

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

November

2018

DECISION

ZSOŚS.440.19.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and art. 12 point 2, art. 22, art. 23 sec. 1 point 2, art. 27 sec. 2 point 5 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 of 2018, item 1000, as amended) after conducting administrative proceedings regarding the complaint of Ms M. S., residing in N., on irregularities in the process of processing by the President of the District Court in C. her personal data and the personal data of her son J. S. in the files of court cases,

I refuse to accept the application

Justification

On [...] August 2012, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mrs. in C., a comment by an employee of the Court's reading room, failure to make available for inspection the order of the President of the Court on making entries on loose cards in court files, not registering documents submitted to the Court's administration office, changing testimonies submitted during court hearings by the Court, sharing unlawful applications and documents submitted for exemption from court costs and assigning an ex officio lawyer ". The complainant, in a letter of [...] October 2012, was requested by the Inspector General for Personal Data Protection to supplement formal deficiencies in the complaint. In reply, the complainant specified that she asked for the exclusion of the personal data of her and her son JS from the files of the court cases in the District Court in C., registered under file reference numbers: [...], [...], [...], [...], [...]. This exclusion is to be made by placing in separate files applications for exemption from court fees and fees, together with attached documents, which include names, surnames, PESEL numbers, address of residence and information about the health of the applicant and her son JS In this way, as indicated by the complainant , documents containing sensitive data would not be open to other parties to the proceedings. In addition, the subject of the complaint is also

the processing of the complainant's personal data in the files of the court reading room and "free cards" placed in the above-mentioned court files (letters of [...] October 2012, [...] October 2012, [...] March 2013 in the case files).

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. 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. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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.

In a letter of [...] March 2013, the Inspector General for Personal Data Protection asked the President of the District Court in C., who is the administrator of personal data, to comment on the content of the complaint and to provide written explanations. The President of the Office informed the Complainant about the above activity (letter of [...] March 2013 in the case files). On [...] March 2013, the Office of the Inspector General for Personal Data Protection received a letter from the President of the Court ([...]) explaining that three cases were registered in the [...] Labor and Social Insurance Department of the District Court in C. entered in the "[...]" repertory filed by the Applicant, but none of the above cases concerns directly her son JS. The case with file number [...] is closed and is in the department archives. On the other hand, in cases with file reference numbers [...] and [...], as at the date of the above-mentioned letters, proceedings have not been completed. Moreover, the President of the Court referred to the provisions of Art. 9 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended), hereinafter referred to as the Code of Civil Procedure, which refers to the principle of open proceedings and § 37 of the Order of the Minister of Justice of December 12, 2003 on the organization and scope of activities of court secretariats and other judicial administration departments (Journal of Laws MS.2003.5.22), hereinafter referred to as the order of the Minister of Justice, pursuant to which letters sent in the course of proceedings in the case are attached to the files in the order in which they were received by the court, with the exception of letters concerning supervisory activities (§ 39). The President of the Court also explained that there were no legal grounds for returning the complainant's requests for exemption

from court costs together with the attached documents.

Due to the need to collect additional evidence in the case, the Inspector General for Personal Data Protection, in a letter of [...] November 2013, requested the President of the District Court in C. to provide explanations as to the legal grounds for processing the personal data of the applicant and her son in cases with file number [...] and [...], at the disposal of civil divisions. In response to the above, the President of the Court indicated that the basis for the processing of the complainant's personal data was Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data, Art. 175 sec. 1 and art. 176 sec. 2 of the Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483), Art. 84 of the Regulation of the Minister of Justice of 23 December 2015. Regulations for the operation of common courts (Journal of Laws of 2015, item 2316), hereinafter referred to as the regulations, in connection with Art. 41 § 1 of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2018, item 23, as amended), § 82 sec. 1 of the order of the Minister of Justice in connection with Art. 148 § 1 of the Act of 27 July 2001, Law on the System of Common Courts. On the other hand, in the case file number [...], the Court did not process the personal data of the applicant's son, as he did not act as a party to the proceedings (letter of [...] November 2013 in the case file). In addition, in a letter of [...] May 2014, the Inspector General for Personal Data Protection asked the President of the Court to clarify the circumstances and legal grounds for the processing of the complainant's personal data in the files of the court reading room and on "free cards" included in court files with reference number: [...], [...], [...], [...], [...]. Therefore, the President of the Court, in a letter of [...] May 2014, explained that in cases with file number [...], [...] the complainant's personal data are processed in collective files concerning the lending of court files in the court reading room pursuant to Art. 9 of the Code of Civil Procedure, §92 of the Rules, § 81 of the order of the Minister of Justice, as well as order No. [...] of the President of the District Court in C. of [...] October 2013 on the use of the Reading Room at the District Court and District Court in C. in buildings at ul. [...] and ul. [...], Which annulled the previously applicable Order No [...] of the President of the Regional Court in C. of [...] March 2013 and Order No [...]. On the other hand, the complainant's personal data are processed "on free cards placed in court files" (the so-called review cards) pursuant to Art. 9 of the Code of Civil Procedure, § 92 of the Rules and the letter of the President of the District Court in C. of [...] March 2012 No. [...] regarding the template of the review card for persons reading the content of court case files. In cases with file reference numbers [...], [...], [...], the complainant's personal data are processed in the control of files received at the Reading Room of the Customer Service Office (Point) pursuant to Art. 9 of the Code of Civil Procedure, § 92 of the Regulations, § 81 of

the order of the Minister of Justice, as well as the cited order No. 55/2013 of the President of the District Court and on the review sheets referred to above.

The personal data of the applicant's son, J. S., are processed in the files of court cases with reference numbers: [...], [...], [...], [...], [...]. In the case file number [...], there are photocopies of his medical documentation, constituting an attachment to the applicant's application for exemption from court fees. On the other hand, in the case file number [...], which was initiated as a result of a lawsuit filed by J. S. represented by the applicant as a legal representative, personal data concerning his state of health are included in the response to the statement of claim and the damage files attached thereto. In addition, in cases with file reference numbers [...], [...], [...] there is also medical documentation of J. S., which was submitted by the claimant to prove the correctness of, inter alia, motions to change the date of the hearing, or to revoke the decision on the costs of the trial and to exempt the applicant from the costs of the trial due to her family and financial situation.

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

The Act of August 29, 1997 on the protection of personal data 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 Act). Pursuant to the wording of art. 7 point 2 of the Act, the concept of data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 of the Act on the Protection of Personal Data. Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, 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. The legal basis for the processing of the Complainants' personal data by the Court in court proceedings, i.e. their names, surnames, address, PESEL numbers is, inter alia, art. 187 § 1 of the Code of Civil Procedure, which states that the statement of claim should satisfy the conditions of a pleading. On the other hand, pursuant to Art. 126 of the Code of Civil Procedure each pleading should contain, inter alia, designation of the court to which it is addressed, name and surname or name of the parties, their statutory representatives and attorneys. Moreover, pursuant to Art. 126 § 2 of the Code of Civil Procedure, when the pleading is the first letter in the case, it

should contain, inter alia, designation of the subject of the dispute, place of residence or seat of the parties, their statutory representatives and proxies, PESEL number or NIP number. Data on the state of health, however, belong to the information referred to in Art. 27 sec. 1 of the Act of August 29, 1997 on the protection of personal data, the so-called sensitive data. Pursuant to this provision, it is prohibited to process, inter alia, health data. However, this prohibition is not absolute, which means that after meeting the conditions enumerated in Art. 27 sec. 2 of the aforementioned Act, the processing of sensitive data will be allowed. In the facts of the present case, it should be noted that pursuant to Art. 27 sec. 2 point 5 of the Act, the processing of data on health is allowed if it concerns data that is necessary to pursue rights in court. The phrase "asserting rights" should be understood broadly, which means that it covers all actions before the court taken by the parties and other entities of the proceedings, including attorneys. It is both about bringing claims, with accusations and defending rights. In the light of Art. 27 sec. 2 point 5 of the Act on Personal Data, both the judicial authority and the party appearing in the proceedings or its representative are authorized to process personal data. In civil proceedings, the principle of proving the facts by means of evidence applies, so the claimant bears the burden of proving his arguments, which, however, does not invalidate the defendant's right to present circumstances and evidence to the contrary. Pursuant to Art. 3 of the Code of Civil Procedure the parties and participants in the proceedings are obliged to perform procedural actions in accordance with good practice, provide truthful explanations as to the circumstances of the case and without concealing anything, and present evidence. Pursuant to Art. 232 of the Code of Civil Procedure the parties are obliged to prove the facts from which they derive legal effects. In the present case, the applicant, in order to pursue her rights before a court, to apply for: exemption from court fees (in the cases: [...], [...], [...], [...]), change the date of the hearing, set aside the decision on the costs of the trial (in the cases [...], [...], [...]), she attached the medical documentation in her possession. On the other hand, in the case file number [...]. The applicant, who is the legal representative of the minor plaintiff - J. S., filed a motion in the lawsuit for evidence to be taken from the damage files containing, inter alia, the claimant's medical records. In connection with the above, it should be pointed out that the processing by the District Court in C. of the personal data of the applicant and her son J. S. in the files of court cases, including making this information available to other parties to the proceedings and their attorneys, is justified by the conditions set out in Art. 23 sec. 1 point 2 and art. 27 sec. 2 point 5 of the Personal Data Protection Act.

Access to court files is governed by the relevant procedural provisions of the Code of Civil Procedure, in particular Art. 9 and art. 525 and the provisions of the Act of 27 July 2001, the Law on the System of Common Courts and the Regulation of the

Minister of Justice issued on its basis of 23 December 2015. Rules of Procedure of Common Courts - Section III, Chapter 9 entitled "Providing information, disclosing court files and documents on file, transmission of files " (§ 103 et seq.).

It should be pointed out that pursuant to Art. 9 § 1 of the Code of Civil Procedure cases are heard openly, unless a specific law provides otherwise. The parties and participants in the proceedings have the right to view the case files and receive copies, copies or excerpts from these files. Similarly, Art. 525 of the Code of Civil Procedure, which refers to non-contentious proceedings, stipulates that the case files are available to participants in the proceedings and, with the consent of the chairman, to anyone who will sufficiently justify the need for review. On the same principles, it is permissible to prepare and receive copies of and extracts from the case files, as well as to receive audio or video and audio recordings from the case files. In the present case, as indicated by the President of the District Court in a letter of [...] May 2014, the applicant's data from the case file may be made available only to the parties or other authorized persons, e.g. the child's father as a statutory representative, in accordance with the applicable regulations laws.

Moreover, pursuant to § 103 of the Regulations, disclosing files and the documents contained therein for the purpose of reviewing or recording their image on their own, as well as issuing items or documents submitted in the case, or issuing documents on the basis of files to a party or participant in non-litigious proceedings, may take place after they show their identity. , and as for other persons - after proving the existence of a right resulting from legal provisions (section 1). Viewing the case files and recording their image on your own takes place in the presence of a court employee, and the files to which a will was submitted under his control (section 2) In the previous Regulations of February 23, 2007, the above issue was regulated in § 92.

On the other hand, the cited § 81 of the ordinance stipulates that in the secretariats of faculties other auxiliary books not listed in this chapter may be kept, if their possession is necessary to perform the tasks of the faculty. Subsidiary books should be understood as various types of recording devices in the form of, inter alia, "Controls for files accepted into the reading room of the Customer Service Office" and "Controls for files submitted to the Reading Room".

The provisions cited above exhaustively regulate access to any documents in the files of the proceedings. The parties to the proceedings and other authorized persons, under the provisions of law, have the opportunity to read their content in a designated place and in the presence of a court employee. In addition, in order to control access to the files, the Court keeps records in the form of, inter alia, "Controls of files taken into the reading room of the Customer Service Office", the specimen of

which is attached to the order No. [...] of the President of the District Court in C. of [...] March 2013, and the legal basis for its keeping is § 81 of the order. Entries to this control are made by the Manager of the Customer Service Office or an authorized person, and the party viewing the case file signs his / her signature. Additionally, each court file includes an overview card of people who read the content of the files. In connection with the above, the complainant, who is a party to the court proceedings or the legal representative of JS's son, as well as other parties to the proceedings and their attorneys, have the right to inspect the files of cases pending before the District Court in C. to the reading room of the Customer Service Office "and on the review sheet attached to these files. The right to inspect the files of court cases includes, in principle, unlimited access to the content of the letters and documents collected in them, submitted by the parties to the proceedings in support of their motions and statements, which is necessary for the proper examination of the case by the court and is associated with other rules proceedings. Therefore, there are no legal obstacles for the applications for exemption from court costs and fees as well as other pleadings with attached documents, including medical documents, containing personal data of the applicant and her son, to be made available to other parties to the court proceedings, as the party's right to access to these files results from the principle of openness and the quoted provisions. The above argumentation is justified in the judgment of the Provincial Administrative Court in Warsaw of June 30, 2006 (II SA / Wa 14/06).

Bearing in mind the above, it should be stated that the President of the District Court in C. did not violate the rules of personal data processing, as the conditions for the legality of the processing of the data of the complainant and her son J. S. pursuant to Art. 23 sec. 1 point 2 and art. 27 sec. 2 point 5 of the Act of August 29, 1997 on the protection of personal data. The processing of sensitive data of the applicant and her son J. S. in the court files was legal, as it served to assert the rights in the trials brought about by the claims of the applicant or her son J. S.

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

Based on Article. 127 § 3 of the Code of Civil Procedure of the decision, the party has the right to submit an application for reconsideration of the case within 14 days from the date of its delivery 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 Office (address: ul. Stawki 2, 00-193 Warsaw). 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.

