THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

April

2019

DECISION

ZSPU.440.200.2019

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. 7 sec. 1 in conjunction joke. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) and art. 57 sec. 1 lit. a) and lit. h) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), after conducting administrative proceedings ex officio regarding irregularities in the processing of personal data carried out by the Mayor of the City [...] , President of the Personal Data Protection Office

discontinues the proceedings.

JUSTIFICATION

The President of the Personal Data Protection Office, hereinafter also referred to as the President of the Personal Data Protection Office, obtained information on irregularities in the process of personal data processing carried out by the Mayor of [...], hereinafter also referred to as the President.

The signals received by the President of the Personal Data Protection Office indicated possible breaches of the provisions on the protection of personal data in the City Hall [...] (City Hall) subordinate to the President, consisting in the access of unauthorized persons to any personal data processed in the above-mentioned organizational unit, in connection with the implementation of its tasks. According to the information obtained by the President of the Personal Data Protection Office, in the years 2008-2015 employees of the City Hall had unlimited access to personal data processed as part of the Electronic Documentation Circulation (EOD) system operating at the City Hall, regardless of their position and the scope of related official tasks. The information obtained by the President of the Personal Data Protection Office also indicated the possibility of

violations in the area of due protection of personal data in the City Hall - in connection with the possibility for employees of this entity to handle business correspondence with the use of instruments or systems other than official ones.

The President of the Personal Data Protection Office (UODO) conducted an ex officio administrative procedure in this case, under which, acting pursuant to Art. 58 sec. 1 lit. a) and lit. e) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), hereinafter also referred to as the GDPR, obtained from the President written explanations regarding the circumstances of the case and appropriate evidence to confirm them. Based on the evidence collected in this way, the President of the Personal Data Protection Office established the following.

According to the explanations of the President, the quotation: "(...) in the years 2008-2015 employees of the City Hall used the Electronic Document Circulation (EOD, later EZD). In these years, employees had access to personal data on the basis of personal authorizations issued by the President (...) - Personal Data Administrator. Each employee of the City Hall (...), before commencing his function, underwent training in administrative law and was familiarized with the documentation on the protection of personal data. Only employees with an authorization to access the EDPS had access to it (...) In 2008-2015, the issued authorizations authorized employees of the City Hall to process personal data. Each employee had the appropriate authorization. The authorizations contained the scope of the data. The authorizations gave employees the right to access the EDPS system without limitation as to the matters included in it. Only employees with an access authorization to the EDPS could see it (…) ". The President also emphasized that the quotation: "(...) currently employees have access only to matters handled by the department / department in which they perform their official duties. Access to this data is limited and specified in detail in the personal authorizations issued by the President (...) "(letter from the President of [...] March 2019, ref. [...] - in the case file). To confirm the submitted explanations, the President presented, inter alia: - the document entitled "Information system management manual" constituting Annex No. [...] to the Regulation No. [...] of the President of the City [...] of [...] May 2018, which states that "the rights to the IT systems of the {City} Office are only [...] {employees of the City Hall appointed by the Personal Data Administrator - § 3 point 2 of the discussed document} adequately to their official duties and persons authorized by the data administrator "(§ 8 paragraph 1), while granting and receiving authorizations in the area of this access are carried out is based on a specific request, under a regulated procedure (§ 5 and § 6); - document entitled "Procedure for

granting authorizations to IT systems of the City Hall [...]" constituting Appendix [...] to the "Instructions for managing the IT system"; - a copy of an exemplary application for granting an employee of a specific department of the City Hall rights in the IT system, the content of which clearly restricts access to the above-mentioned employee, to such elements of the above-mentioned an IT system that is directly related to the scope of his official duties; - a copy of an exemplary authorization to process personal data granted to an employee of a specific department of the City Hall by the Mayor; - a copy of an exemplary statement of an employee of a specific department of the City Hall submitted in connection with the access obtained, as part of the performed official duties, to the quotation: "(...) collections, documents, lists, files or IT systems containing personal data (...)" generally applicable provisions on the protection of personal data as well as internal regulations of the City Hall in this regard (copies of documents - in the case files).

As the Mayor explained, "(...) in the City Hall (...) it is not possible for an employee to conduct official correspondence through systems other than official systems. Employees are not allowed to use private electronic communication systems to conduct official matters. Employees are equipped with computer equipment that ensures the implementation of tasks only with the use of official tools. The mere possibility of an employee using private mail is technically possible, but it would be a breach of personal data protection and internal procedures and the employee would be held liable in such a situation. If such an action was found, the Personal Data Protection Inspector would immediately take steps to determine the circumstances of such an event and its consequences. No such event was found in the City Hall (...) and the Inspector for Personal Data Protection did not receive such reports. There are also no documents proving that such applications would be accepted in the years 2008-2015 (...) "(letter from the President of [...] March 2019, ref. [...]). To confirm the above explanations, the President presented in particular the document entitled "Regulations on the protection of personal data, the City Hall [...]" constituting Annex No. [...] to the order No. [...] of the President of the City [...] of [...] May 2018, specifying in in particular, the obligation of employees of the City Hall to use, for purposes related to the performance of official duties, only the infrastructure provided by the President (§ 2) and the rules concerning the use of electronic mail (§ 9).

As the Mayor explained, "(...) an analysis of threats related to the use of IT systems and the level of their security was carried out in the City Hall (...). In order to ensure the compliance of the Office's work with the requirements of the GDPR in the City Hall (...) by order No. [...] of the President of the City [...] of [...] May 2018, the following were introduced: - Security Policy, - Personal Data Protection Regulations, - Information System Management Instruction . All employees have also been trained in

the field of personal data protection and the Data Protection Inspector conducts training for each newly hired employee in this regard. The Office also has a Register of processing activities (...) ”(documents listed by the President - in the case files).

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

The President of the Personal Data Protection Office is the competent authority for the protection of personal data and the supervisory authority within the meaning of the GDPR (Article 34 (1) and (2) of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) as amended), hereinafter referred to as the Act). The President of the Personal Data Protection Office (UODO) conducts proceedings regarding infringement of provisions on the protection of personal data (Article 60 of the Act), and in matters not covered by the Act, administrative proceedings before the President of the Personal Data Protection Office, in particular those regulated in Chapter 7 of the Act - proceedings on infringement of data protection provisions personal data, the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter also referred to as the Code of Administrative Procedure (Article 7 (1) of the Act).

Pursuant to Art. 57 sec. 1 GDPR, without prejudice to other tasks under this Regulation, each supervisory authority on its territory monitors and enforces the application of this Regulation (point a) and conducts investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or another public authority (point h). The instruments for the implementation of the tasks provided for in Art. 57 sec. 1 GDPR are set out in particular in Art. 58 sec. 2 GDPR, remedial powers, including the possibility of: issuing warnings to the controller or processor regarding the possibility of violating the provisions of this Regulation by planned processing operations (point a), issuing reminders to the controller or processor in the event of violation of the provisions of this Regulation by processing operations (point b), to order the controller or processor to adapt the processing operations to the provisions of this Regulation, and, where applicable, the manner and time limit (point d).

The fact that, as at the date of this decision, there are no irregularities in the processing of personal data by the President, the signals of which were received by the President of the Personal Data Protection Office and on the basis of which he initiated the proceedings in this case, is of decisive importance from the point of view of its resolution. In this situation, the present proceedings are subject to obligatory discontinuation pursuant to Art. 105 § 1 of the Code of Administrative Procedure - in view of its redundancy. In accordance with the above-mentioned a provision, when the proceedings for any reason have become

redundant, the public administration authority issues a decision to discontinue the proceedings. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body conducting the procedure will obligatorily discontinue it. 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 Administrative Proceedings 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, p. 485). The literature and jurisprudence also emphasize the following quotation: "(...) The irrelevance of the proceedings may be (...) the result of a change in the facts of the case. The proceedings must be considered redundant as a result of the cessation of the facts to be regulated by the administrative authority by way of a decision (...) "(see: MP Przybysz" Code of Administrative Procedure. Updated Comment "Published: LEX / el. 2019 and the judgment of the Supreme Administrative Court cited therein of September 29, 1987, file reference: IV SA 220/87, published: ONSA of 1987, No. 2, item 67).

An important attribute of the administrative decision is the so-called double specificity, meaning that the decision specifies the consequences of applying a legal norm in an individual case of a specific addressee (party) (cf. Wróbel Andrzej, Jaśkowska Małgorzata, Wilbrandt-Gotowicz Martyna "Updated commentary of the Code of Administrative Procedure" LEX / el. 2018 - commentary, legal status: December 13, 2018, other editions (25)). Changes in the factual or legal status of the case that took place after the initiation of the proceedings must be taken into account when adjudicating the case - otherwise, this decision would be grossly contrary to the principle of substantive truth (see above in W. Siedlecki, Civil Procedure, 1972, p. 371). Consequently, as it is emphasized in the literature on the subject, the public administration body assesses the facts of the case according to the moment of issuing the administrative decision. The above principle also applies to the assessment of the legal status of the case, therefore the public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (see above). Also the Supreme Administrative Court in Warsaw, in its judgment of October 4, 2000, file ref. act: V SA 283/00) underlined that the quotation: “(…) It should be pointed out (…) the need to apply the norms of substantive law in force on the date of the decision. It should be clearly emphasized that the provisions of the Code of Administrative Procedure do not bind the date of initiation of the proceedings on the factual and legal grounds for examining the case. The decisive factor in this respect is the state in force on the date of the decision (see B. Adamiak,

Commentary, Warsaw 1998, p. 363) (...) ”.

Taking into account the remarks made so far, it should be noted that the impulse to initiate ex officio proceedings in this case were signals about possible irregularities in the processing of personal data by the President in the City Hall under his authority. The proceedings initiated in this connection served to verify the truthfulness of the above-mentioned reports and eliminating deficiencies in the area of personal data processing - if it is confirmed that they do occur as of the date of the decision. In other words, confirmation of the existence of the alleged irregularities would constitute the basis for the President of the Personal Data Protection Office to assess them in law and use - in order to eliminate them - the legal instruments of a remedial nature provided for in Art. 58 sec. 2 GDPR. Meanwhile, bearing in mind that the irregularities reported to the President of UODO in the processing of personal data by the President, in the City Hall subordinate to him, do not take place as of the date of the decision, there are no grounds for their legal assessment in the context of the possible use of the instruments provided for in art. 58 sec. 2 GDPR - i.e. instruments to eliminate them.

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

Pursuant to Art. 7 sec. 2 of the Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), the proceedings before the President of the Office for Personal Data Protection are single-instance. This decision is final. Based on Article. 52 § 1 and 2 and article. 53 § 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 is entitled, within 30 days from the date of delivery of this decision, to lodging a complaint against it with the Provincial Administrative Court in Warsaw. The complaint is lodged through the President of the Personal Data Protection Office (to the following address: 00 - 193 Warsaw, ul. Stawki 2). The fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

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