

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

January

2019

DECISION

ZSOŚS.440.138.2018

Based on Article. 105 § 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 and 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), art. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), after administrative proceedings regarding the complaint of Mr. J. S., residing in R., for disclosure of his personal data to a journalist [...] by the District Prosecutor's Office in R.,

I discontinue the proceedings

JUSTIFICATION

On [...] September 2013, the Office of the Inspector General for Personal Data Protection (now: the Office for Personal Data Protection) received a complaint from Mr. JS (hereinafter: "the Complainant") that his personal data was disclosed to a journalist [...] by the District Prosecutor's Office in R., (hereinafter: "Prosecutor's Office").

In the complaint, the complainant indicated that his personal data had been made available in the scope of his first name, surname initials and information on the investigation of "I." Sp. z o. o., of which he is the president. Moreover, the Complainant argued that publishing his personal data allowing for full identification in connection with the legal qualification of the prematurely accused acts, in the media, violated the Act on the Protection of Personal Data.

In the course of the administrative procedure initiated by the complaint, the following findings were made.

1) by letters of [...] May 2014, the Inspector General for Personal Data Protection informed the Complainant and the Prosecutor's Office about the initiation of the investigation procedure and asked the Prosecutor's Office to submit written explanations regarding the charges presented in the complaint;

2) on [...] June 2014, a letter from the representative of the District Prosecutor's Office in R. was received, in which he explained that in the period from [...] to [...] the Prosecutor's Office conducted an investigation against the applicant in case no.

[...] concerning an abuse by members of the management board of I. Sp. z o.o. and W. Sp. komandytowa of the powers granted to them and causing property damage on behalf of the above-mentioned the company in connection with the purchase of real estate, i.e. for an act under Art. 296 § 3 of the Act of 6 June 1997 Penal Code (Journal of Laws of 2018, item 1600, as amended). Moreover, the attorney indicated that on [...] December 2010, upon the journalist's [...] inquiry, the prosecutor supervising the investigation, as an authorized person, made an official statement to the press about taking steps to investigate possible irregularities in lending by the Bank [...] in W. purchase by the Company I. Sp. z o.o. and W. Sp. komandytowa of real estate located in P. and to conduct an investigation in this matter. An official note - information for the press of [...] December 2010 of the Prosecutor of the District Prosecutor's Office in R., in which he explained that the crime was reported by the Tax Control Office in R. and initiated by the District Prosecutor's Office for the city of R. on [...] February 2010, and then taken over by the District Prosecutor's Office in R. on [...] June 2010. As part of the proceedings conducted by the Prosecutor's Office, the analysis covered, inter alia, topic related to possible irregularities related to crediting by the Bank [...] in W. purchase by I. Sp. z o.o. and W. Sp. komandytowa of real estate located in P. As indicated by the representative of the Public Prosecutor's Office in his letter of [...] June 2014, quoted: "The District Prosecutor's Office in R. did not disclose Mr. JS's personal data or image to third parties and cannot be held responsible for the content of the article consisting of information which the journalist [...] obtained as part of a journalistic investigation from his informants ". The prosecutor provided the journalist [...] only with general information, stating on several occasions that the prosecutor's office had not yet brought any charges in the ongoing investigation. As is apparent from the press release of [...] July 2011 ([...]) attached to the letter, the District Prosecutor's Office in R. informed that on [...] June 2011, the investigation into the abuse of rights by members was discontinued of the management board of I. Sp. z o.o. and W. Sp. komandytowa and causing large-scale property damage to the property of the above-mentioned companies. As indicated in the press release by the Prosecutor, the reason for the discontinuation was the statement that the acts under investigation did not contain the features of a prohibited act. The letter of the Prosecutor's Representative was also accompanied by a letter of the Deputy District Prosecutor of [...] May 2014, in which he informed that due to the content of the article published in the press, on [...] July 2011, on the website of the Regional Prosecutor's Office in R. posted a press release explaining the circumstances of the case;

3) The Inspector General for Personal Data Protection, in letters of [...] September 2016, informed the Complainant and the representative of the District Prosecutor's Office in R. about conducting administrative proceedings, as a result of which

evidence sufficient to issue an administrative decision was collected and about the possibility to comment on the gathered evidence and materials as well as requests made in accordance with 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.

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

The District Prosecutor's Office in R. processed the complainant's personal data pursuant to art. 23 sec. 1 point 2 of the Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended) in connection with Art. 297 § 1 of the Act of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended), according to which the purpose of the preparatory proceedings is: 1) determining whether a prohibited act has been committed and whether it is a crime, 2) detecting and, if necessary, apprehending the perpetrator, 3) collecting data pursuant to art. 213 and 214, 4) explanation of the circumstances of the case, including determination of the aggrieved parties and the extent of the damage, 5) collecting, securing and, to the extent necessary, recording evidence for the court.

The evidence collected in the case at hand does not show that the complainant's data obtained in the course of criminal proceedings were made available to third parties, i.e. a journalist [...] by the District Prosecutor's Office in R.

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), (hereinafter: "the Code of Administrative Procedure"), when the proceedings for any reason have become redundant in whole or in part, a public administration body issues a decision to discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that "the objectivity of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the

proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjne postępowania. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491). It should also be mentioned the judgment of the Supreme Administrative Court of 21 September 2010, II OSK 1393/09, in which the position was expressed that the pointlessness of the administrative procedure means the lack of any element of the substantive legal relationship resulting in the fact that it is impossible to settle the case by resolving it. In essence. The discontinuation of administrative proceedings is a formal decision that ends the proceedings, without a substantive decision. At the same time, pursuant to Art. 38 sec. 1 above of the Act, civil liability for violation of the law caused by the publication of a press material is borne by the author, editor or other person who caused the publication of this material; this does not exclude the publisher's responsibility. In terms of financial liability, these persons are jointly and severally liable. Therefore, if, in the Complainant's opinion, as a result of the publication of his personal data in the press material, his personal rights, in particular, were infringed, which pursuant to Art. 23 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025, as amended) are in particular health, freedom, honor, freedom of conscience, name or nickname, image, secret of correspondence, inviolability of the apartment, scientific, artistic, inventive and rationalizing creativity, it may pursue its claims in this respect by means of a civil action - in accordance with art. 17 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended), taking into account Art. 38 sec. 1 of the Press Law.

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 Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), from this decision, the party has the right to submit an application for reconsideration within 14 days from the date of delivery of the decision side. 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 Personal Data Protection Office (address: ul. Stawki 2, 00-193 Warsaw). 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.

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