THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

May

2019

DECISION

ZSOŚS.440.50.2019

Based on Article. 105 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. 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 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. S. Ś., Residing in in Ł., for the processing of his personal data by the Opinion Team of Judicial Specialists at the District Court in E.,

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 Mr. S. Ś., Residing in in Ł. (hereinafter the "Complainant"), concerning the processing of his personal data by the Opinion-Providing Team of Judicial Specialists at the District Court in E. (previously: Family Diagnostic and Consulting Center in E.).

In the complaint, the complainant indicated that in his opinion the opinion of [...] July 2015, prepared by the Opinion Team of Judicial Specialists (hereinafter "OZSS") at the Regional Court in E. (hereinafter "the Court"), contains - without legal basis - his personal data. The applicant complained that he had not consented to be placed in the above-mentioned the opinion of their personal data or the content concerning it, and the opinion was drawn up "without a court order". As the Complainant pointed out, justifying the complaint, "(...) the demand to prevent the use of the challenged (...) content of the opinion in further court proceedings is justified by the fact that the content was included in the opinion without legal justification, in particular without the consent of the court, and therefore should not be subject to further assessment by courts in pending court proceedings (...) ". Moreover, the Complainant, specifying the categories of his personal data whose protection had been

violated, indicated the use of the term "[...]" in the content of the OZSS opinion, identifying - according to the Complainant - his person. In connection with the above-mentioned allegations of the complaint, the Complainant requested the President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office") to initiate proceedings in the case, including demanding the removal of his personal data and his family members from the OZSS opinion. It should be noted 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 Inspector General for Personal Data Protection became the President of the Personal Data Protection Office. According to Art. 160 of this Act, 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 under the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and all activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

In the course of the proceedings initiated as a result of the complaint, the President of UODO obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

In a letter of [...] April 2019 ([...]), the President of UODO asked the President of the District Court in E. (hereinafter the "President of the Court") to provide explanations as to whether, and if so, on what basis legal, for what purpose and scope OZSS obtained and processes the complainant's personal data. The President of the Court, referring to the above-mentioned of the letter of the President of UODO, he explained in his letter of [...] April 2019 ([...]) that "the cited in the letter of Mr. S. Ś. the opinion of [...] July 2015 was prepared in accordance with the order of the Court of Appeal in G. (...) and in accordance with the applicable (...) standards of opinion in the ROD-K developed by the Ministry of Justice (...), taking into account also the opinion template in guardianship matters in accordance with the Regulation of the Minister of Justice of 3 August 2001 ". The President of the Court also pointed out that "(...) despite the access to the applicant's personal data, included in the court documentation, they were not included in the opinion (...)". The President of the Court also argued that "(...) in accordance with the applicable procedure, the opinion after its execution was sent only to the principal to be used by the Court in the pending proceedings, it constituted evidence in the case, it was not made available by the investigators or used by them in other proceedings. "

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

The above-mentioned Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "PDA", creates 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 subsuming, 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 of the PDA and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the application, 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 Personal Data Protection Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, as referred to in art. 7 point 2 of the Personal Data Protection 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 in mind the above, therefore, when applying the provisions of the Personal Data Protection Act, it is necessary to weigh the underlying goods each time. In this case, the content of Art. 23 sec. 1 point 2 of the PDPA, which states that data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision.

In accordance with the legal status in force on the date of this decision, the processing of personal data in the OZSS takes place in connection with the tasks set out in the Act of August 5, 2015 on opinion-giving teams of forensic specialists (Journal of Laws of 2018, item 708) . In the previous legal status, i.e. until December 31, 2015, the tasks and principles of operation of family diagnostic and consultation centers, transformed from January 1, 2016 - pursuant to Art. 25 sec. 1 above of the Act - the opinion-making teams of court specialists were regulated by the provisions of the Act of October 26, 1982 on proceedings in juvenile cases (Journal of Laws of 2018, item 969) and the ordinance of the Minister of Justice of August 3, 2001 on the organization of and the scope of operation of family diagnostic and consultation centers. According to art. 1 of the Act of August 5, 2015 on opinion-giving teams of judicial specialists (Journal of Laws of 2018, item 708), the tasks of the OZSS include the preparation of opinions on family and guardianship matters and in juvenile cases at the request of the court or

prosecutor. on the basis of the conducted psychological, pedagogical or medical examinations. Moreover, pursuant to the said provision, the OZSS act in district courts. In view of the above, it should be considered that the OZSS performs its tasks in the organizational structure of the District Court in E., constituting its integral part, and is organisationally subject, also in the scope of personal data processing, to the President of this Court as the administrator of personal data processed in the Court, including in the OZSS . Due to the above, the President of the Court is therefore a party to the proceedings in the course of which this decision was issued. This legal and organizational status of the OZSS is also confirmed by the content of Art. 11 sec. 2 and 3 of the Act of 5 August 2015 on opinion-giving teams of judicial specialists (Journal of Laws of 2018, item 708), according to which there is a reporting relationship between the President of the Court and the head of the OZSS, and the President of the Court performs and OZSS specialists in activities in the field of labor law. It should also be pointed out that the nature of the tasks performed by the OZSS, defined in the above-mentioned act, is directly related to the administration of justice beyond the competence of administrative courts, military courts and the Supreme Court, and the performance of other tasks in the field of legal protection, entrusted by statutes, on the basis of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended). The relationship referred to above is due to the fact that the opinion drawn up by the OZSS is only ordered by the court or the prosecutor, and these opinions constitute evidence in court proceedings (Article 1 (1) of the Act of August 5, 2015. on opinion-giving teams of forensic specialists - Journal of Laws of 2018, item 708). The judicial activity of courts is, in turn, determined by the provisions of, inter alia, in the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended). Also, the explanations of the President of the Court contained in the letter of [...] April 2019 ([...]) indicate that the activities of the OZSS being the subject of the complaint include activities solely within the scope of the administration of justice by courts. Moreover, the explanations of the President of the Court in comparison with the content of the attached copy of the letter of the Court of Appeal in G. of [...] March 2015 (file reference: [...] contradict the applicant's claims that the opinion of the OZSS was drawn up without the consent of the Court The content of the said letter leaves no doubt that the opinion was drawn up by the OZSS at the request of the Court of Appeal in G., and therefore with its consent, as a result of its admission as evidence in court proceedings.
In view of the above, it should be stated that the President of the Personal Data Protection Office (UODO) has no substantive competence to deal with matters relating to the processing of personal data by courts as part of the administration of justice. The President of the Personal Data Protection Office also does not have the competence to interfere with the content of

documents drawn up as part of the administration of justice by courts. The main purpose of excluding the competences of the President of the Personal Data Protection Office in the above-mentioned scope is the protection of the constitutional independence of courts. The exercise by the authority competent in data protection matters of supervision over the processing of data within the scope of adjudication by courts, could constitute an unacceptable interference in their judicial activity. The President of the Personal Data Protection Office, within the scope of the powers conferred on him by the Act, cannot therefore interfere in the course or in the manner of proceedings conducted by other authorities authorized under separate provisions. Thus, the President of the Personal Data Protection Office may not interfere with the rules governing the preparation and collection by courts in the files of such proceedings of documents commissioned by those courts and constituting part of the evidence material. In other words, the President of the Personal Data Protection Office may not undertake activities related to proceedings conducted by other authorities under the relevant provisions of law. The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in its judgment of March 2, 2001 (file reference number II SA 401/00) stated that the Inspector General for Personal Data Protection (currently: President of the Personal Data Protection Office) is not an authority controlling or supervising the correctness of application of substantive and procedural law in matters falling within the competence of other authorities, services or courts, the decisions of which are subject to review in the course of the instance or otherwise specified by appropriate procedures.

Due to the lack of competence of the President of the Personal Data Protection Office to substantively resolve this case, as well as the lack of grounds to conclude that the complainant's personal data were processed at all, the proceedings initiated as a result of the complaint lodged by him had to be discontinued as redundant, pursuant to Art. . 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (hereinafter "Kpa"). The legal doctrine indicates that the pointlessness of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means the lack of any element of the material-legal relationship, resulting in the fact that it is impossible to settle the matter by resolving its substance. The discontinuation of administrative proceedings is a formal decision that ends the proceedings, without its 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 continuing the proceedings in such a situation would

make it defective, having 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.

Based on Article. 127 § 3 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the decision has the right to the party to submit an application for reconsideration of the case within 14 days from the date of its delivery to the side. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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 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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