THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

March

2019

DECISION

ZSZZS.440.632.2018

DECISION

Based on Article. 138 § 1 point 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000) in connection with joke. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922) and art. 6 sec. 1 lit. c and art. 9 sec. 2 lit. h and lit. and 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 (Official Journal of the European Union , L 119, May 4, 2016), after considering the application of Ms KS and Mr. AS, to reconsider the case ended with the decision of the Inspector General for Personal Data Protection of January 3, 2017 (DOLIS / DEC-2/17/360, 366) regarding their complaint regarding the processing by S. sp. a treatment facility with the designation NZOZ [...], the County State Sanitary Inspector in G. and the Voivode [...] of their personal data and their minor son AS, President of the Office for Personal Data Protection

upholds the contested decision.

Justification

Ms K.S. and Mr AS, hereinafter referred to as the Complainants, for the processing of their personal data and the personal data of their minor son AS, regarding the Complainants' failure to perform the obligation to vaccinate the minor by S. sp. Outpatient clinic, the State County Sanitary Inspector in G., hereinafter referred to as PPIS and the Governor [...], hereinafter referred to as the Governor.

In the content of the complaint, the complainants indicated that the Clinic provided PPIS with their personal data and the data of their minor son in breach of the Act on the Protection of Personal Data. In the complaint, the complainants indicated that

they expected the Inspector General to issue a decision ordering the protection of their data, which had been transferred by the Clinic to the PPIS and by the PPIS to the Voivode, and to remove their personal data from the resources of these entities.

In the course of administrative proceedings, the Inspector General for Personal Data Protection established the following facts.

The applicant, as the person who was in charge of his minor child, did not comply with the obligation to vaccinate him.

The clinic shared the personal data of the Complainants and their son in the scope of their name, surname, address and PESEL number to the County State Sanitary Inspector in G. in connection with the Complainants' failure to comply with the obligation to vaccinate their minor son.

PPIS indicated that it processed the personal data of the applicants and their underage son A.S. in accordance with § 13 of the Regulation of the Minister of Health of 18 August 2011 on compulsory vaccinations (ie Journal of Laws of 2016, item 849, as amended), indicating that pursuant to Art. 5 point 3 of the Act of 14 March 1985 on the State Sanitary Inspection (ie Journal of Laws of 2017, item 1261), the tasks of the State Sanitary Inspection include determining the scope and dates of preventive vaccinations and exercising supervision in this regard.

Due to the Complainants' failure to comply with the vaccination obligation towards their minor son, PPIS transferred their personal data to the Voivode, as an enforcement authority in the field of administrative enforcement of non-pecuniary obligations.

After conducting the administrative procedure in the case, the Inspector General for Personal Data Protection issued an administrative decision of January 3, 2017 (DOLiS / DEC-2/17 / 360,366,372,377,380), by which he refused to accept the request in this case.

On [...] January 2017, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a request from the Complainants to reconsider the case resolved by the above-mentioned by decision (date of sending the application at a post office - [...] January 2017, i.e. within the statutory deadline).

In the request for reconsideration of the case, the Complainants requested that the deficiencies in the processing of personal data be ordered by fulfilling the information obligation under Art. 25 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), deletion of their personal data from registers kept contrary to the provisions or without their consent, commencement of explanatory proceedings in this case , referral to the complained entities of a statement regarding the improvement of personal data protection, the use of additional measures securing the collected

personal data, issuing a decision or order stating the defectiveness of documents issued by the Sanitary Inspection authorities, which violated the provisions on the protection of personal data, recognition of a violation of the law in the activities of the Sanitary Inspection, initiation of disciplinary proceedings against guilty persons and, if necessary, referring the case to law enforcement authorities.

After re-examining all the evidence collected in this case, the President of the Office for Personal Data Protection, hereinafter referred to as the President of the Office, considered the following.

First of all, it should be noted that on the date of entry into force of the Act of 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Proceedings conducted by the Inspector General, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 with d.), hereinafter referred to as the 1997 Act, in accordance with the principles set out in the Code of Administrative Procedure All activities undertaken by the Inspector General before May 25, 2018 remain effective.

It is necessary to emphasize that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, “a public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A. Wróbel, Lex., El / 2012). At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated the following: "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision."

The President of the Personal Data Protection Office must assess whether the questioned process of personal data processing as at the date of the administrative decision is lawful. Referring the above to the established facts, it should be emphasized that two circumstances are decisive for the decision that must be issued in the present case. First of all, it should be noted that the disclosure of personal data of the Complainants and their minor son, both by the Clinic for the PPIS and by the PPIS for the Voivode, was a one-off and accomplished event, which took place during the period when the Act of 1997 on the protection of personal data was in force, therefore, the substantive provisions of that act apply to the assessment of the legality of this circumstance. Secondly, it should be pointed out that the personal data provided are still processed by the PPIS and the Voivode, therefore the provisions in force at the time of issuing the decision in the case, i.e. the GDPR, will apply.

AD. 2

Referring to the provision of data by the Clinic for PPIS, it should be pointed out again that any form of personal data processing, the so-called "Ordinary" should have found support in one of the enumerated in Art. 23 sec. 1 of the Act of 1997, the prerequisites for the legality of this process. However, the processing of personal data, the so-called "Sensitive", the exhaustive catalog of which was defined by Art. 27 sec. 1 of the 1997 Act, it should have been based on one of the premises listed in Art. 27 sec. 2 of the Act of 1997. The conditions for the legality of personal data processing were comprehensively listed in the above-mentioned provisions. Each of them was autonomous and independent. This means that these conditions were equal, and the fulfillment of at least one of them constituted the lawful processing of personal data. It should be noted that, irrespective of the consent of the data subject, the processing of his personal data was permissible, inter alia, when it was necessary to exercise the right or fulfill an obligation resulting from a legal provision in the case of ordinary data processing (Article 23 (1) point 2 of the 1997 Act). In the case of sensitive data, the processing of personal data without the consent of the data subject was allowed, inter alia, in the event that a special provision of another act allowed for the processing of such data without the consent of the data subject and created full guarantees of their protection (Article 27 (2) (2) of the Act of 1997).

As indicated in the contested decision, special provisions governing the vaccination obligation apply to this event. Pursuant to Art. 5 sec. 1 point 1 point b of the Act persons staying on the territory of the Republic of Poland are obliged to undergo preventive vaccinations under the terms of this Act. In the case of a person without full legal capacity, the responsibility for the fulfillment of this obligation is borne by the person who exercises legal custody or actual care of a minor or helpless person, in accordance with art. 3 sec. 1 point 1 of the Act of November 6, 2008 on Patient Rights and Patient's Rights Ombudsman

(Journal of Laws of 2017, item 1318, as amended). Moreover, Art. 5 sec. 1 point 4 of the Act on obliges persons staying on the territory of the Republic of Poland to provide personal data and information, inter alia, to the bodies of the State Sanitary Inspection, which are necessary for epidemiological supervision over infections and infectious diseases, prevention and combating infections and infectious diseases, as well as information necessary to fulfill the obligations set out in Art. 5 sec. 1 point 1-3 of the Act on

Pursuant to Art. 17 sec. 8 z.z. persons carrying out preventive vaccinations keep medical records on compulsory vaccinations, keep immunization cards, make entries confirming vaccination, draw up reports on the vaccination status and prepare reports on the vaccination status of persons covered by preventive health care, which are forwarded to the relevant State County Sanitary Inspector. Article 17 (1) 10 z.z. stipulates that the report template is specified in the Regulation of the Minister of Health of 18 August 2011 on compulsory preventive vaccinations (i.e. Journal of Laws of 2018, item 753), hereinafter referred to as roso, which requires a list of persons who refrain from preventive vaccinations (Annex 4, second section roso).

In the case in question, it is important to define the scope of personal data provided by the Clinic for PPIS. As it has been shown, in accordance with the applicable law, the Clinic is obliged to prepare a report on the preventive vaccinations carried out and to prepare a list of names of people who avoid immunization, in order to enable the State Sanitary Inspection to supervise the fulfillment of this obligation and its effective execution. The report should contain the data necessary for the appropriate branch of the State Sanitary Inspection to send a reminder to comply with the vaccination obligation. It should be emphasized that the data obtained by the PPIS and made available to it must also be sufficient to effectively enforce the vaccination obligation, under which the creditor draws up an enforcement order. The scope of these data is governed by Art. 27 of the Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws of 2018, item 1314), hereinafter referred to as the Act on Enforcement Proceedings or the Act. Pursuant to Art. 27 § 1 point 2 and 3, the writ of execution should include the name, surname, address, PESEL number of the person liable and the content of the obligation to be enforced.

In connection with the above, it should be stated that the Complainants' personal data in the field of name, surname, address and PESEL number were made available by the Clinic for PPIS pursuant to art. 23 sec. 1 point 2 of the Act of 1997, and the data of their minor son in the scope of information on vaccinations not performed pursuant to Art. 27 sec. 2 point 2 of the 1997 Act, which in both cases should be again considered adequate and expedient in the light of the supervisory obligation

performed by the PPIS.

AD. 3

However, referring to the ongoing data processing of the Complainants and their minor son, it should be noted that Regulation (EU) 2016/679 of the European Parliament and of the Council specifies the obligations of the data controller, which include the processing of personal data in accordance with the conditions set out in the Regulation. Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of the premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permitted, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR) GDPR). As indicated above, the PPIS has a legal obligation to supervise the implementation of the obligation to perform preventive vaccinations, therefore Art. 6 sec. 1 lit. c GDPR should be considered as the legal basis allowing the processing of "ordinary" data of the Complainants and their minor son, such as names, surnames, address and PESEL number.

Moreover, due to the special category of data (the so-called "sensitive" data), which are data on the health status of information on immunization of minor A.S., processed in the present case, Art. 9 GDPR, according to which the processing of sensitive data is allowed only if one of the conditions of Art. 9 sec. 2 GDPR. As possible grounds allowing for processing, this provision mentions: data processing for the purposes of preventive healthcare (...) on the basis of EU law or the law of a Member State, subject to par. 3 (h), processing is necessary for the public interest in the field of public health on the basis of European Union or Member State law (letter i).

In the case at hand, both Art. 9 sec. 2 lit h, in connection with the health prophylaxis, and art. 9 sec. 2 lit. and in view of the public interest in preventing infectious disease epidemics. Both of these grounds presuppose the existence of a legal basis in the form of a regulation at the level of the European Union or adopted by a Member State of the European Union. In this case, the provisions of the act on promoting and combating infections and infectious diseases in humans should be indicated.

According to the above analysis, Art. 17 sec. 8 point 2 of the Act on should be considered as a provision authorizing the processing of sensitive personal data by PPIS (i.e. information on immunization of a minor A.S.) in accordance with the requirement of Art. 9 sec. 2 lit. h and lit. i. The legislator provided for the above powers enabling effective supervision over the implementation of the obligation to vaccinate, along with the possibility of processing personal data by the authorities performing such tasks. Moreover, the obligation to vaccinate was secured by administrative compulsion pursuant to Art. 5 sec. 1 point 1 point b of the Act

AD. 4

As regards the disclosure of the Complainants' personal data by the PPIS to the Voivode, the following should be indicated. Due to the failure by the applicants to perform the vaccination obligation towards the minor A.S., PPIS was obliged to take steps to initiate enforcement proceedings. Pursuant to Art. 26 § 1 u.p.e.a. the enforcement authority shall initiate administrative enforcement at the request of the creditor and on the basis of an enforcement order issued by him, drawn up in accordance with a predetermined model. PPIS, as a creditor, prepared enforcement orders in relation to each of the Complainants. Each of the titles contained the personal data of one of the Complainants, in the scope of name, surname, address, PESEL number, the content of the obligation to be enforced, and thus the information about the failure to comply with the obligation to vaccinate the applicants' son. The PPIS was obliged to indicate the above personal data in the enforcement title, in accordance with the regulation of art. 27 § 1 u.p.e.a. It should be pointed out again that the obligation to undergo protective vaccinations is reserved as an administrative obligation, as an obligation arising directly from the provisions of law, where the role of the creditor is the PPIS authority and the voivode as the enforcement authority. According to Art. 20 § 1 u.p.e.a. As a rule, the voivode is the enforcement authority in the field of administrative enforcement of non-pecuniary obligations. It should be noted that the head of the voivodeship inspection or the head of the poviat inspection are enforcement authorities in the field of administrative enforcement of non-pecuniary obligations only in relation to the obligations arising from decisions and resolutions issued by these authorities (cf. Article 20 § 1 points 3 and 4 of the UPEA) . Therefore, these entities are not enforcement authorities in the field of administrative enforcement of non-pecuniary obligations in relation to obligations arising directly from the law (see the judgment of the Supreme Administrative Court of June 12, 2014, file ref. II OSK 1312/13). Therefore, in the present case, the PPIS correctly identified the enforcement authority, ie the Voivode, to whom it referred enforcement orders, containing the personal data of the Complainants and their son.

In view of the above, the provision of personal data on the health condition of the applicants' son to the Voivode by the PPIS, in the scope of failure to perform compulsory preventive vaccination, was therefore based on the premise specified in Art. 27 sec. 2 point 2 of the Act of 1997, while in the case of the Complainants' personal data, in the condition indicated in Art. 23 sec. 1 point 2 of the 1997 Act

As regards the processing of the complainants' and their son's personal data by the Voivode, it should be noted that pursuant to art. 122 §1 u.p.e.a. a fine for coercion shall be imposed by the enforcement authority, which shall serve the principal with a copy of the writ in accordance with art. 32 u.p.e.a. and an order imposing a fine. On the other hand, according to § 2 of this article, the decision should contain an invitation to fulfill the obligation specified in the writ of execution. In view of the above, it should be considered that the processing of personal data concerning the health condition of the applicants' son by the Voivode, as regards failure to perform the compulsory preventive vaccination, is also based on the premise specified in Art. art. 9 sec. 2 GDPR, while in the case of the Complainants' personal data, in the condition set out in art. art. 6 sec. 1 lit. c GDPR.

Referring to the complainants' demand regarding the fulfillment of the information obligation arising from Art. 25 of the Act of 1997, it should be pointed out that in accordance with section 2 point 1 of this provision, this obligation was not applied when the collection and processing of data was provided for in another act, as in the case in question. With regard to the Complainants' requests to order their data to be removed from the registers of the complained entities unlawfully or without their consent, referring the complained entities to the complaints, finding the documents issued by PPIS to be defective and recognizing the violation of the law in PPIS activities, it should be noted that along with the identified purposefulness, adequacy and compliance with the provisions on the protection of personal data of the processing of personal data of the Complainants, these requests are groundless. In addition, no reasons were found that would indicate the need to apply additional security measures for the collected personal data. Referring to the demand to initiate disciplinary or other proceedings provided for by law against persons guilty of infringements, it should be pointed out that irrespective of the presence or absence of the violation found, this demand goes beyond the competences of the President of the Office.

Comprehensive control activities regarding the processing and protection of data by a specific data administrator may therefore be undertaken by the President ex officio, after receiving information about the illegal activities of the entity and after making a preliminary assessment of the legitimacy of the charges against him, but the decision to carry out these activities is made by the authority on its own based on a reasonable suspicion of violating the provisions of the GDPR. In the present case,

it should be convicted that the circumstances questioned by the Complainants resulted from the deliberate operation of the PPIS, and not from irregularities in the manner of securing personal data.

It should be noted here that the administrative procedure conducted by the President of the Office serves to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Act of 1997, according to which the administrative proceedings conducted by the President of the Office serve to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act.As it follows from the wording of the quoted provision, in the event of a breach of the provisions of the Act, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders restoration of the legal status, and in particular removal of the deficiencies (point 1) , supplementing, updating, rectifying, disclosing or not providing personal data (point 2), applying additional security measures for the collected personal data (point 3), suspending the transfer of personal data to a third country (point 4), securing data or transferring it to other entities (point 5), deletion of personal data (point 6). Due to the fact that the processing process complies with the existing provisions of law and the disclosure of data partially complies with the provisions in force at that time, it should be considered that the legal status will be restored after the PPIS has implemented the order to delete some of the Complainants' personal data in accordance with Art. 18 sec. 1 point 6 of the Act of 1997

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. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data and in connection with joke. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2017, item 1369, as amended), the party has the right to lodge a complaint against this decision with the Provincial Administrative Court in Warsaw, in 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 fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

2019-04-26