THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 04

January

2019

DECISION

ZSOŚS.440.26.2018. II

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) 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 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), after conducting administrative proceedings regarding the application of Ms EK for reconsideration of the case concluded with the decision of the President of the Personal Data Protection Office of September 4, 2018 r.

uphold the contested decision

Justification

On [...] December 2013, through the Patient's Rights Ombudsman, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mrs. EK about the processing of her personal data by the President of the District Court in O., the Social Insurance Institution and City Council in O. regarding her health.

In response to the complainant's request, on [...] March 2014, and then on [...] July, the Inspector General for Personal Data Protection called on the complainant to supplement the formal deficiencies in the complaint.

In response, by letter of [...] August 2014, the applicant submitted that the Social Insurance Institution had, without her consent, disclosed the above-mentioned personal data to the President of the District Court in O., who then included the information thus obtained in the applicant's appeal from the function of a lay judge at the District Court in O., submitted to the City Council in O. Moreover, the application contained data concerning the conviction issued against SK (hereinafter referred to as "the Complainants"). Consequently, as the complainant claims, the disclosure of her and the complainant's personal data constituted a breach of the law.

After conducting the administrative procedure, the President of the Personal Data Protection Office issued on September 4, 2018 an administrative decision (ref. ZSOŚS.440.26.2018) refusing to accept the application.

As a result of the complainant's submission of the application within the statutory deadline, the President of the Personal Data Protection Office reconsidered the case in question. In support of the above-mentioned of the application and in the letter of […] September. The applicant did not provide any new facts, ie different from those she had reported in the case so far, which had an impact on the outcome of this decision. In connection with the above, the President of the Office for Personal Data Protection on [...] November 2018 informed the parties about the collection of material sufficient to issue an administrative decision. In reply, the Complainant, in a letter of [...] November 2018, informed that she had not exercised her right to access the files, repeating her demands expressed so far.

On the basis of all the collected evidence, in the course of the investigation, the President of Personal Data Protection determined the following.

In a letter of [...] May 2007, the President of the District Court in O. asked the President of the District Court in S. to borrow case files, ref. No. [...] (against the applicant). The files in question were transferred by letter of […] June 2007 and by letter of the President of the District Court in O. of […] June 2007, they were returned on […] June 2007.

The Zakład Ubezpieczeń Społecznych (Social Insurance Institution) twice, on […] and […] January 2008, made available to the applicant's pension files at the request of the President of the District Court in O. The files were returned on […] January 2008 by an employee of the Court.

In the request to dismiss the applicant from the function of a lay judge in the District Court in O., which was referred to the City Council in O. on [...] January 2008, the President of the District Court in O. included information obtained from the pension files of the Social Insurance Institution, and which concerned the applicant's state of health, as well as information on the conviction handed down against the applicant in the case No. [...].

As a result of the investigation, the City Council in O., at the session on [...] May 2008, did not share the arguments of the President of the District Court in O., adopting a resolution not to dismiss the applicant.

Consequently, on […] June 2008 the President of the District Court in O. summoned the City Council in O. to remove the law and to repeal the adopted resolution. The summons contained information on the applicant's health condition, obtained from the disability pension records of the Social Insurance Institution, as well as on the conviction issued against the applicant in the

case No. [...].

The City Council of O. on […] September 2008, by acclamation, upheld its original decision and closed the pending proceedings.

According to the information of the Chairman of the City Council of O. of [...] March 2016, the City Council of O. in the 2014-2018 term did not process the complainant's and the complainant's personal data.

At the outset, it should be noted that the decision of September 4, 2017 (reference number: ZSOŚS.440.26.2018) contained an indication of Art. 23 of the Act of August 29, 1997 on the Protection of Personal Data as the basis for the decision. However, in the case at hand, Art. 27 of the same act. The judgment of the Supreme Administrative Court of February 8, 1983 should be quoted here, according to which "the fact that the administrative authorities referred in their decision to provisions inappropriate in the case, although it indicates the defectiveness of these authorities' actions, does not constitute a premise for the court to recognize that there was a violation of the law to a degree significant for the decision, if the circumstances of the case show that the administrative authorities could issue the contested decisions on the basis of another provision of the same act ”(file ref. I SA 1294/82).

Moreover, as the Supreme Administrative Court points out in the judgment of 6 May 1999, “failure to cite the legal basis in the decision of the first instance authority or failure to cite all the provisions of the law that should be indicated does not, by itself, cause such a defect which results in the annulment of the decision. The body of the second instance is the body appointed to examine the case in terms of content and it may remedy the aforementioned failure of the body of the first instance by invoking the appropriate legal basis for the decision contained in the decision ”(reference number II SA / Gd 134/97).

In the present case, however, it is necessary to refer to the provisions contained in the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws 2018, item 23, as amended), hereinafter referred to as "pusp", as well as in the Act on of October 13, 1998 on the social insurance system (Journal of Laws of 2017, item 1778, as amended), hereinafter referred to as "usus", the first of which regulates the issue of submitting an application for dismissal from the function of a lay judge, the second, the provision of information contained in the pension files of the Social Insurance Institution.

According to the then wording of Art. 50 sec. 3 u.s.u.s. (Journal of Laws of 2007, No. 11, item 74) data collected on the insured person's account, as referred to in art. 40, and on the account of the payer of the contributions referred to in art. 45, could be made available to courts, prosecutors, tax inspection authorities, tax authorities, court bailiffs, social assistance centers, poviat

family assistance centers and the Polish Financial Supervision Authority, taking into account the provisions on the protection of personal data. The wording of the provision in force on the date of this decision shows that it extends the above catalog and states that the data collected on the insured person's account referred to in Art. 40 and on the account of the payer of the contributions referred to in art. 45, may be made available to courts, prosecutors, tax authorities, the National Labor Inspectorate, the Internal Supervision Office, the Police, the Border Guard, court bailiffs, enforcement authorities within the meaning of the Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws No. of 2017, item 1201, as amended), to the minister competent for the economy to the extent necessary to resolve cases conducted pursuant to Art. 29, art. 32 and art. 34 of the Act of March 6, 2018 on the Central Register and Information on Economic Activity and the Information Point for Entrepreneurs, the minister competent for family matters, the minister competent for social security, authorities providing family benefits, benefits from the maintenance fund and childcare benefits, social assistance, poviat family assistance centers, public employment services, the Polish Financial Supervision Authority as well as the voivode and the Head of the Office for Foreigners in the scope of conducted proceedings regarding the legalization of foreigners' stay in the territory of the Republic of Poland, taking into account the provisions on the protection of personal data.

Again, it should be noted that the above-mentioned provision clearly shows that the legislator provided for a closed catalog of entities authorized to receive such data and included the court in it. Importantly, in the case of the court, no goal was indicated, the achievement of which would be necessary for the implementation of the indicated right. The only restriction imposed on the court under the said provision is the requirement to take into account the provisions on the protection of personal data.

In connection with the above, attention should be paid to Art. 166 § 2 point 4 of the BRL, which, both at the time and now in force, clearly stipulates that the municipal council which selected the lay judge may dismiss him at the request of the president of the competent court, in the event of incapacity to perform the duties of a lay judge. Firstly, as indicated in the doctrine, "the president of the court, in the event of disclosure of the circumstances referred to in § 2, may not remove a lay judge from the list of lay judges of a given court, as deleting from the list is possible only after the lay judge is dismissed by the municipal council (the argument from § 3 ). The conditions listed in § 2 points 2-4 are of an assessment nature. The inability to perform the duties of a lay judge is related to the physical or mental condition of a given person and may result from relevant documents. (cf. Gudowski, Jacek, Ereciński, Tadeusz i Iwulski, Józef. Art. 166. In: Commentary to the Act - Law on the System of Common Courts, [in:] Law on the System of Common Courts. Act on the National Council of the Judiciary. Commentary, ed.

. II. LexisNexis Legal Publishing House, 2009.)

Moreover, the literature rightly notices that "the finding of a lay judge's inability to adjudicate may be related to the physical or mental state of a given person and may be confirmed by relevant documents, for example, with a certified disability." (see Świetlicka, Maria. Art. 166. In: Law on the System of Common Courts. Commentary to the changes introduced by the Act of April 15, 2011 amending the Act - Law on the System of Common Courts. Legal Information System LEX, 2011).

Bearing in mind the above, the application of Art. 50 sec. 3 u.s.u.s. in connection with Art. 166 § 2 point 4 p.u.s.p. should be considered as meeting the condition set out in Art. 27 sec. 2 point 2 u.o.d.o. Thus, it is impossible to agree with the complainant's statements contained in the letter of [...] September 2018 (points 1-5) that the decision of 4 September 2018 did not indicate the legal provisions authorizing the President of the Court to process personal data contained in the ZUS documentation. The above-mentioned provisions provide a sufficient legal basis for the collection of such data by an authorized entity and for the use of such data under the procedure prescribed by law, which is undoubtedly the submission of an application for dismissal from the function of a lay judge.

At this point, it is also worth emphasizing once again that the President of the Personal Data Protection Office, as part of the powers conferred on him by the Act, may not interfere with the conduct of proceedings conducted by other bodies authorized under separate provisions. Thus, he cannot interfere with the content of documents collected in the files of such proceedings, such as the content of applications for dismissal from the function of a lay judge. The President of the Office is not an authority controlling or supervising 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 otherwise determined by appropriate procedures (file reference number II SA 401/00 ). Therefore, it is impossible to refer to the applicant's statements in point 6-7 letters of [...] September 2018. It is not within the competence of the President of the Personal Data Protection Office to assess which medical documents should be believed by the President of the District Court in O. psychophysical abilities of people performing the function of a lay judge. The criterion followed by the President of the Personal Data Protection Office is the legality of personal data processing. At the same time, it should be remembered that the requests of the President of the District Court in O. were examined twice and rejected as a result of resolutions adopted by a competent and democratically elected body.

Regarding the processing of the Complainant's personal data, it should be noted that the issues related to the transfer of court

files are governed by separate provisions. In the content of her letter of [...] September 2018, the complainant points to § 95 item 1 of the Ordinance of the Minister of Justice of February 23, 2007 - Regulations on the operation of common courts, which was in force on the date of submission of the above-mentioned act and stipulated that the case files or the land and mortgage register files shall be sent upon each request after the necessary steps have been taken in the case: to the President of the Republic of Poland, the Minister of Justice, the Supreme Court, the Ombudsman, the Ombudsman for Children and the appellate court.

However, the reasoning assuming that it was an exclusive catalog of authorized entities is incorrect. The content of the above provision in the version in force at that time clearly indicates that it was a special group of entities whose right to obtain files corresponds to the obligation to submit them to the court, and the general principles were laid down in § 94 para. 2, according to which the head of the division decided to make court files available to other persons without procedural rights and on the scope of their use of these files.

First of all, attention should be paid to the then wording of Art. 156 § 1 of the Act of 6 June 1997, Code of Criminal Procedure (Journal of Laws of 2003, No. 17, item 155), which clearly specified that the parties, the entity specified in Art. 416, defenders, attorneys and statutory representatives shall be provided with the court case files and give the possibility of making copies of them. With the consent of the president of the court, these files may also be made available to other persons.

The above provision is explained by the doctrine, stating that “the act does not define the group of these persons, however, one should follow the rule that such persons must have a legitimate reason to read all or part of the documentation constituting the court case files. Such persons may be representatives of the media, persons conducting research, and others, if they show the reason why they request access to the file "(see Paluszkiewicz, Hanna. Art. 156. In: Code of Criminal Procedure. Comment. Wolters Kluwer Polska , 2018).

Meanwhile, as pointed out by the President of the District Court in S. in a letter of [...] February 2008 addressed to the applicant, “The District Court in O. asked me (the President of the District Court in S. - footnote) to borrow case files under reference number [...] (...) The said files were submitted to the President of the District Court in O. with my letter of [...] June 2007, and the files were returned on [...] June 2007 "after use" with another letter from the President of the District Court in O. of […] June 2007 ”.

Thus, it should be considered that the transfer of the case files [...] took place to an authorized entity on the basis of the

consent of the president of the court, and therefore within the limits of generally applicable legal provisions, on the date of the above-mentioned activities. This means that the processing of personal data contained in the files was also carried out at this stage in accordance with Art. 27 sec. 2 point 2.

However, as regards the inclusion of data on the applicant's conviction in the applications for dismissal from the function of a lay judge, the applicant's assertion that her husband was not the subject of the proceedings concerning her dismissal from the post of lay judge should be considered correct. Thus, it must be admitted that the conclusion of the above-mentioned the complainant's data was unfounded. The border was clearly established by Art. 51 sec. 2 of the Polish Constitution, which clearly indicates that public authorities cannot obtain, collect and share information about citizens other than necessary in a democratic state ruled by law. In the case at hand, it cannot be stated that the inclusion of the complainant's data was necessary in the discussed applications, as well as that it was based on the provisions of the law.

It is not without reason that the data on the conviction were included in the so-called sensitive data, the catalog of which indicates art. 27 sec. 1 u.o.d.o. In the present case, the very time that has elapsed since the judgment was delivered is also important. The value, the protection of which the legislator had in mind, which is rehabilitation and the possibility of return to society for convicted persons, has been violated. Although the prohibition of processing such data is an institution different from the seizure of a conviction, it is worth noting that they are undoubtedly intertwined. Thus, it is worth quoting the position of the doctrine, according to which "it is to prevent the sustaining of the effects of condemnation indefinitely and enable re-adaptation to functioning in society. It is an expression of humanism, it aims to rebuild the social order disturbed by crime, it motivates the criminal to leave the criminal path and aims to eradicate stigma. Charging the perpetrator of each crime for life would be inhumane, because any behavior, regardless of the type of punishment imposed, would contain the element of charging the perpetrator for life with the consequences of a crime committed many years ago. It is not justifiable to maintain stigma on punishment for the rest of your life or for an indefinite period of time. The seizure of a conviction is aimed at restoring good public opinion about the convicts, and consists in restoring the convicted person's social prestige in the state of law. It aims to ensure that the conviction does not have sine die effects ”(cf. Stefańska, Blanka Julita. Chapter IV The essence and effects of obliterating the condemnation. In: Blurring the condemnation. LEX, 2014).

However, although the actual and legal findings in the case indicated a breach of the provisions of the Personal Data Protection Act with regard to the Complainant, there were no grounds to apply Art. 18 sec. 1 of the Act, according to which in

the event of a breach of the provisions of this Act, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status. Such an order in the present case would be impossible to execute due to the nature of the conduct in question, namely its incidental nature and irreversibility. Due to the fact that at the time the contested decision was issued, the infringement of the provisions of the Act did not exist, the personal data protection authority could not make any other decision than to refuse the application and uphold the contested decision.

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

The decision is final. Based on Article. 21 sec. 2 of the Act on the Protection of Personal Data and in connection with joke. 3 § 2 point 1, art. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302), the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against this decision, within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw).

2019-04-08