THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

March

2019

DECISION

ZSOŚS.440.84.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and 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) in connection with Art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended) after administrative proceedings regarding the complaint of Mr. M. P., residing in in R. to process his personal data by the President of the District Court in J., including making them available to the Minister of Justice

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. MP (residing in R.), hereinafter referred to as "the Complainant", about the processing of his personal data by the President of the District Court in J., hereinafter referred to as the "President of the Court" , in connection with the competition for the position of the director of the District Court in J., including making them available to the Minister of Justice.

Based on the administrative procedure, the Inspector General for Personal Data Protection issued a decision of October 4, 2016 (DOLiS / DEC-961/16/88255, 88256, 88257), in which he refused to accept the request. Within the statutory deadline, [...] October 2016, the complainant's request for reconsideration of the case was received by the GIODO Bureau. After reconsidering the case, the Inspector General for Personal Data Protection issued a decision of March 8, 2017 (DOLiS / DEC-290/17/18926, 18956, 18965), which upheld the appealed decision. As a result of the above, the Complainant lodged a complaint [...] with the Provincial Administrative Court in Warsaw through the Inspector General for Personal Data Protection against the abovementioned decisions. In the judgment of December 15, 2017 (file reference number II SA / Wa 661/17), the Provincial Administrative Court in Warsaw repealed the contested decision of March 8, 2017 (DOLiS / DEC-290/17/18926,

18956, 18965) and preceding the decision of 4 October 2016 (DOLiS / DEC-961/16/88255, 88256, 88257), granting the complaint and declaring that the above-mentioned the decisions were based on incomplete findings of the facts and legal considerations made on the basis of inadequate legal provisions, therefore the statement of the Inspector General for Personal Data Protection that the issuance of any order was groundless was considered premature by the Court. Due to the above, the Court did not refer to the allegations of infringement of substantive law by the authority in the complaint and ordered the case to be reconsidered with a detailed factual and legal status determination.

In the course of the re-conducted proceedings in this case, the President of the Personal Data Protection Office determined as follows:

In 2015 the applicant took part in a competition for the post of director of the District Court in J. As indicated by the President of the District Court in J. in his explanations of [...] September 2018, the applicant's application to enter the competition for the position of the Court Director Of the District Court in J., together with the attached documents, were submitted to the Court [...] in May 2015.

According to the information of the President of the Court of [...] June 2015, after the competition [...] and [...] in June 2015, the competition commission established its decision by a resolution of [...] June 2015 the result, awarding the Complainant with 22.4 points. and 4th place.

While examining the competition documentation at the seat of the District Court in J., the complainant received information that the entire competition documentation would be sent to the Ministry of Justice. The applicant submitted to the President of the Court his objection to the transmission of documents relating to him.

As indicated by the President of the District Court in J., the applicant did not send a letter containing his declaration of resignation from participation in the competition for director of the District Court in J.

President of the District Court in J. in a letter of [...] July 2015, transferred by the Vice President of the District Court in P. [...] July 2015, and which was received by the Ministry of Justice [...] July 2015 r., filed a motion to appoint the director of the District Court in J.

The Court was sent electronically [...] on August 2015, a request from an employee of the Department of Courts, Organization and Analyzes of the Justice System in the Ministry of Justice to send competition documentation.

Along with the responses from [...] August 2015 to the above-mentioned a letter to the Ministry of Justice with documents, the

Vice President of the District Court in J. informed that the applicant did not consent to the sending of documents relating to him.

By the act of [...] October 2015 ([...]), the Minister of Justice appointed as of [...] November 2015 the Director of the District Court in J. the candidate who took 1st place in the competition.

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

The Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "PDA", defines the rules of conduct in the processing of personal data and the rights of natural persons, whose personal data are or may be processed in data files (Article 2 (1) of the GDPR). In the event of a breach of any of these principles, in particular Art. 23 or article. 27 u.o.d.o., the President of the Personal Data Protection Office pursuant to Art. 18 sec. 1 u.o.d.o. issues an administrative decision. In this regard, it may order the data controller to remove deficiencies (Article 18 (1) (1) of the Act), supplement, update, rectify, disclose or not disclose personal data (Article 18 (1) (2) of the Act).

In the present case, Art. 23 sec. 1 point 2 u.o.d.o., which states that data processing is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. This provision clearly defines the condition of admissibility of the processing of personal data.

The main issues being the subject of these administrative proceedings were the determination whether the President of the District Court in J. was entitled to transfer the complainant's personal data to the Minister of Justice and whether the Minister of Justice was entitled to obtain the complainant's personal data. Another issue to be resolved in this case was whether the Minister of Justice had legal grounds for further processing of personal data after the competition for the vacant position of the director of the District Court in J.

Referring to the first two issues, it should be noted that Art. 32 § 2 of July 27, 2001, the law on the system of common courts, hereinafter referred to as "p.u.s.p." in the version in force at the time (Journal of Laws of 2015, item 133), provided that the president of a given court presented the Minister of Justice with a candidate for the position, who had been selected in the first place by competition. Moreover, as indicated in § 7 point 2 of the above-mentioned of a provision, in the event of a refusal to appoint a candidate referred to in § 2 for the post of court director, the president of the court could submit an application for the appointment of a candidate from the next place selected through a competition, or order the competition again. According to the evidence collected in the case, the President of the Court included the data of the person who took first place in the

application for appointment filed on [...] July 2015.

When considering the legal nature of the objection raised by the applicant, it should be remembered that, according to the explanations of the President of the District Court in J. of [...] September 2018, the applicant did not send a letter containing his declaration of resignation from participation in the competition. The information about the objection was provided by the complainant only when he was familiarizing himself with the competition documentation at the seat of the Court. In the above case, the withdrawal of consent to participate in the competition did not result in the removal of all the Complainant's data from the already prepared documentation. It constituted a whole, and its individual elements, such as the aforementioned resolution, were produced on the basis of legal provisions. Thus, although the first transfer of personal data by the Complainant undoubtedly took place on the basis of consent, during the competition procedure, his data was already processed on the basis of legal provisions specifying the procedure for conducting the competition.

It should be noted, however, that although the said objection of the Complainant could not have any effect on the recording and further storage of data by the President of the Court in the competition documentation produced, it should nevertheless be taken into account in the context of possible disclosure. Even if the situation specified in Art. 32 § 7 point 2 of the BRL ie the refusal of the Minister of Justice to appoint the originally indicated candidate, it would be pointless to provide his data in a situation where the complainant did not intend to assume the position of court director any longer. Thus, Art. 32 p.u.s.p. for enabling the transfer of the complainant's data.

Nevertheless, in the present case, attention should be paid to the remaining provisions in force on the date on which the President of the Court disclosed personal data. In particular, it should be noted that according to the then wording of Art. 9 p.u.s.p. administrative supervision over the activities of courts referred to in Art. 8, point 1, is exercised by the Minister of Justice, on the terms set out in section I, chapter 6 of the Act of 27 August 2009 on Public Finance (Journal of Laws of 2013, item 885, as amended), hereinafter referred to as u.f.p.

As it is indicated in the doctrine, "the tasks of the Minister of Justice in the field of judicial administration include ensuring appropriate technical, organizational and property conditions for the functioning of the court and the performance of tasks by the court in the field of justice and legal protection" (Germany, Tomasz M "External supervision over administrative activity of common courts. National Council of the Judiciary, 2012, No. 4. pp. 5-9).

Reference to the provisions of the u.f.p. I would like to point out Art. 68 sec. 1 of the Financial Act, which states that

management control in units of the public finance sector is all activities undertaken to ensure the implementation of goals and tasks in a lawful, effective, economical and timely manner. As indicated in paragraph 2 of the aforementioned provision, the purpose of management control is to ensure, in particular: 1) compliance of the activities with the provisions of law and internal procedures; 2) effectiveness and efficiency of operation; 3) credibility of the reports; 4) resource protection; 5) compliance and promotion of the principles of ethical conduct; 6) efficiency and effectiveness of information flow; 7) risk management. The above provisions are discussed in the doctrine, which indicates that "the management control system is a set of all activities aimed at legal, effective and efficient achievement of results. The areas of operation of the unit indicated by the legislator (objectives of management control) are those activities, the proper functioning of which should lead to the completion of the task to be performed (goal) adopted by the unit. This is the essence of the provisions of Art. 68 sec. 2 u.f.p. (Gołębiowski, Grzegorz. Art. 68. In: Public Finance Act. Legal and financial commentary. Sejm Publishing House, 2014).

Thus, the reasoning that, on the one hand, the Minister of Justice was not bound by the result determined by the commission, and on the other hand he supervised the administrative activity of the court, should be considered correct, he could have requested that the entire documentation be sent for verification. Therefore, it should be noted that the personal data protection system should function without prejudice to other values protected by law, which undoubtedly include the need to document the transparency and fairness of the competition. In the discussed situation, as indicated above, it was not possible to send documentation with regard to only one candidate.

Taking into account the above provisions, it should be stated that the President of the Court was obliged to provide the Complainant's personal data. The power rested with the Minister of Justice, who [...] exercised it in August 2015.

Regarding the further processing of personal data by the Minister of Justice, it should be noted that, as indicated by the Minister of Justice in the content of his explanations of [...] November 2018, the documentation in question is stored for 50 years as archival category BE50 documentation pursuant to the Regulation Of the Minister of Justice of 30 December 2010 on the establishment of the office instructions of the Minister of Justice and the uniform material list of files in the Ministry of Justice (Journal of Laws of the Minister of Justice of 2011 No. 2, item 10, as amended). Thus, the entire documentation, including the Complainant's personal data, was processed on the date of completion of the procedure on the basis of generally applicable provisions of law and for the period indicated therein, and therefore in accordance with Art. 23 sec. 1 point 2 u.o.d.o.

Referring to Art. 175a BRL, as indicated by the Minister of Justice in his explanations of [...] November 2018, "all persons who

applied for the competition for the position of court director are candidates for this position. The appointment of one of these persons to the position of court director does not change the status of the remaining candidates who, after the appointment of the court director, are still candidates who took part in the competition for the position of the director of a given court. As indicated in Art. 175a § 1 point 4 of the BRL in the wording of this administrative decision, the personal data administrators of candidates for the positions of court directors and their deputies are the presidents and directors of competent courts and the Minister of Justice, in the scope of performed tasks. As it is indicated in the judgment of the Provincial Administrative Court in Warsaw on March 13, 2014 (file reference number II SA / Wa 1988/13), "the premise for issuing the order by the Inspector General for Personal Data Protection is the finding that the provisions on the protection of personal data have been violated, i.e. the evidence collected in the proceedings must show that the administrator breached the law by his action or omission. The state of breach of the provisions on the protection of personal data identified by the authority should exist on the date of issuing the decision. And provided for in Art. 18 point 1 sec. 1 u.o.d.o. the sanction in the form of removal of deficiencies covers activities restoring the state of lawfulness, other than those listed in the other points of this provision "

In the present case, attention should also be paid to the judgment of the Provincial Administrative Court in Opole of March 25, 2010, which indicates that “public administration bodies are obliged to act on the basis of legal provisions. This means that they should make an assessment and make a decision based on the provisions in force on the date of the decision. This obligation also applies to situations where the provisions of law change between the initiation of the proceedings and the examination of the case. In such a case, while maintaining its identity, the authorities should take into account the new legal status when making judgments, unless the new provisions stipulate otherwise. In the absence of specific regulations, it cannot be concluded that the findings made as a result of explanatory activities undertaken under the provisions that have lost their force cannot constitute the basis for a substantive decision, if the collected evidence is sufficient to consider the case under the new provisions of law.

Thus, the data of the Complainant on the date of the decision are processed on the basis of generally applicable provisions of law, and therefore in accordance with the wording of Art. 23 sec. 1 point 2 u.o.d.o. The amendment to the provisions, which extended the group of persons whose data the Minister of Justice may process to include candidates for the positions indicated therein, should therefore be taken into account, even if it took place after the end of the competition. Based on Article. 18 u.o.d.o. The President of the Office for Personal Data Protection issues an administrative decision, the purpose of

which is to restore the legal status on the day of its issuance.

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 CAP, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. 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. The party has the right to apply for the right to assistance, including exemption from court costs.

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