

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 05

April

2019

DECISION

ZSOŚS.440.156.2018

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) and Art. 57 sec. 1 lit. a) and f) of the general regulation on the protection of personal data [1], after administrative proceedings regarding the complaint of Mr. DJ regarding the deletion of personal data regarding the place of residence from the data set (list of persons holding the trustee's license) kept by the President of the District Court [.] in W.,

I discontinue the proceedings

JUSTIFICATION

The Office for Personal Data Protection received a complaint from Mr. DJ, hereinafter referred to as "the Complainant", concerning the violation of the right to personal data protection by the President of the District Court [...] in W. his personal data, namely: name and surname, correspondence address, license number and contact telephone number are included in the data set (list of persons holding the receiver's license) kept by the Minister of Justice. Moreover, it indicated that the above-mentioned list with his data was published on the website of the District Court [...] in W., while the data regarding the correspondence address are out of date because they indicate a private correspondence address. In connection with the above, the complainant asked the President of the Regional Court [...] in W. with a request to remove outdated data in the indicated scope. As the Complainant pointed out, his data, the removal of which he demanded, had not been removed from the above-mentioned dataset.

As a result of the complaint lodged [...] on November 2018, the personal data of the Complainant was checked in the indicated filing system, as a result of which it was found that the data was indeed available on the website of the District Court [...] in W. at the internet address provided by the Complainant (official note near [...]).

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office asked the President of the District Court [...] in W., hereinafter referred to as the "President of the Court", to provide explanations

regarding the circumstances of this case.

In a reply of [...] December 2018, the President of the Court indicated that, having regard to the content of the applicant's application and the validity of the statements contained therein, the personal data had been removed from the website of the District Court [...] in W. At the same time, it was indicated that persons obtaining a trustee's license are entered on the list kept by the Minister of Justice, which is then forwarded to the presidents of regional courts for publication. Moreover, the President of the Court argued that the list in question was public information, and therefore it was placed on the website of the Public Information Bulletin of the District Court [...] in W. As a result of the above actions, the President of the Court indicated that by decision of [...] December In 2018, the complainant's data from the list of receivers made available by the Minister of Justice constituted the archival content of the Public Information Bulletin of the court subordinate to him and that they were removed from the data set.

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

At the outset, it should be noted that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing at the time of issuing this decision. As indicated in the literature, "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 fulfills the objective 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., EI / 2012). Moreover, in the judgment of 7 May 2008 in the case file reference number I OSK 761/07, the Supreme Administrative Court stated that "when examining the legality of personal data processing, GIODO is obliged to determining whether the data of a specific entity is processed as at the date of the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be emphasized that in the course of the investigation, the personal data protection authority established that currently the complainant's personal data are not processed in the manner described in

the complaint, because they have been removed from the District Court's website. In connection with the above, it should be considered that the President of the District Court [...] in W. does not process the complainant's personal data to the extent indicated in the complaint.

For the above reasons, the proceedings became redundant and therefore had to be discontinued 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: "k.p.a", as it is irrelevant.

In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. 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 Civil Procedure means that there is no element of the 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. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005 r., p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

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, 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), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, within 30 days from the day it was delivered to

its side. 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.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal EU L 119 of 04/05/2016, p. 1, with the change announced in the Official Journal of the European Union L 127 of 23/05/2018, p. 2).

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