

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

of August

2019

DECISION

ZSOŚS.440.146.2018

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. 12 point 2, art. 22 and art. 43 sec. 1 and 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. 100 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), after conducting administrative proceedings regarding the complaint of Mrs. M. G., residing in in W. at ul. [...] against the unlawful processing of their personal data by the Central Anticorruption Bureau,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Ms M. G., residing in in W. at ul. [...], hereinafter referred to as the "Complainant", for the unlawful processing of her personal data by the Central Anticorruption Bureau with its seat in Warsaw, Al. Ujazdowskie 9, hereinafter referred to as: "CBA."

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. In accordance with Art. 100 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, proceedings conducted by the President of the Office for Personal Data Protection, initiated and not completed before the date of entry into force of this Act (i.e. before February 6, 2019.) are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Administrative Procedure (hereinafter: the Code of Administrative Procedure).

In the letter, the complainant argued that the CBA had used her personal data, including sensitive data, unlawfully and

unlawfully and with the intended use by "instituting proceedings on [...] August 2011 [...] CBA Delegation in B. (files of the prosecutor's office [...] District Prosecutor's Office in B., prosecutor K., later District Court in W., reference number [...] and [...]); this constitutes a violation of Art. 47 and 51 of the Polish Constitution and U.O.O.DO. art. I, art. 2, point 1 of the Act on the Central Anti-Corruption Bureau of 2010 and a number of other provisions (Article 231 of the Penal Code) "and" disseminating defamatory and false notes of [...] January 2012 in the mass media ([...], [...], [...], [...] etc.), identifying me in the context of my detention by the Central Anti-Corruption Bureau as a person involved in illegal corrupt activities ", as well as" refusal to remove and correct this information. " Considering the above, the complainant demanded from the President of the Personal Data Protection Office to take actions aimed at removing the violations by "presenting unlawfully collected data concerning me and destroying them (file reference [...], CBA Delegation in B.); removal of all documents concerning me (eg slanderous notes prepared by Mr. J. and J. Z., fraudulently forced confessions, etc.); deletion of notes disseminated by the CBA in the media after the arrest of J. K; ordering the Polish Film Institute to be sent by Mr. PW a letter with the following text: "I apologize to the Management of the Polish Film Institute and members of the film community for the problems that I caused with my actions for the Institute and the film community and for people aggrieved by JK's actions. The information disseminated by the CBA in the media was attributed to persons participation in or interest in corrupt actions by JK, which is not true. Persons aggrieved by the activities of the Office under my management, incl. Mr. M. G. and the late Mr. T. P. showed a high level of environmental responsibility by trying to initiate criminal proceedings against J. K. This pro-social attitude deserves approval. The detention of J. K. was in the interest not only of those wronged by him, but of the whole society. He is a destructive and dangerous man, a diagnosed psychopath with a cruel homicide in the background, who has not undergone any rehabilitation, on the contrary, in prison he has improved his criminal workshop. Impunity inspired him to commit increasingly bold crimes. My interference in the case was completely unauthorized as no one reported any corrupt behavior and there were no grounds for conducting the proceedings by the CBA. The court's judgment is proof of this. The notes disseminated in the media hurt Ms. M. G., violated her honor, good name and credibility necessary to practice the profession, for which I apologize to both her and the Institute ". Justifying the request, the complainant indicated that pursuant to Art. 2 point 3 of the Act of June 9, 2006 on the Central Anticorruption Bureau (Journal of Laws of 2018, item 2104, as amended), hereinafter referred to as: "the Act on the CBA", the CBA may conduct preparatory proceedings covering all acts disclosed in its course if they are in a subjective or objective relationship with the act constituting the basis for its initiation. Article 7 of the Constitution of the Republic of Poland of 1997

provides that organs of public authority operate on the basis and within the limits of the law. In the opinion of the complainant, the key issue is the method of detecting or reporting corruption or paid protection, which can be reported or detected as a result of operational activities. The complainant also explained that the proceedings showed that the CBA did not conduct or undertake any operational activities in this case, and that no one reported the corruption or citing influence on the abovementioned organs. With regard to further allegations, the complainant indicated that, in her opinion, there had been a violation of Art. 1 clause 1 in connection with Art. 6 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, hereinafter referred to as: "the Act on the Protection of Personal Data", because the actions of the CBA led to the disclosure of defamatory information to the complainant in the media. The applicant also pointed out that these actions had caused severe damage to her reputation, as the letters sent by the CBA to the National Film Institute showed that it was the applicant who was the object of the CBA's interest, and not J.K. services to the fact that these activities violate her personal rights and constitute an abuse. The applicant also pointed out that by publishing in the media a note of [...] January 2012 entitled "[...]", the above-mentioned the service destroyed her credibility and reputation, both personal and professional, necessary for the practice of the profession.

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.

By letters of [...] April 2019, the President of the Office for Personal Data Protection informed the Complainant and the Head of the Central Anticorruption Bureau (hereinafter referred to as: "the Head of the CBA") about the initiation of explanatory proceedings and asked the Head of the CBA to comment on the content of the complaint and submission of written explanations. [...] in June 2019, the Office for Personal Data Protection received a letter from the Plenipotentiary for the control of personal data processing by the Central Investigation Bureau ([...]), hereinafter referred to as: "Proxy", acting under the authority of the Head of the CBA, in which it was explained that the complainant's personal data was processed in connection with the investigation initiated by the decision of the District Prosecutor's Office in B. of [...] August 2011. In the proceedings in question, the Ministry of Economy had the status of an aggrieved party. Moreover, the complainant's personal data were processed in connection with the statements she submitted to the CBA. The explanations also indicated that all activities in which the personal data of Ms M. G. were processed were carried out by the CBA in accordance with the statutory jurisdiction specified in Art. 2 of the Act on the Central Anti-Corruption Bureau and were necessary to ensure the proper performance of

the tasks related to the investigation. Moreover, it was indicated that pursuant to Art. 22a paragraph. 1 above of the Act, within the limits of the tasks referred to in Art. 2 clause 1 of the Act, the CBA may process personal data, including the data indicated in Art. 27 sec. 1 of the Act on the Protection of Personal Data, without the knowledge and consent of the data subject. Another aspect of the processing of the complainant's personal data resulted from her complaints about the actions of the officers of the Central Anticorruption Bureau and was connected with the necessity to refer to the requests referred to therein, pursuant to the provisions of Section VIII of the Code of Administrative Procedure.

The plenipotentiary also explained that currently the above-mentioned the documentation is archival material and as such is subject to protection in accordance with the Act of 14 July 1983 on the National Archival Resource and Archives and the executive regulations issued on its basis, including the Uniform List of Files in force at the Central Anticorruption Bureau. The letter in question stated that pursuant to Art. 22a paragraph. 8 of the CBA Act, the Bureau processes personal data for the period in which they are necessary for the performance of its statutory tasks. The CBA verifies the need for further processing of this data, at least every 5 years, by deleting redundant data. The above duties are performed in the Central Anticorruption Bureau and are subject to special verification by the Plenipotentiary for the control of personal data processing by the CBA, and the controls carried out by the Plenipotentiary in this respect did not confirm the deficiencies described by Ms M. G. With regard to the issue of unlawful use of the complainant's personal data, collected as part of the proceedings under reference number [...], it was explained that the complainant MG's personal data were processed in connection with the investigation conducted by the CBA Delegation in B. in the case with reference number [...]. It was indicated that the applicant corresponded with the CBA related to the above-mentioned as a result of which she submitted to the CBA a number of complaints, which were examined in internal proceedings: [...], [...], [...], [...], [...] and [. ..]. As the Plenipotentiary explained, one of the abovementioned proceedings concerning no. [...], initiated by a complaint lodged by telephone with the prosecutor of the District Prosecutor's Office in B. G., concerned a breach of M. G.'s personal data by sending a letter by fax to the bookstore, which was used by her. The complaint was found to be justified, but not due to improper processing of personal data, but due to a failure to deliver the letters. It was also explained that the complaint procedure, following which the complainant was sent a notification on the manner of examining the complaint ([...]), did not concern the processing of personal data, but the content of the CBA press spokesman's announcement of January 2012, which, according to the complainant, was harmful to the injured. It was also emphasized that the content of the communication did not mention the applicant M. G., even in the form of

initials. It was also indicated that the applicant appealed to the CBA with claims for compensation for the bodily injury and damage to property. Due to the refusal to recognize her claims, she applied to the Prime Minister for compensation pursuant to Art. 25 of the Act on the Central Anti-Corruption Bureau. One of the threads of this letter concerned the disclosure of M. G.'s personal data as a source of information about corruption in the Central Anti-Corruption Bureau. The reason for this allegation was the fact that the materials prepared after the interview with the applicant and another person, indicating irregularities in the CBA's activities, were, as appropriate, sent by the CBA to the prosecutor's office. On the basis of these materials, the District Prosecutor's Office [...] conducted an investigation (reference number [...]), during which the legitimacy of the allegations raised by Ms M. G. was verified and no crime was found in the actions of the officers.

Finally, the Plenipotentiary pointed out that the complainant had repeatedly raised issues related to the alleged shortcomings in the proceedings in the case no. [...] conducted by the CBA Delegation in B. Speeches were addressed directly to the CBA as well as to supervisory authorities. Each time, steps were taken to clarify the shortcomings indicated by the complainant, but the actions taken did not confirm the circumstances that the protection of the complainant's personal data had been violated in the course of the proceedings. It was also indicated that the personal data of Ms MG were processed in accordance with the applicable regulations, in particular those specified in the Act of June 6, 1997, the Code of Criminal Procedure, the Act of June 14, 1960, the Code of Administrative Procedure, and the Act of June 9, 2006. . On the Central Anticorruption Bureau, taking into account the respect and protection of the processed personal data, including the data relating to the complainant.

The President of the Office for Personal Data Protection informed the complainant and the Head of the CBA in letters of [...] June 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility of expressing his opinion on the collected evidence and materials, and submitted requests in accordance with the content of art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

In such a factual and legal state, 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 sub-consumption, 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 remedy deficiencies in the 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. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of this Act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to to the legal protection of private and family life, honor and good name (Article 47 of the Constitution), and disclosure of information about a person is specified by statute (Article 51 (5) of the Constitution). The instruction of Art. 51 sec. 5 of the Constitution is fulfilled by the Personal Data Protection Act, which 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 Personal Data Protection Act of August 29, 1997 r.).

The Central Anticorruption Bureau (CBA) is a special service established to combat corruption in public and economic life, in particular in state and local government institutions, as well as to combat activities detrimental to the economic interests of the state. The CBA is an office of government administration through which the Head of the CBA operates, which is the central body of government administration. The tasks of the CBA include, first of all, the identification, prevention and detection of crimes listed in art. 2 clause 1 point 1 of the Act on the Central Anti-Corruption Bureau and the prosecution of their perpetrators, but also, inter alia, revealing and counteracting cases of non-compliance with the provisions on limiting the conduct of business activity by persons performing public functions, revealing cases of non-compliance with the procedures for making and implementing decisions specified by law in the scope of: privatization and commercialization, financial support, public procurement, disposal of property of public finance sector units, units recipients of public funds, entrepreneurs with the

participation of the State Treasury or local government units, granting concessions, permits, subjective and objective exemptions, concessions, preferences, quotas, plafonds, bank sureties and guarantees, and control of the correctness and truthfulness of property declarations or declarations on conducting business activities of persons performing public functions. The legal basis for the processing of personal data by the CBA is Art. 22 of the Act on the Central Anti-Corruption Bureau, which indicates that within the scope of its competence, the Central Anti-Corruption Bureau may obtain information, including secretly, collect, check and process it. Moreover, it is necessary to take into account Art. 22a of the Act on the Central Anti-Corruption Bureau, which states that within the limits of the tasks referred to in Art. 2 clause 1, the CBA may process personal data, including the data indicated in art. 14 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), without the knowledge and consent of the data subject.

The content of Art. 43 of the Act on the Protection of Personal Data, according to which the group of data files that are not subject to registration and with regard to which the control and supervisory powers of the Inspector General (currently: the President of the Office for Personal Data Protection) have been limited, include, inter alia, data files containing personal data obtained as a result of operational and reconnaissance activities by officers of the authorities authorized to perform these activities. This should be understood as not only data collected by officers of uniformed services, but also by other formations, e.g. by fiscal control inspectors who conduct fiscal intelligence activities, also in the form of operational and reconnaissance activities. It should be noted that the exemption covers only situations in which data processing is carried out by the Internal Security Agency, the Foreign Intelligence Agency, the Central Anticorruption Bureau, the Military Counterintelligence Service and the Military Intelligence Service. In this regard, the Inspector General (currently: the President of the Office for Personal Data Protection), in particular: a) has no right to enter the premises where the files are located or the premises where the data are processed outside the data filing system, and to conduct the necessary tests or other control activities to assess the compliance of data processing with the Act; b) has the right to access all documents and data directly related to the issues of control and to make copies thereof, nor has the right to commission the preparation of expert opinions and opinions, or to inspect devices, carriers and IT systems used for data processing; c) may not issue any administrative decisions, including ordering the administrator to restore the legal status, or consider complaints regarding the implementation of the provisions on the protection of personal data; d) may not request the initiation of disciplinary proceedings or other proceedings provided for

by law against persons guilty of admission to irregularities.

Bearing in mind the content of art. 43 of the Act on the Protection of Personal Data, it should be noted that the President of the Personal Data Protection Office, within the powers conferred on him by the Act, may not interfere with the course or manner of proceedings conducted by other authorities authorized under separate provisions, in this case by the Central Anti-Corruption Bureau. Thus, it cannot interfere with the content of the documents collected in the files of such proceedings.

Pursuant to Art. 105 § 1 of the Code of Civil Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration body 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 resolving its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Commentary" 7th edition, CH Beck edition, Warsaw 2005, 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. 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), in connection with art. 15 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, within 30 days from the date of delivery to her 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.

2019-08-12