

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 31

January

2019

DECISION

ZSOŚS.440.109.2018

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), 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. 55 sec. 3 and 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 Mr. PN, residing in in the town of R., represented by adv. R. T., Kancelaria [...] with its seat in Ł., For the processing of his personal data by the President of the District Court for W., I discontinue the proceedings

Justification

On [...] July 2018, the Personal Data Protection Office received a complaint from Mr. P. N., hereinafter referred to as "the Complainant", concerning irregularities in the processing of his personal data by the President of the District Court for W., hereinafter referred to as the "President of the Court". The applicant pointed out that in the files of the case pending before the W. District Court (reference number [...]) there was a printout from the website of the law office, with a photograph showing the personal data in the form of the applicant's image. The complainant also pointed out that these data were redundant for the purposes of the court proceedings, as the described printout, constituting an attachment to the pleading, was not admitted as evidence in the case and did not constitute evidence in the case on which the decision was based in any way. The complainant also explained that he had never consented to the use of his image in the described manner, therefore, there was no reason to legalize the processing of the complainant's personal data in the manner described in the complaint. Considering the above, in the content of the complaint, the Complainant demanded that the President take action to protect his personal

data by removing the printout of the photo showing the personal data in the form of his image and constituting an attachment to the plaintiff's pleading.

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 [...] October 2018, the President of the Personal Data Protection Office informed the Complainant and the President of the Court about the initiation of proceedings in the case and asked the President of the Court to comment on the content of the complaint and to provide written explanations. On [...] October 2018, the Office for Personal Data Protection received a letter from the President of the Court ([...]), in which he explained that the complainant's personal data had been processed by the District Court for W. in W. in order to conduct court proceedings in the case with reference number [...].

Moreover, the President of the Court indicated that the basis for the processing of personal data is Art. 6 sec. 1 lit. c, e 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 Official Journal of the European Union L 119 of May 4, 2016, p. 1). The President of the Court also explained that in the proceedings conducted before the above-mentioned He acted as the defendant in court, and the opposing party submitted, together with the pleading, a printout from the website of the applicant's office, which contained a photograph reflecting his image. The President of the Court detailed that the above-mentioned personal data in the form of a photo on the [...] card of court files with reference number the files [...] are kept using the technical and organizational measures provided for in Art. 24 sec. 1 of the general regulation on the protection of personal data. Moreover, the President of the Court, in the submitted explanations, indicated that [...] on February 2018, the judge clerk in the case no. [...] issued an order excluding card no. [...] from the case files. The exchanged card was placed in an envelope and secured in court files by sealing the envelope.

Therefore, access to personal data in the form of a photo on the [...] card of court files with reference number the file [...] has been fully protected from all persons having access to the file. The above order of [...] February 2018 was submitted to the Complainant.

The President of the Office for Personal Data Protection informed the Complainant and the President of the Court in letters of [...] November 2018 about the conduct of 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 as well as the

requests made 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. On [...] November 2018, attorney R.T. submitted to the case files a power of attorney authorizing him to represent the applicant in the present case.

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 Personal Data Protection Office, 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)).

The provision of art. 55 sec. 3 above The regulation states that the supervisory authorities lack substantive competence with regard to the processing of data by courts in the course of administering justice. The main purpose of excluding the competence of a supervisory authority 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.

Recital 20 explains that the above-mentioned the regulation applies, inter alia, to the actions of courts and other judicial authorities, but nevertheless Union or Member State law may further clarify the operations and procedures for the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not apply to the processing of personal data by courts in the course of the administration of justice, in order to protect the independence of the administration of justice. It should be possible to entrust the supervision of such processing operations to specific authorities in the justice system of a Member State, they should, in particular, ensure compliance with this Regulation, raise awareness of its obligations under this Regulation in the judiciary and handle complaints related to such processing operations. data.

The President of the Personal Data Protection Office, as part of the powers conferred on him by the Act, may not interfere in the course or manner of proceedings conducted by other authorities authorized under separate provisions. Thus, it cannot interfere with the content of the documents collected in the files of such proceedings. Therefore, even if doubts were raised by the inclusion in the case files of the Complainants' data in the form of a printout from the website of the Complainant's office, which contained a photograph reflecting his image, and not being evidence in the case, it should be emphasized that the

President of the Office for Personal Data Protection 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, 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 Office for Personal Data Protection) is not a controlling body nor overseeing the 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 in any other manner determined by appropriate procedures.

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

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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