

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

April

2019

DECISION

ZSPU.440.799.2018

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), Art. 7 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), after conducting administrative proceedings regarding the complaint of Mr. W. M. in H. [...], Mrs. B. W. dom. in H. [...], Mr. D. B. dom. in H. [...], Mr. J. R. dom. in H. [...]. and Mr. S. K. residing in H. [...], to provide their personal data on websites at the following addresses: [http \[...\]](http) [http \[...\]](http) [http \[...\]](http) by H. Spółdzielnia Mieszkaniowa im. S. S. with its seat in H. [...] - President of the Personal Data Protection Office

discontinues the proceedings.

Justification

The Personal Data Protection Office received a complaint from Mr. W. M. in H. [...], Mrs. B. W. dom. in H. [...], Mr. D. B. dom. in H. [...], Mr. J. R. dom. in H. [...] and Mr. S. K. residing in H. [...], hereinafter referred to as the Complainants, to provide their personal data on websites at the following addresses: [http \[...\]](http); [http \[...\]](http); [http \[...\]](http) by H. Spółdzielnia Mieszkaniowa im. S. S. with its seat in H. [...], hereinafter referred to as the Cooperative.

In connection with the violation of the provisions of the Act on the Protection of Personal Data, the complainants demanded that the legal status be restored by quoting: "(...) applying remedial powers by introducing a complete ban on data processing, that is, a request to remove the full content of the Supervisory Board Report [...] for 2017 from the generally accessible website of the Cooperative in connection with the violation by the Management Board of [...] of the provisions on the protection of personal data by publishing without our consent [...] in the period preceding the General Meeting [...], i.e. from [...] .05.2018, on the open-access website of the Cooperative [http \[...\]](http) of the above-mentioned Report with personal identification data of 4 persons - former members of the Supervisory Board [...] and holding the position of Deputy President of the Management Board of SK until [...] November 2017, who are not currently members of the body Cooperatives. The above Report, despite

our demands to the Management Board [...], is still available on the cooperative's public website and anyone, not only the Cooperative, who has access to the Internet can read it ". In a letter dated [...] February 2019, Mr. JR indicated that the quotation: "(...) Today, you can still read the Management Board's Report for 2017 [http ...], so everyone who has access to the Internet he could and still can read this Report and identify (...) ".

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the following facts.

In the explanations provided to the President of the Personal Data Protection Office in a letter of [...] January 2019, the Cooperative indicated that the quotation: "(...) made the said report of the Supervisory Board available on the website referred to (...) submitting materials being the subject of the General Meeting due to the provisions of the Cooperative Law Act (...) ordering to publish materials related to the approval of the annual reports of the Cooperative ".

In additional explanations sent to the Office, the Cooperative indicated that in terms of publications on the websites: http [...] and http [...] it maintains its previous position quoted: '(...) it is in the performance of legal obligations related to the submission of materials being the subject of the general meeting - due to the provisions of the Cooperative Law Act - Article 46 and in connection with Article 8¹ par. 3 of the Act on Housing Cooperatives, ordering the publication of materials related to the approval of the annual reports of the Cooperative ".

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

The subject of these proceedings was a complaint concerning the disclosure of the complainants' personal data on the websites at the following addresses: http [...] http [...] by [...] Spółdzielnia Mieszkaniowa im. S. S. with headquarters in H.

In the course of the investigation, the personal data protection authority determined that at present the complainants' personal data are not processed in the manner described in the complaint, because they have been removed from the above-mentioned websites, the report of the General Meeting of [...] June 2017 and the report of the Supervisory Board for the period from July 2017 to June 2018, which contained the Complainants' personal data. Therefore, it should be considered that [...] Spółdzielnia Mieszkaniowa im. S. S. does not provide the Complainants' personal data to the extent indicated in the complaint. Thus, it should be pointed out that the further conduct of the proceedings in this respect is redundant and is subject to discontinuation pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as

amended), hereinafter referred to as the Code of Administrative Procedure. In accordance with the above-mentioned a provision, when the proceedings, for whatever reasons, have become redundant, the public administration authority issues a decision to discontinue the proceedings. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body 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 element of a 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. Commentary, 7th edition, Publisher 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 (II SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the material and legal relationship is missing, which means that it is impossible to settle matters by deciding on the substance ".

As regards the complaints of the Complainants concerning the content of the published documents and their truthfulness, it should be noted that the President of the Office for Personal Data Protection does not have the power to interfere with the competences of other authorities and to assess their actions.

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. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000 and item 1669) 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 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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