THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

of August

2019

DECISION

ZSOŚS.440.157.2018

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) in connection with Art. 57 sec. 1 lit. f and art. 6 sec. 1 lit. f of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on the protection of data) (Journal of Laws of the EU L 119 of 04/05/2016, p. 1, with the amendment announced in the Journal of for service: [...]), irregularities in the processing of personal data by the President of the District Court in O. (address: ul. [...]) consisting in providing personal data on the website of the District Court in O.,

I refuse to accept the application

Justification

The Personal Data Protection Office received a complaint from Mr RM, hereinafter referred to as the "Complainant", about irregularities in the processing of personal data by the President of the District Court in At the same time, in the content of the complaint, the complainant included a request to order the President of the District Court in O. to delete the personal data posted on the website of the above-mentioned court.

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.

The applicant, being a participant in a publicity program broadcast on public television, commented on the behavior of judges and officials of the District Court in O. In response to the allegations in the statements of the applicant, the President of the District Court in O. on the court's website at "[... ] ”Placed a statement in which he contradicted all the complainant's claims, indicating his name and surname. Subsequently, the complainant [...] on October 2018, to the e-mail address of the customer service office of the District Court in O. court. Further, due to the lack of a reply from the President of the Regional Court in O.,

the complainant asked the President of the Personal Data Protection Office to conduct explanatory proceedings regarding the legality of processing personal data included in the statement of the President of the Regional Court in O.

In a letter of [...] January 2019, the President of the Office for Personal Data Protection informed the Complainant and the President of the District Court in O. about the initiation of proceedings in the case and asked that entity to comment on the content of the complaint and to submit written explanations, enclosing a copy complaints.

In the explanations submitted to the President of the Personal Data Protection Office, the President of the District Court in O. (hereinafter referred to as: "the President of the Court"), responding to the content of Mr. RM's complaint, indicated that indeed [...] in March 2018, the court's website published a statement which was a response to the allegations that the applicant had made against the judges and court officials of the Court under his management.

For the sake of explanations, the President of the Court also submitted that, in fact, the e-mail address of the court customer service bureau had received the applicant's request to cease the "violations of law" and "remove false information", which, in his opinion, infringed his reputation. As the President of the Court explained, the Complainant did not specify what specific personal data breaches were to occur. He also added that, while referring to the allegations of Mr. R. M. in his statement, he had not slandered him. Moreover, he argued that the applicant, in the said application, did not explicitly demand the removal of his personal data, but only "false information" about him. In the further part of the explanations, the President of the Court indicated that the sent e-mail contained only the complainant's basic data. Art. 22 § 1 point 1 of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended) and Art. 4 and art. 6 sec. 1 lit. c of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on the protection of data). At the same time, the President of the Court emphasized that the complainant's statements were made during the broadcast of a television program in which he disclosed his personal data, i.e. his name and surname. In turn, the importance of the charges against judges and employees of the court administration could not remain without the reaction of the management of that court. Therefore, the President of the Court used the Complainant's data disclosed in a television program which, in his opinion, by undertaking a public debate, consented to the publication of his personal data. In conclusion, the President of the Court expressed the conviction that the attitude presented by the Complainant could not constitute a basis for a finding that there had been irregularities in the processing of personal data.

The President of the Office for Personal Data Protection informed the Complainant and the President of the Court in letters of [...] April 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment on the collected evidence and materials, and submitted requests in accordance with the content of 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.

In these facts, the President of the Personal Data Protection Office considered the following.

In the present case, the complainant complained about the unauthorized processing of personal data by the President of the District Court in O. Therefore, the complainant demanded the removal of his data included in the statement appearing on the court's website.

At the outset, it should be emphasized that the President of the Office for Personal Data Protection, when issuing an administrative decision, is obliged to settle the case based on the actual state of affairs at the time of issuing this decision. As argued in the doctrine, "a public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A. Wróbel, Lex., El / 2012). At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision".

In the Regulation of the European Parliament and of the EU Council 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, effective from May 25, 2018 (Journal of Laws EU L.2016.119) .1 with the amendment announced in the Journal of Laws UE L 127 of 23/05/2018, page 2, hereinafter

referred to as: "GDPR"), provisions on the protection of individuals with regard to the processing of personal data and provisions on the free flow of personal data (Art. 1 (1)).

In the course of the proceedings, the President of the Office for Personal Data Protection established that the Complainant had participated in a news program broadcast on television, as well as sent an e-mail of [...] October 2018, sent to the Court's e-mail address. It follows from recital 42 of the GDPR preamble that informed consent to the processing of data takes place when the data subject knows at least the identity of the controller. On the other hand, the definition of consent is specified in Art. 4 point 11 of the GDPR, pursuant to which consent means a voluntary, specific, informed and unambiguous demonstration of the will, which the data subject, in the form of a declaration of will or a clear affirmative action, allows for the processing of his personal data. The requirement of voluntary consent means freedom of consent, no coercion and the possibility of refusing it. Hence, consent may not be forced, and the data subject should have a choice in deciding to express it. Another qualifier, i.e. specificity, means that the content of the statement should correspond to the scope and purpose of consent to data processing. However, the above-mentioned According to the provision, awareness comes down to the fact that the person who makes this declaration must have complete conviction about the consequences for the processing of his data it will cause. The requirement that the declaration of consent should be "unequivocal" means that it cannot raise doubts about the intention of the person who makes such a declaration. By the way, it should be noted that the GDPR does not require the consent of a given entity to be expressed in a specific legal form. It follows, therefore, that consent may be expressed in written, electronic or oral form. It is important that it meets all the conditions discussed above (P. Fajgielski, General Data Protection Regulation, Commentary, Warsaw 2018, pp. 127-130).

Referring the above considerations to the findings of the present case, it should be noted that the Complainant, participating in the television program, knew the scope and purposes for which his data would be processed. Moreover, he knew the identity of the data controller, i.e. the television on which the program with his participation was broadcast. At the same time, the complainant was aware of the meaning of the words he uttered and took into account that in order to engage in a polemic with the statements he made, the applicant would refer not only to the content itself, but would also use his data, which he himself made available in the media. Moreover, as mentioned above, the applicant, in an e-mail of [...] October 2018, consciously, voluntarily, in a concrete and unambiguous manner, provided the identification data to the President of the Court. It cannot be ignored that the complainant did not stipulate in this message that he did not consent to the processing of data by the entity to

which the message was addressed. In this state of affairs, the President of the Court became the administrator of the transferred data, which, in the light of the applicable provisions, legitimized this entity to process the complainant's data. The conducted analysis of the collected evidence proves that there are no grounds for formulating an objection against the President of the Court that the President of the Court had unlawfully obtained the applicant's data and processed it in a manner that was inadequate to the purpose for which it was obtained. It should also be noted that the provision entitling data controllers to process ordinary data of natural persons (i.e. name and surname), including their disclosure, is Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of premises listed in this provision is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the consent of the data subject is not the only basis for the processing of personal data, as the data processing process will also be compatible if the data controller demonstrates that another of the conditions listed below is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is allowed, inter alia, when it is necessary for the purposes of the legitimate interests pursued by the controller (Article 6 (1) (a) of the GDPR). 1 letter f of the GDPR). Taking into account, in particular, the premise regarding the legal interest of the controller, it should be emphasized that it is to be a legally justified interest, i.e. one that is based on specific provisions of EU law or national law, which establishes a legal obligation on the data controller, for the fulfillment of which it is necessary will be data processing. In the Polish legal system, an obligation may result from the constitution, international agreements or statutes. Taking into account the circumstances of the case, the provisions that allowed the President of the Court to act in a specific manner are Art. 22 § 1 point 1 of the Act of 27 July 2011, Law on the System of Common Courts, from which it follows that "the President of the Court manages the court and represents the court externally, with the exception of matters falling within the competence of the director of the court". In turn, from § 1 point 3 of Art. 22 of the cited act, it follows that the President of the Court also performs other activities provided for in the Act and separate regulations. At the same time, the above regulations are complemented by § 30 sec. 1 items 10 and 15 of the Regulation of the Minister of Justice of 18 June 2019. Regulations of the operation of common courts (Journal of Laws, item 1141), the wording of which shows that when performing activities in the field of administrative activity of the court, the President is, in particular, the administrator of personal data in accordance with with the provisions on the protection of personal data, and

also takes steps in current matters related to the efficient functioning of the court within its competence. In the analyzed case, the disclosure of specific personal data (identification data) took place during the complainant's public appearance in a television program and e-mail messages. Taking into account the content of the above-mentioned provisions, it should be concluded that the President of the Court, while performing the supreme function in the court within the scope of the powers entrusted to him, had a legitimate interest in processing the Complainant's data. During his speech in the television program, the complainant articulated a number of allegations against specific entities constituting the judicial and administrative staff of the court. On the other hand, the President of the Court, as an entity representing this institution externally, was entitled to refer to the content of publicly pronounced allegations, including personally to the person formulating them. While referring to the content of the declaration posted on the website of the District Court in O., it should be noted that the President of the Court did not use other data of the complainant than the name and surname. The President of the Court disclosed the data made available by the applicant himself, but only to the extent that was necessary to respond to the allegations concerning the activities of the Court. Thus, the allegation that this action is unlawful from the point of view of the provisions of the General Regulation on the Protection of Personal Data should be considered unfounded. Therefore, this justifies the conclusion that in the analyzed case, the disclosure of data on the court's website was made to the extent necessary to fulfill the legitimate interests pursued by the data controller, in a manner not going beyond this purpose and in compliance with the principle of data minimization (Article 5 (1) (c) of the GDPR). .c GDPR). Therefore, there are no grounds for issuing an administrative decision ordering the removal of the Complainant's personal data from the website of the District Court in O. In this situation, the President of that court cannot be attributed a breach of the provisions of the general regulation on the protection of personal data in this respect and the issuing by The President of the Personal Data Protection Office, any of the orders referred to in art. 58 GDPR.

Referring to the remaining claims of the Complainant regarding the issues of criminal law or civil claims against the President of the District Court in O., the President of the Personal Data Protection Office would like to explain that these issues are beyond the scope of the President of the Personal Data Protection Office, because the disputed issues may be considered only in proceedings conducted by a common court. The President of the Personal Data Protection Office is not, however, the competent authority to investigate the existence of criminal prerequisites in the behavior of the entity against which the complaint was submitted. It is not an authority controlling or supervising the correct application of substantive and procedural

law in cases 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 (vide: the judgment of the Supreme Administrative Court of 2 March 2001, file reference number II SA 401/00). Hence, in the present proceedings, only the legality of the processing of the Complainant's personal data by the entity questioned in the complaint was assessed.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the operative part of the decision in question.

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with Art. 13 § 2, art. 53 § 1 and article. 54 § 1 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (Journal of Laws of 2018, item 1302, as amended), 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 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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