THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

of August

2019

DECISION

ZSOŚS.440.41.2019

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. 12 point 2, art. 22, art. 23 sec. 1 point 2 and art. 27 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. 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), following administrative proceedings regarding a complaint from Ms MG (residing at ul. [..]), to the unlawful processing of his personal data by the Regional Prosecutor's Office in B. (ul. [...]),

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Ms M. G., hereinafter referred to as: "the complainant", about the unlawful processing of her personal data by the Regional Prosecutor's Office in B.

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. In accordance with Art. 100 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, proceedings conducted by the President of the Office for Personal Data Protection, initiated and not completed before the date of entry into force of this Act (i.e. before February 6, 2019.) are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Administrative Procedure (hereinafter: the Code of Administrative Procedure).

The applicant alleged that prosecutor B. K., currently employed at the Regional Prosecutor's Office in B., and previously at the Regional Prosecutor's Office in B., breached the provisions of the Personal Data Protection Act by unlawfully using the

applicant's personal data, collected in the proceedings under reference number [...] by: 1) refusing to issue a procedural decision in the case with reference number [...]; 2) using the complainant's personal data to prepare a false indictment, according to which the complainant quoted "hired the criminal as an intermediary, while he was a partner in the company, which she herself confirms in the indictment. The aim was to cover up the unlawful intervention of the CBA and achieve a personal benefit in the form of promotion to the Regional Prosecutor's Office (...) "; 3) "legalizing fraud through the lack of a criminal-criminal reaction to the illegal processing of my documents by the offender, and even authenticating them by making them available when he tried to initiate proceedings against me."

The complainant requested the President of the Personal Data Protection Office to take steps to remedy the violations by quoting "1) removing from the Internet distribution [...] the newspaper [...] of the article dated [...] July 2013 and disseminated in O., pt. "[...]"; 2) asking the prosecutors of the district [...], [...] and [...] for the files of the proceedings in which I am unjustly accused by J. K. and forcing the prosecutor's office to award me the status of an aggrieved party and to issue a legal and criminal decision; 3) exclusion and destruction of all my documents as unjustifiably processed; 4) sending a letter to the State Institute [...] (for the information of the director and financial director, Mr. J. B.), with the following content: I am sorry, Mr. M. G., injured by J. K., mentioned in the indictment, ref. No. [...] and in the article "[...]", published [...] July 2013 in P., for violating her right to privacy and her dignity and good name, by attributing her with malicious intentions. The aggrieved parties (including Mr. MG, relieving law enforcement agencies, invested their own resources, time and energy in prosecuting a criminal committing offenses on parole, showing a responsible and pro-social attitude for which they deserve respect. Connecting these people with any corruption activities was with on my part as an abuse, as indicated by the court in the judgment.In the scope of Article 230 § 1 of the Penal Code indicated in the legal classification of the accused, it should be pointed out that the qualification referred to in this regard by the prosecutor in the established facts was completely wrong and unfounded. was finally convicted of fraud and groundless accusation of Mr. MG My conduct indirectly contributed to the breach of the relations with the above-mentioned State Institute [...] and the environmental peace for which I am sorry. "

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] April 2019, the President of the Personal Data Protection Office informed the complainant and the Regional Prosecutor in B. (hereinafter referred to as: "the Regional Prosecutor") about the initiation of the investigation and asked the

Regional Prosecutor to comment on the content complaints and submission of written explanations. [...] in May 2019, the Office for Personal Data Protection received a letter from the Deputy Regional Prosecutor (reference number [...]), in which it was explained that the case described in the complaint with reference number [...] was not covered by the proceedings conducted at the Regional Prosecutor's Office in B. It was also indicated that currently the handy files of the case are not in the Regional Prosecutor's Office in B. and the main files of the case were sent by the District Prosecutor's Office in B. to the Court together with indictment. It was explained that the Regional Prosecutor's Office in B. did not process the complainant's personal data in the preparatory proceedings and in connection with the lodging of the indictment with the Court. These activities were carried out in the District Prosecutor's Office in B. to which the prosecutor is independent.

The Deputy of the Regional Prosecutor explained that Ms Prosecutor B. K., while performing her official duties at the Regional Prosecutor's Office in B., participated in the case before the court at the stage of appeal proceedings, preparing appeals and a reply to a cassation appeal. At that time, for the purposes of the criminal proceedings, she used the case files, which also included the applicant's data as a victim. Her data was also used for the purposes of compiling the reply to the appeal. These activities were based on the provisions of the Act of 6 June 1997, the Code of Criminal Procedure (Journal of Laws 2018, item 1987, as amended), hereinafter referred to as the "CCP", which act remains a lex specialis in relation to both to the Act of August 29, 1997 on the Protection of Personal Data, as well as the Act of December 14, 2018 on the Protection of Personal Data in Connection with the Prevention and Combating of Crime. The case files were used for the purposes of the prosecution of the prosecutor's office. The materials left over from the completion of procedural steps as part of legal aid remain with the local Regional Prosecutor's Office. It was further explained that M. G. had the status of an aggrieved party in the case. In the opinion of the Deputy Regional Prosecutor, it appears from the content of the complaint that it concerns not the processing of her personal data, but the dissatisfaction with the content of the indictment and the allegations (e.g. indication of the evidence on which the indictment was based, why the indictment was included in the indictment). only one incident of unfounded accusation, the others not). At the same time, it was emphasized that the allegations related to the content of the procedural activities in which the prosecutor was independent. The submitted explanations also explained that the use of the victim's data for the purposes of the preparatory proceedings cannot be assessed as unlawful, because it serves the purposes of criminal proceedings defined, inter alia, in art. 2 of the CCP and art. 297 of the Code of Criminal Procedure

The Deputy Regional Prosecutor also mentioned that, apart from the performance of the prosecution function as part of legal

assistance in the appeal proceedings, the complainant's data are processed in the repertory [...] (reference number [...]). These materials contain a copy of the correspondence of the above-mentioned of [...] October 2016 and [...] November 2018 addressed to the Regional Prosecutor's Office in B. in this respect is the implementation of the statutory tasks of the prosecutor's office, and that it is internal correspondence of the Regional Prosecutor's Office in B. with a subordinate unit that has not been made available to any other entities.

The President of the Office for Personal Data Protection informed the complainant and the Regional Prosecutor in letters of [...] May 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment on the collected evidence and materials, and submitted requests in accordance with the content of art. 10 § 1 of the Code of Criminal Procedure, within 7 days from the date of receipt of the above-mentioned writings.

In a letter of [...] June 2019, (date of receipt: [...] June 2019), the applicant also requested a confrontation with Prosecutor data under the guise of conducting criminal proceedings ", i.e. about: a) inconsistent processing of my data as part of the proceedings with reference number [...] excluded from the proceedings [...] consisting in bringing another fictitious indictment against the partner of the criminal A. M. and failure to recognize my evidence motions against the court's order; b) confirming the untruth in the letter / official note / to the Head of the PW of [...] January 2013. Illegal processing of my data concerns the alleged receipt of testimony from me and the victim E. Ł. on that day and the content these testimonies and falsification of notes in the files, sheet [...] of files [...]; c) replacing the binary copy of the convicted K.'s disk in 2013, at the stage of preparatory proceedings, with another disk cleared of data and hiding this fact from the aggrieved parties. The stolen disk contains my data stolen by a criminal, materials covered by professional secrecy and currently processed by I do not know who. Part of the report to the prosecutor's office was the recovery of my data and not the initiation of further crimes. "

By a decision of [...] July 2019 (reference number [...]), served to the complainant on [...] July 2019 (the return receipt is included in the case file), the President of the Personal Data Protection Office refused to take into account requests for a confrontation between the applicant and the Prosecutor of the Regional Prosecutor's Office of the BK In the opinion of the President of the Office, there was no need to admit evidence from the confrontation between the parties to the proceedings, as the explanations submitted to the Regional Prosecutor are consistent, exhaustive and do not raise any doubts of the authority. As regards the application regarding the extension of the charges, the President of the Office decided that it would be

examined by issuing an administrative decision on the processing of the complainant's personal data.

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

The aforementioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuance of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing.

Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of this act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to to the legal protection of private and family life, honor and good name (Article 47 of the Constitution), and disclosure of information about a person is specified by statute (Article 51 (5) of the Constitution). The instruction of Art. 51 sec. 5 of the Constitution is fulfilled by the Personal Data Protection Act, which defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Personal Data Protection Act of August 29, 1997 r.).

Pursuant to Art. 2 of the Act of January 28, 2016, Law on the Public Prosecutor's Office (Journal of Laws of 2019, item 740), hereinafter referred to as: "the Public Prosecutor's Office Act", the Public Prosecutor's Office performs tasks in the field of prosecution of crimes and upholds the rule of law. Pursuant to Art. 3 of the Public Prosecutor's Office Act, the obligations

specified in Art. 2 The Public Prosecutor General, the National Public Prosecutor and other deputies of the Public Prosecutor General and their subordinate public prosecutors perform, inter alia, by: conducting or supervising preparatory proceedings in criminal cases and acting as a public prosecutor before the courts; bringing actions in civil cases as well as submitting applications and participation in court proceedings in civil matters in the field of labor and social security law, if required by the protection of the rule of law, social interest, property or rights of citizens; taking measures provided for by law, aimed at the correct and uniform application of the law in court and administrative proceedings, in cases of misdemeanors and in other proceedings provided for by the Act; supervising the execution of decisions on pre-trial detention and other decisions on deprivation of liberty; coordinating activities in the field of prosecuting crimes or fiscal crimes conducted by other state authorities; cooperation with state authorities, state organizational units and social organizations in the prevention of crime and other violations of the law; issuing opinions on draft normative acts; cooperation with organizations associating prosecutors or prosecutor's office employees, including co-financing of joint research or training projects; undertaking other activities specified in statutes.

The content of art. 6 of the Public Prosecutor's Office Act stipulates that the public prosecutor is obliged to take actions specified in the acts, guided by the principle of impartiality and equal treatment of all citizens, and Art. 7 § 1, that the public prosecutor is independent when performing the activities specified in the statutes, subject to § 2, according to which the public prosecutor is obliged to execute orders, guidelines and orders of a superior public prosecutor. The principle of independence of the prosecutor in the course of examining the case in which the proceedings have been initiated is obvious and should not raise any doubts. The quality and efficiency of performed activities requires independence, free from any kind of external and internal pressure. Thus, the independence of the public prosecutor is one of the main systemic principles of the public prosecutor's office. Pursuant to this principle, the public prosecutor is independent when performing the activities specified in the Acts, taking into account the limits of independence specified in the Act.

In the present state of affairs, one should also point to Art. 2 of the CCP, according to which the provisions of the above-mentioned of the Code are aimed at shaping the criminal proceedings in such a way that: 1) the perpetrator of the crime was detected and held criminally responsible, and the innocent person did not bear this responsibility; 2) through the correct application of the measures provided for in criminal law and the disclosure of the circumstances conducive to the commission of a crime, the tasks of criminal proceedings have been achieved not only in combating crimes, but also in preventing them

and strengthening the respect for the law and the principles of social coexistence; 3) the legally protected interests of the victim have been taken into account, while respecting his dignity; 4) the case was resolved within a reasonable time.

When translating the meaning of the term of personal data processing to the criminal-procedural level, it should be considered that all actions taken as part of the criminal process that involve personal information should be classified as data processing. The Code of Criminal Procedure contains a wide range of legal provisions relating to the processing of personal data. Therefore, there is no greater doubt that the operations undertaken by criminal-procedural bodies relating to the collection of evidence, sharing the files of the proceedings, or disclosing documents at the hearing, which contain the personal data of the participants in the proceedings, constitute an activity of personal data processing. In a criminal trial, in connection with various types of actions taken by law enforcement and judicial authorities on personal data, information processing takes place throughout the entire criminal process. Therefore, activities involving personal data take place from the preparatory stage, to the final termination of the jurisdictional proceedings and further, until the completion of the enforcement and liquidation stage.

The Act on the Protection of Personal Data, in accordance with the constitutional delegation, indicates the conditions under which the processing of personal data may be justified. The role of the provision setting out the grounds for lawful processing of personal data is fulfilled by Art. 23 sec. 1 u.o.d.o. with regard to ordinary data, and Art. 27 sec. 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as: "u.o.d.o." in relation to sensitive data. The catalog of circumstances creating the conditions necessary for the legalization of data operations has been listed in the Act on the Protection of Personal Data in a taxative manner. In the light of the Act on the Protection of Personal Data, the principle is that the processing of sensitive data is prohibited, and situations in which the processing of this information is allowed will be considered an exception. However, when it comes to ordinary data, Art. 23 sec. 1 u.o.d.o. no exceptions to the principle of the prohibition of data processing have been included, but general substantive law grounds for data processing have been indicated, which suggests that there is no general prohibition of processing this information.

In art. 23 sec. 1 u.o.d.o. substantive conditions allowing the processing of ordinary data are specified, and in art. 27 sec. 2 u.o.d.o. exceptions were included that waived the prohibition of processing sensitive data. It is indicated in the literature and judicature that due to the independent and equal nature of the grounds for data processing, meeting at least one of the conditions will entitle to perform all activities included in the concept of data processing. From the point of view of legalizing the

processing of personal data, it does not matter whether this entity has one or more premises. Bearing in mind the above, it should be concluded that when the provisions of the Code of Criminal Procedure or other specific acts provide for the possibility of processing sensitive data by procedural bodies, these entities act in accordance with the basis contained in Art. 27 sec. 2 point 2 u.o.d.o., according to which the processing of data is permissible, however, if 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. In this case, the criminal procedure authorities act not only on the basis of the premise specified in Art. 27 sec. 2 point 2 u.o.d.o., but also based on the premise specified in Art. 27 sec. 2 point 5 of the Personal Data Protection Act, according to which the processing of data is permissible if it concerns data that is necessary to pursue rights in court. features of legality in connection with relying on the statutory prerequisites for the admissibility of data processing under Art. 27 sec. 2 points 2 and 5 of the Act on Public Procurement Law Summing up the above, it should be stated that the criminal and procedural provisions grant procedural authorities the right to process the personal data of entities appearing in the proceedings, both of an ordinary nature and those with a sensitive attribute.

In this case, the content of Art. 23 sec. 1 point 2 u.o.d.o., which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. Undoubtedly, the data of participants in criminal proceedings are processed for the purpose necessary to fulfill the legal obligation incumbent on law enforcement authorities, which is the performance of tasks in the field of prosecuting crimes and upholding the rule of law. According to the principle of legalism, public authorities operate on the basis and within the limits of the law. The scope of activities of the Public Prosecutor's Office is determined primarily by the provisions of the Code of Criminal Procedure, which is a lex specialis to the Act on the Protection of Personal Data, which is based on the actions of the authority questioned by the applicant.

Bearing in mind the above, it should be stated that the complainant's personal data were obtained by the prosecution authorities in a legal manner and are processed in this way by them, and therefore there was no violation of the provisions of the Personal Data Protection Act, therefore the President of the Office for Personal Data Protection ruled as in the introduction.

On the other hand, referring to the applicant's letter of [...] June 2019, in which the above-mentioned requested the extension of the allegations by: a) inconsistent processing of my data under the proceedings with reference number [...] excluded from the proceedings, reference number [...] consisting in bringing another fictitious indictment against the partner of the criminal A. M. and failure to recognize my evidence motions against a court order; b) confirming the untruth in an official letter / note to the

Head of the PW of [...] January 2013. Illegal processing of my data concerns the alleged receipt of testimonies from me and the victim E. Ł. on that day and the content of these testimonies and falsification of notes in the files, sheet [...] of files [...]; c) replacing the binary copy of convicted K.'s disk in 2013, at the stage of preparatory proceedings, with another disk cleared of data and hiding this fact from the aggrieved (...) ", the President of the Office considered the following.

The above claims of the complainant do not deserve to be taken into account, as they do not fall within the scope of powers granted by the law to the President of the Personal Data Protection Office. The authorities competent to examine the above-mentioned of the applicant's requests are the Public Prosecutor's Office and the Central Anticorruption Bureau. It should be noted that the President of the Personal Data Protection Office may not undertake activities related to proceedings conducted by other authorities on the basis of relevant legal provisions. The above is confirmed by the jurisprudence of the Supreme Administrative Court. In the judgment of March 2, 2001 (file no. II SA 401/00), the Supreme Administrative Court 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 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 ". The personal data protection authority is also not the authority authorized to decide on the legality of disposing of documents or interfere with the files of the proceedings conducted by the authorities, therefore ordering the removal of personal data from the files of the proceedings conducted by the above-mentioned entities or assessing the legality or legitimacy of individual activities undertaken in their course. As regards the complainant's allegations, concerning the replacement of the binary copy of the convicted person's disk, Kw 2013, at the stage of the preparatory proceedings, with another disk cleared of data and hiding this fact from the aggrieved parties (...) ", it should be noted that the law enforcement agencies are the only competent authorities to protect the rule of law and prosecution of offenses pursuant to the wording of Art. 2 of the Public Prosecutor's Office Act. It is up to them, and then to the criminal courts, which conduct criminal proceedings under the terms and in the manner specified in the Code of Criminal Procedure, to decide on the application of relevant provisions in connection with the legal classification of a criminal act, which is made on the basis of the material collected in the course of the preparatory proceedings. evidence. Thus, the President of the Personal Data Protection Office is not a body authorized to qualify the features of a prohibited act.

For the above reasons, the proceedings are redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the

Code of Civil Procedure Pursuant to the aforementioned 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, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. 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 Civil Procedure means that there is no element of the material 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. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005 r., p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case no. act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

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. 9 sec. 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), in connection with art. 15 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, within 30 days from the date of delivery to her side. 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.

2019-08-27