

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

May

2019

DECISION

ZSOŚS 440/11/2018

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096 of the document, hereinafter: the CCP) in connection with Art. 12 point 2, art. 22, art. 23 sec. 1 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. 100 sec. 1 and 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), after conducting administrative proceedings regarding the complaint. Mrs. J. G., represented by legal advisor K. S., Kancelaria Adwokacka [...], for the processing of her personal data by the President of the District Court in Ż.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms J. G., hereinafter referred to as "the complainant", about irregularities in the processing of personal data by the District Court in Ż. The division [...] consisting in the disclosure of her personal data in the files of the criminal case [...] pending under the private prosecution of D. W. against M. G.

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. According to 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 course of the proceedings initiated by the complaint, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] September 2017, the complainant reported to the Office that her personal data had been disclosed in the course of the pending criminal proceedings by attaching to the case file a certificate from the [...] system of the IT System of Courts, in which they appear her personal data. She emphasized that she was not a party to or participant in the proceedings in question before the District Court in Ż., While the certificate in question contained the applicant's name, maiden name, PESEL number, date of marriage and the number of the marital status certificate. In conclusion, the complainant added that disclosing her personal data in the files of the case in which she did not participate, without informing her of this fact in advance, indicated unlawful processing of her personal data.

In a letter of [...] April 2018, the Inspector General for Personal Data Protection turned to the President of the District Court in Ż. to comment on the allegations of the complaint and to provide written explanations, enclosing a copy of the complaint.

In the explanations submitted to the Inspector General for Personal Data Protection, the Vice President of the District Court in Ż. indicated that in the case [...] pending before that Court, an order was issued on the determination of personal identification data by means of an IT system [...] to check the addresses of the accused, including Mr. MG. As a result of this verification, it was established that Mr. MG he's married. The Vice President emphasized that the system [...] contains data on the conclusion of a marriage, ie the date, marriage certificate number, spouse's name, maiden name of the defendant's wife and PESEL number. He added that the information contained in the printout from the above-mentioned system remains in the case files, and the files can be made available to the parties to the trial. The Vice-President stated that there had been no violation of the provisions on the protection of personal data to the detriment of the complainant, because the Court processed her personal data, as it was necessary to exercise the right or fulfill the obligation resulting from the law.

By letters of [...] March 2019, the parties were informed that an administrative decision would be issued on the basis of the collected evidence. The parties were informed that within 7 days of the delivery of this letter to them, they have the opportunity to comment on the collected evidence and materials as well as on the demands made.

In a letter of [...] March 2019, the President of the District Court in Ż. pointed out that, in connection with the amendment to the

Act of 27 July 2001, the Law on the System of Common Courts (i.e. Journal of Laws of 2019, item 52), the body competent to examine complaints regarding violations of personal data protection in court proceedings is, respectively, for district courts, the president of the competent regional court.

In these facts, the President of the Personal Data Protection Office considered the following.

In the present case, the complainant complained about unauthorized disclosure of personal data by the District Court in Ż., i.e. name, maiden name, PESEL number, date of marriage, marital status number.

Article 57 of the General Data Protection Regulation sets out the basic tasks of the supervisory body, which is the President of the Personal Data Protection Office, and generally defines the manner of performing these tasks. To the above-mentioned tasks, constituting the essence and the most important part of the body's activity, include: monitoring and enforcement of the application of the provisions of the Regulation (paragraph 1 (a)) as well as considering complaints and conducting proceedings in cases of complaints (paragraph 1 (f)).

The provision of art. 55 sec. 3 above The regulation states that the supervisory authorities lack substantive competence with regard to the processing of data by courts in the course of administering justice. The main purpose of excluding the competence of a supervisory authority in this respect is to protect the independence of courts. The exercise by the authority competent in data protection matters of supervision over the processing of data in the scope of adjudication could constitute an unacceptable interference in the judicial activity.

Recital 20 explains that the above-mentioned the regulation applies, inter alia, to the actions of courts and other judicial authorities, but nevertheless Union or Member State law may further clarify the operations and procedures for the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not apply to the processing of personal data by courts in the course of the administration of justice, in order to protect the independence of the administration of justice. It should be possible to entrust the supervision of such processing operations to specific authorities in the justice system of a Member State, they should, in particular, ensure compliance with this Regulation, raise awareness of its obligations under this Regulation in the judiciary and handle complaints related to such processing operations. data.

The President of the Personal Data Protection Office, as part of the powers conferred on him by the Act, may not interfere in the course or manner of proceedings conducted by other authorities authorized under separate provisions. Thus, it cannot interfere with the content of the documents collected in the files of such proceedings. Therefore, even if there were doubts

about the inclusion in the case file of the above-mentioned data of the Complainant in the printout from the system [...], it should be emphasized that the President of the Office for Personal Data Protection may not take actions related to proceedings conducted by other authorities on the basis of competent authorities. legal regulations.

The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in the justification of the judgment of March 2, 2001 (file reference number U SA 401/00) stated that the Inspector General for Personal Data Protection (currently: President of the Office for Personal Data Protection) is not an authority controlling or supervising the correct application of substantive and procedural law in matters falling within the competence of other bodies, services or courts, whose decisions are subject to review in the course of the instance or in any other manner specified by appropriate procedures.

Due to the lack of competence of the President of the Office to substantively resolve this case, the proceedings initiated by the complaint submitted by the Complainant had to be discontinued as redundant, pursuant to Art. 105§1 of the Code of Civil Procedure. The doctrine indicates that "the objectivity of the administrative procedure" referred to in Art. 105 § 1 of the Code of Civil Procedure, means the lack of any element of the material-legal relationship, which results in the fact that it is impossible to settle the matter by deciding on its merits. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105§1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and further conduct of the proceedings in such a situation would constitute its defectiveness, having a significant impact on the result of the case. .

I would also like to inform you that on February 6, 2019, the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, which Art. 1 point 3 stipulates that the act defines the manner of supervising the protection of personal data processed by competent authorities for the purposes referred to in point 1, with the exception of personal data processed by the prosecutor's office and courts.

Moreover, I would like to inform you that pursuant to Art. 175dd § 1 and § 2 point 1 of the Act of 27 July 2001 - Law on the System of Common Courts (Journal of Laws of 2018, item 23, as amended), supervision over the processing of personal data, whose administrators there are courts, within the scope of the activities of the court, they perform: 1) district court - president of the regional court; 2) regional - president of the court of appeal; 3) appellate - the National Council of the Judiciary. As part of

supervision, the competent authorities consider complaints from persons whose personal data is processed unlawfully.

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

Based on Article. 9 sec. 2 of the Act of 6 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), from this decision, the party has the right to lodge a complaint against the decision of the President of the Office for Personal Data Protection to Provincial Administrative Court in Warsaw within 30 days from the date of its delivery to the party.

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