

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 12

February

2019

DECISION

ZSOŚS.440.90.2018

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 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 of 2018, item 1000, as amended) after conducting administrative proceedings regarding the complaint of Mrs. A. B., residing in B., irregularities in the processing by the President of the District Court in J., related to the proceedings by the court before which the court proceedings are pending,

I discontinue the proceedings

Justification

On [...] April 2015, the Office of the Inspector General for Personal Data Protection (currently: the "Office for Personal Data Protection") received a complaint from Ms AB (hereinafter referred to as: "the complainant"), concerning the breach of her personal data by the District Court in J. In the content of the complaint, the applicant indicated that the court had failed to adequately secure the medical documentation concerning her state of health in the case files. In the opinion of the complainant, the above-mentioned documentation for the files of court proceedings with reference number [...] enabled unauthorized persons, i.e. Ms A. Z. and Ms L. W.

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

By letter of [...] December 2018, the President of the Personal Data Protection Office requested the President of the District Court in J., who is the administrator of the complainant's personal data, to comment on the content of the complaint and provide written explanations. The President of the Office informed the Complainant about the above (letter of [...] December 2018 in the case file). On [...] December 2018, the Office for Personal Data Protection received a letter from the President of the Court ([...]), in which she explained that the applicant in the criminal proceedings exercised the rights of the victim and was an auxiliary prosecutor. Therefore, her personal data were processed only for the purposes of the pending proceedings and in the manner and to the extent specified by the procedural regulations. The data can be found in data files such as: court files, record keeping devices, and an ICT system that supports court proceedings. The President of the Court also indicated that he performs administrative supervision activities, therefore he is not entitled to comment on the correctness of the procedure by the court before which the specific proceedings are pending. She added that the case with the applicant's participation had been the subject of an instance control and had already been legally closed. Therefore, the President of the Court did not comment on the merits of the complaint.

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

The Act of August 29, 1997 on the protection of personal data defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Act). Pursuant to the wording of art. 7 point 2 of the Act, data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 of the Act on the Protection of Personal Data. Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, the content of Art. 23 sec. 1 point 2 of the Personal Data Protection Act. The processing of personal data in common courts takes place in order to administer justice in the scope not belonging to administrative courts, military courts and the Supreme Court, and to perform other tasks in the field

of legal protection, entrusted by statutes (Article 1 § 2 and § 3 of the Act of 27 July 2001 Law on the System of Common Courts). The principles of the Court's operation result, inter alia, from the provisions of the Act of 27 July 2001, Law on the System of Common Courts and issued pursuant to Art. 41 § 1 of this Act - the Ordinance of the Minister of Justice of 23 December 2015. Regulations for the operation of common courts (Journal of Laws of 2015, item 2316), which stipulates, inter alia, the order of functioning of common courts, the order of actions taken in courts. The judicial activity of the Court is, in turn, determined by the provisions of, inter alia, in the Act of June 6, 1997, Code of Criminal Procedure (Journal of Laws of 2018, item 1987, as amended) and the Act of June 6, 1997, Penal Code (Journal of Laws of 2018, item 1600 as amended). In the present case, it is necessary to point out the lack of substantive jurisdiction of the supervisory authority with regard to the processing of data by courts in the course of the administration of justice. The main purpose of the exemption 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. 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. In other words, the President of the Personal Data Protection Office may not take actions related to proceedings conducted by other authorities on the basis of relevant legal provisions. The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in the judgment of March 2, 2001 (file no. II SA 401/00) stated that the Inspector General for Personal Data Protection (currently: "President of the Personal Data Protection Office") is not a body that controls or supervises the correct 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 in another manner defined by appropriate procedures. Regardless of the above, it is necessary to indicate the provisions of Art. 156 of the Code of Criminal Procedure concerning the sharing of files with the parties to the proceedings and the preparation of excerpts or copies of these files, as well as on the subject of art. 355 of the Code of Criminal Procedure the principle of an open hearing and its limitations set out in the Act.

Due to the lack of competence of the President of the Office to substantively resolve this case, the proceedings initiated by the complaint lodged by the complainant had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure. The doctrine indicates that: "the objectivity of administrative proceedings", as

provided for in Art. 105 § 1 of the Code of Civil 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 deciding on its substance. 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 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.

Regardless of the above decision, I would like to inform you that from February 6, 2019, pursuant to Art. 175 da - art. 175 dd of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2019, item 52) in connection with joke. 71 point 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), the authorities competent to consider complaints about the processing of personal data in court proceedings under the administration of justice or the implementation of tasks in the field of legal protection are respectively presidents of regional courts, courts of appeal or the National Council of the Judiciary.

The party 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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