

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

January

2019

## DECISION

ZSOŚS.440.120.2018

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 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), hereinafter referred to as the "Act" 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 Mr. G. S., residing in J., regarding the processing of his personal data by the District Court in W. and E. sp.z o.o. with its seat in W., in connection with the provision by this company in the above-mentioned court of personal and property protection services,

I discontinue the proceedings

## JUSTIFICATION

On [...] July 2015, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. GS, hereinafter referred to as the "Complainant", regarding the processing of his personal data by the District Court in W. hereinafter "President of the Court" and E. sp. z oo with its seat in W., hereinafter referred to as "E. Ltd." in connection with the provision by this company in the above-mentioned court services for the protection of persons and property. The complainant requested the initiation of proceedings by the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) in order to quote "clarification of the compliance with the provisions of the applicable right of access to personal data of security personnel - in this particular case of the company E. sp. Z o.o. - who have access to personal data by checking people attending court hearings at the District Court in W. "

The complainant also pointed out that the quotation: "a citizen wishing to enter the courtrooms must provide the security guard with his personal data - name and surname, and only after the security officer checks the consistency of the citizen's name and

surname in the front of him in the office - visible to outsiders standing by next to them, waiting for the security officer to check the compliance of the data with the data in the court case - he lets the citizen into the courtroom ". In this way, in the opinion of the Complainant, an unauthorized person obtained his personal data and processes them in any way, which was the case in the situation described by the Complainant. As the applicant pointed out, on [...] July 2015, when the applicant was preparing to take a photo with the camera of a car parked in the wrong place on the premises of the District Court in W., a security officer ran out of the Court, addressing him by his name .

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 letters of [...] May 2016, the Inspector General for Personal Data Protection informed the Complainant, President of the Court and President of the Management Board of E. sp. Z o.o. to initiate proceedings in the case and asked the President of the Court and the President of the Management Board of E. sp.z o.o. to comment on the content of the complaint and to provide written explanations. On [...] May 2016, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a letter from the President of the Court ([...]), in which he explained that the District Court in W. processes data the complainant's personal data in the IT system called "[...]" and in the files of individual divisions, pursuant to the order of the President of the District Court in W. of [...] April 2016 no. [...] on the conduct in the court of the list of personal data files in connection with the Act of August 29, 1997 on the Protection of Personal Data and in accordance with the Act of July 27, 2001, Law on the System of Common Courts, for the purpose of conducting court proceedings.

The President of the Court detailed that the District Court in W. did not provide E. sp.z o.o. with its seat in W. the complainant's personal data. The President of the Court also explained that under the agreement concluded [...] on December 2015 between the District Court in W. and E. sp. Z o.o. with its seat in W., regarding the benefits in the above-mentioned the court for the protection of persons and property, the company's employees are obliged to keep secret all information obtained in the course of performing tasks related to the implementation of the concluded contract. The detailed manner of performing the tasks was specified in the agreement and protection plan of the District Court in W., which constitute attachments to the submitted explanations. The President of the Court also explained that all personal data processed in the District Court in W. are protected on the basis of the Act on the Protection of Personal Data and the Regulation of the Minister of Internal Affairs and

Administration of April 29, 2004 on the documentation of personal data processing and technical and organizational conditions. which should be fulfilled by devices and IT systems used to process personal data. The President of the Court also denied the complainant's statements that security staff were to ask persons coming to the court for their surname and first name. It was explained that a person going to the courtroom has the opportunity to seek the help of a security guard in order to avoid wandering around the multi-story court building. The President of the Court also pointed out that the provisions of law allow for the publication of data in court lists, among others when it is necessary to exercise the right or fulfill the obligation resulting from the provisions of law, in accordance with Chapter 4 of the Regulation of the Minister of Justice of 23 December 2015. Rules of Procedure of Common Courts. The President of the Court also mentioned that the applicant was known to the Court's employees and security staff, as he very often appeared in court as a witness or party. The President of the Court also indicated that he could not refer to the event described in the complaint due to the passage of time, and thus the inability to verify the course of the above-mentioned events based on the accounts of people involved in it. The President of the Court also explained that the applicant did not report this incident directly to the President of the Court.

On [...] June 2016, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a letter from the representative of E. sp. Z oo, in which he explained that the company provides personal and property protection services to The District Court in W. The attorney also pointed out that the company did not process the complainant's personal data and that the security staff, like everyone staying in the court building, had access to court lists and provided assistance by answering questions from people arriving at the court and helping to find the courtroom. hearings, but they do not keep these dossiers. The attorney also explained that the applicant was known to the security staff as he very often appeared in court as a witness or party. In order to prove the course of the event described in the complaint, the company's representative sent a copy of the official memo prepared by the employee who participated in the incident described by the Complainant. In the above-mentioned In the note, the security officer explained that on [...] July 2015 he was on duty in the building of the District Court in W. and he was informed that in front of the court building, next to the car of the employee of the abovementioned of the court, quoted as "a man is walking around". The security officer also explained that in addition to the above-mentioned The applicant and a police officer noticed the car, who he said that it was a company car, used by the Court's employees, and that the employee using it had carried materials to the building and soon presented the above-mentioned the vehicle in a dedicated parking space. The security officer also mentioned that the applicant was known to

the security staff as quoted as "a person frequently staying in the building of the District Court in W. in various capacities (witness, accompanying person, victim).

The President of the Personal Data Protection Office informed by letters of [...] November 2018 the Complainant, the President of the Court and the attorney of E. sp. Z o.o. on conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and on the possibility to comment on the collected evidence and materials and reported requests in accordance with 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.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2018, item 1000 as amended), on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection . 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 on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) in accordance with the principles set out in the Code of Administrative Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides 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 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuance 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. The collected evidence shows that the complainant's personal data are processed only in the IT system "[...]" and in the files of individual divisions, on the basis of the order of the President of the District Court in W. of [...] April 2016, no. [...] on keeping in

court a list of personal data files and in connection with the Act of August 29, 1997 on the Protection of Personal Data and in accordance with the Act of July 27, 2001, Law on the System of Common Courts, in order to conduct legal proceedings. On the other hand, as the representative of E. sp.z o.o., the company does not process the complainant's personal data. E. sp.z o.o. provides services for the protection of persons and property for the District Court in W. on the basis of the concluded contract, and the security staff, under the above-mentioned contracts, have access to court lists and provide assistance by answering questions from people arriving at the court and helping to find the courtroom, but do not keep these lists.

Referring to the issue of disclosing the complainant's personal data by the District Court in W. to E. sp.z o.o. in connection with the provision by this company in the above-mentioned it should be pointed out to the court of the protection of persons and property that the explanatory proceedings conducted in the case did not indicate that the entity made the above-mentioned personal data for E. sp.z o.o.

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), hereinafter referred to as the Code of Administrative Procedure, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision on discontinuation of 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 Administrative 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 administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491). It should also be mentioned the judgment of the Supreme Administrative Court of 21 September 2010, 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 case by resolving it. in essence. The discontinuation of administrative proceedings is a formal decision that ends the proceedings, without a substantive decision. Moreover, the Supreme Administrative Court stated in its judgment of 15 January 2010, I OSK 1167/09, that if the procedure is groundless, no decision on its essence can be issued.

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. . The groundlessness of the proceedings may also result from a change in the facts of the case.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Personal Data Protection Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the 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 the deficiencies, 2) supplementing, updating, rectifying, or failure to provide 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 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 W. did not disclose the complainant's personal data, the legality examination, in the context of determining the possible existence of premises for the formulation of the order referred to in art. 18 sec. 1 of the act 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 14 June 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 of the case 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. 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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