

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 24

July

2019

## DECISION

ZSOŚS.440.39.2018. II

Based on Article. 104 § 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, art. 27 sec. 1 and 2 point 2 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. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), following administrative proceedings regarding the complaint of Mr. ML, residing in W., against unauthorized disclosure of his personal data by the Court District in L.,

I refuse to accept the application

### Justification

The Office of the Inspector General for Personal Data Protection (currently the President of the Personal Data Protection Office) received a complaint from Mr. ML, residing in W., hereinafter referred to as the "Complainant", about disclosure of his personal data by publication on the list of court experts, published by the District Court in L. , home address and telephone number.

In the content of the above-mentioned of the complaint The complainant indicated that the notification concerns the publication of personal data in the list of experts, for the publication of which the complainant did not consent.

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 (Journal of Laws, item 1000, as amended), i.e. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the proceedings conducted by the Inspector General for Personal Data Protection, 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 in accordance with the principles set out in the Code of Civil Procedure. In the course of the proceedings initiated by the

above-mentioned through the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, familiarized himself with the evidence and made the following arrangements.

In a letter of [...] October 2018, the President of the Personal Data Protection Office informed the Complainant about the initiation of proceedings in the case and requested the President of the District Court in L. (hereinafter: the "President of the Court") to submit written explanations. On [...] October 2018, the Office for Personal Data Protection received a letter from the President of the Court (letter number: [...]), which explained that [...] January 2018, acting pursuant to § 9 of the Regulation Of the Minister of Justice of 24 January 2005 in the case of court experts (Journal of Laws of 2005, No. 15, item 133), the President of the District Court in R. provided a non-editable file with the list of experts with full contact details, without statements regarding the consent or lack of consent to the processing of personal data. List of experts, by decision of the Editorial Team of the website of the District Court in L. [...] February 2018, pursuant to § 11 para. 2 of the Rules of the Office of Common Courts, was posted on the website of the District Court in L. [...] March 2018, after the applicant's intervention, the President of the Court ordered the removal of the list of experts from the website and a link to the website of the District Court in R. as regards court experts. This order was implemented on the same day, about which [...] March 2018 was also informed the Complainant.

Removal of the list from the Court's website made the document unavailable, but the link previously indexed by the search engine remained active. [...] on September 2018, the document was physically removed from the hosting server. Nevertheless, the information obtained by the President of the Court from another court expert showed that after entering his data in a web browser, a reference to the document containing the list of experts being the subject of the present proceedings is displayed. A person employed as an IT specialist at the District Court in L. [...] October 2018, filed an application for the removal of this entry from the search databases via the form "Removing obsolete content", which was taken into account by the operator, as a result of which the document in question was not visible.

As a result of the inspection of the website of the District Court in L., conducted [...] on May 2019, it was found that the above-mentioned the website contains a list of experts, including an entry concerning the Complainant, however, the list does not disclose the Complainant's personal data in the form of his home address and mobile phone number.

In view of the above, the President of the Personal Data Protection Office considered the following. The above-mentioned 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 issuing of an order to remove deficiencies in the processing of personal data or to cease 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.

The collected evidence shows that the complainant's personal data in the form of his mobile phone number were processed by the District Court in L. by including this data in the list of experts available on the website of the abovementioned The court. The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Personal Data Protection Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data. The condition for issuing by the authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the time of issuing the administrative decision. In a situation where the President of the District Court in L. removed the complainant's personal data from the publicly available list of experts, the legality examination in the context of determining the possible existence of premises for the formulation of the order referred to in Art. 18 sec. 1 point 6 of the Act, as requested by the complainant, would be obviously pointless.

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

Based on Article. 127 § 3 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), from this decision, the party has the right to submit an application for reconsideration within 14 days from the date of delivery of

the decision to the party . If a party does not want to exercise the right to submit an application for reconsideration of the case, he 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 entry 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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