicant and the President of the District Court in Ż., And in a letter of [...] January 2019 - the attorney of the District Court in Ż. 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, within 7 days from the date of receipt of the above-mentioned writings;

4) by letter of [...] January 2019, attorney of the District Court in Ż. upheld the current position in the case, expressed in the letter of [...] December 2018, and added that the need to provide information on the applicant's procedural status resulted from the applicable provisions of the criminal procedure. He also indicated that the processing of personal data complies not only with Art. 6 GDPR, but also with 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), according to which data processing is allowed only if it is necessary to exercise the right or fulfillment of an obligation resulting from a legal provision. Art. 15 § 2 of the Code of Criminal Procedure, indicates that all state and local government institutions are obliged, within the scope of their activities, to provide assistance to organs conducting criminal proceedings within the time limit set by these organs. As the attorney points out, obtaining the information was necessary to ensure the proper course of the proceedings, and also to achieve the goal for which the common judiciary is established.

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

The collected evidence shows that the applicant's personal data were disclosed solely for the purpose of conducting court proceedings in [...] the Criminal Division of the District Court in Ż.

The processing of personal data in common courts takes place in order to administer justice in the scope not belonging to administrative courts, military courts and the Supreme Court, and to perform other tasks in the field of legal protection, entrusted by statutes (Article 1 § 2 and § 3 of the Act of 27 July 2001 Law on the System of Common Courts). The principles of the Court's operation result, inter alia, from from the provisions of the Act of 27 July 2001, Law on the System of Common Courts and issued pursuant to Art. 41 § 1 of this Act - the Ordinance of the Minister of Justice of 23 December 2015. Regulations for the operation of common courts (Journal of Laws of 2015, item 2316), which specifies, inter alia, the conditions and procedure for making available and sending files and documents from files, moreover, in the order of the Minister of

Justice of 12 December 2003 on the organization and scope of operation of court secretariats and other departments of the court administration, an obligation to use forms or templates developed and included in the court IT system was imposed .

In the present case, it is necessary to point out the lack of substantive jurisdiction of the supervisory authority with regard to the processing of data by courts in the course 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, may not, therefore, interfere in the course or manner of proceedings conducted by other authorities authorized under separate provisions. The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in its judgment of March 2, 2001 (file no. II SA 401/00) stated that the Inspector General for Personal Data Protection is not an authority controlling or supervising the correct application of substantive and procedural law in matters of belonging to the competence of other authorities, services or courts, the decisions of which are subject to review in the course of the instance or otherwise specified by appropriate procedures.

Due to the lack of competence of the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) to substantively resolve this case, the proceedings initiated by the complaint submitted by the Complainant had to be discontinued as redundant, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended). The doctrine indicates that "the objectivity 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 administrative procedure. Commentary, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491). It should also be mentioned the judgment of the Supreme Administrative Court of 21 September 2010, II OSK 1393/09, in which the position was expressed that the pointlessness of the administrative procedure means the lack of any element of the substantive legal relationship resulting in the fact that it is impossible to settle the case by resolving it. in essence. The discontinuation of administrative proceedings is a formal decision

that ends the proceedings, without a substantive decision.

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

Regardless of the above decision, I would like to inform you that from February 6, 2019, pursuant to art. 175 da - art. 175 dd of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2019, item 52) in connection with joke. 71 point 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), the authorities competent to consider complaints about the processing of personal data in court proceedings under the administration of justice or the implementation of tasks in the field of legal protection are, respectively, presidents of regional courts, courts of appeal or the National Council of the Judiciary.

The party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against the decision issued 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 (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 of assistance, including exemption from court costs.

2019-04-17