THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

September

2019

DECISION

ZSOŚS.440.137.2018

Based on Article. 105 § 1 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, art. 23 sec. 1 point 2, art. 26 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. RB (residing at ul. [...]) concerning irregularities in the processing of personal data by the District Court in S. (ul. [...]),

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. a court consisting in the removal of an e-mail sent to the e-mail address containing his personal data. In view of the above, the complainant asked the Inspector General for Personal Data Protection to take steps to remove the deficiencies in the form of ordering the recovery of the Court's e-mail archive, as well as explaining the reasons for the permanent deletion of the e-mail containing personal data.

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 (Journal of Laws, item 1000, as amended), i.e. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became 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 under the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code administrative proceedings.

In the course of the proceedings initiated by the above-mentioned through the complaint, the President of the Personal Data

Protection Office obtained explanations regarding the circumstances of the case, familiarized himself with the evidence and made the following arrangements.

A case with the applicant's participation was pending before the District Court in S. On [...] December 2013, the complainant was to submit an e-mail request for a justification of the judgment in the maintenance case. Subsequently, in February 2014, the Complainant turned in an e-mail to the abovementioned the court to indicate whether the justification of the judgment in question has been prepared, to which he received a reply that no impact of such a request has been recorded so far. In view of this situation, the applicant asked the President of the same Court to clarify the disputed circumstances. In reply, the Vice President of the District Court in S., in a letter of [...] March 2014 (a copy of the letter in the case file), explained to the complainant that no receipt of the said motion had been recorded in the court's e-mail box, and all messages from the date indicated by the applicant have been permanently deleted. At the same time, the letter informed the Complainant about the provisions of the civil procedure, in particular those relating to the lodging of pleadings, and pointed out that, in the circumstances, the Complainant may request that the time limit for lodging a statement of reasons be restored. In another letter of [...] May 2014 (a copy of the letter in the case file), the Vice-President of the Court indicated that the explanatory proceedings proved that the head of the secretariat checks the e-mail on an ongoing basis, and therefore it is impossible for the employee to ignore the impact of the request from from the applicant. At the same time, the Vice President of the Court objected to the complainant's claims that his personal data had been damaged, destroyed or made available, which would have led to a violation of the provisions of the Act on the Protection of Personal Data.

In a letter of [...] May 2015, the Inspector General for Personal Data Protection informed the complainant about the initiation of proceedings in the case and asked the President of the District Court in S. (hereinafter: "the President of the Court") to submit written explanations.

For explanations, the President of the Court, in a letter of [...] May 2015 ([...]), explained that the complainant's personal data were processed due to the ongoing proceedings with his participation before the District Court in S. Explaining also added that due to the processing of the complainant's personal data for the purposes of court proceedings, pursuant to art. 43 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data, the President of the Court as the data controller was released from the obligation to register the data set. Referring to the situation concerning the loss of an e-mail message described in the complaint, he explained that the findings showed that the correspondence mentioned by the complainant had

not been recorded. For these reasons, there are no grounds to claim that the complainant's personal data was deleted.

The President of the Office for Personal Data Protection informed the Complainant and the President of the Court in letters [...] of May 2019 about the conduct of 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 as well as on the reported 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 such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922, as amended) creates legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and 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 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or refuses to accept the request, 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.

From the collected evidence, it does not appear that the complainant's personal data have been disclosed to anyone or deleted by persons employed in the District Court in S. joke. 43 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data, as the data controller, was exempt from the obligation to register the data filing system, as the processing was carried out by the competent authority for the purposes of court proceedings. Due to the findings made in the course of the conducted administrative proceedings, in particular due to the fact that the allegations made by the complainant were not confirmed in the course of the proceedings initiated by the complaint, the proceedings had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure.

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as: in part, a public administration body issues a decision to

discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Civil Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administrative procedure. Commentary, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491). It should also be pointed out the judgment of the Supreme Administrative Court of September 21, 2010, in case no. no. II OSK 1393/09, in which the position was expressed that the pointlessness of the administrative procedure means the lack of any element of the substantive-legal relationship resulting in the fact that it is impossible to settle the matter by resolving it on its merits. The discontinuation of the administrative proceedings is a formal decision that ends the proceedings. Moreover, the Supreme Administrative Court in the judgment of 15 January 2010, in the case with reference number no. I OSK 1167/09, stated that if the procedure was groundless, no decision on its essence could be issued.

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and continuing the proceedings in such a situation would make it defective, which would have a significant impact on the result of the case.

The procedure conducted by the Inspector General for Personal Data Protection (currently the President of the Personal Data Protection Office) is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 points 1-6 of the Act of August 29, 1997 on the protection of personal data. According to this provision, in the event of a breach of the provisions on the protection of personal data, 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, in particular: 1) removal of deficiencies, 2) supplementing, updating, rectification, disclosure or non-disclosure of personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data. The condition for issuing by the supervisory authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the

time of issuing the administrative decision.

In a situation where the President of the District Court in S. processes the complainant's personal data only in the scope of court proceedings, and also when he did not note the impact of the e-mail correspondence from the complainant, and thus did not delete the personal data contained therein, the legality examination in the context of establishing possible premises for the formulation of the order referred to in art. 18 sec. 1 of the Act of August 29, 1997, would of course be redundant.

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

Based on Article. 127 § 3 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), from this decision, the party has the right to submit an application for reconsideration 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 (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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