THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

January

2019

DECISION

ZSOŚS.440.13.2018. II

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 12 point 2 and 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 sec. 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 application of Mr. M. S., residing in in W., for reconsideration of the case ended with the decision of the President of the Personal Data Protection Office of July 13, 2018 (ref. no .: ZSOŚS-440-1399 / 17)

uphold the contested decision

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. M. S., residing in in W., for the processing of his personal data by the Supreme Administrative Court with its seat in Warsaw at ul. Gabriela Boduena 3/5, hereinafter referred to as "NSA".

In the content of the complaint, the complainant indicated that, in his opinion, there had been unlawful processing of his personal data by the Supreme Administrative Court in the Central Database of Administrative Courts' Rulings.

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the following facts:

The complainant's personal data was processed in the Central Database of the Rulings of Administrative Courts by leaving the name and surname in decisions with reference numbers:

1) […] 2) […] 3) […] 4) […] 5) […] 6) […] 7) […]

The applicant, in a letter of [...] August 2017, addressed to the President of the Supreme Administrative Court, filed a complaint against the disclosure of his personal data in decisions published in the Central Database of Rulings of Administrative Courts.

In a letter of [...] August 2017, the Deputy Chairman of the Judicial Information Department informed that the Complainant's personal data processed in the Central Database of Judgments of Administrative Courts had been immediately removed after considering the complaint of [...] August 2017 submitted to the President of the Supreme Administrative Court.

After conducting the administrative procedure, on July 13, 2018, the President of the Office for Personal Data Protection issued an administrative decision (reference number: ZSOŚS-440-1399 / 17), discontinuing the procedure in this case.

Within the statutory deadline, the complainant filed a request for reconsideration of the case ended with the above-mentioned decision.

In the justification to the request and in the letter of [...] August 2018, the Complainant did not present any new circumstances, i.e. other than those he had reported in the case so far, affecting the decision contained in the decision issued by the Inspector General for Personal Data.

After re-examining the facts of the case, including reading all the evidence gathered in the case, the President of the Office for Personal Data Protection considered the following.

At the outset, it should be noted that the President of the Office for Personal Data Protection in the proceedings in question examined whether the President of the Supreme Administrative Court unlawfully processed the complainant's personal data in the Central Database of Administrative Court Rulings, hereinafter referred to as: "CBOSA", according to the scope of the complainant's request contained in in the complaint.

In the course of the investigation, the personal data protection authority determined that the President of the Supreme Administrative Court admitted the complainant's complaint of [...] August 2017 and, immediately after verifying the complaint, removed the complainant's personal data processed in CBOSA.

It should be pointed out once again that pursuant to Art. 18 of the Act on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), in the event of a breach of the provisions of the 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 state of compliance with the law, in particular the removal of deficiencies, supplementing, updating, rectifying, disclosing or not disclosing personal data, applying additional security measures for the collected personal data, suspending the transfer of personal data to a third country, securing data or transferring it to other entities, deleting personal data. In a situation where the questioned data processing process is no longer continued, there are no grounds for its further

examination (for examining past events, but not those currently taking place). The assessment carried out by the President of the Office in each case serves to examine the legitimacy of sending a warrant to a specific subject corresponding to the disposition of Art. 18 sec. 1 of the Act on the Protection of Personal Data, aimed at restoring a legal state in the data processing process - so it is justified and necessary only insofar as there is a state of violation. As has already been indicated above, the applicant's request was granted by the President of the Supreme Administrative Court, the Complainant's personal data was removed, therefore the breach is no longer continued.

You should also refer to 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 "the Code of Administrative Procedure", which provides that when the proceedings for any reason have become redundant, the authority administration issues a decision to discontinue the proceedings.

It should be emphasized once again that the subject of the proceedings is related to the application by the public authority of the provisions of substantive administrative law. 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 before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski, Code of Procedure administrative department. Commentary, CHBeck, Warsaw 2006, p. 489).

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 it, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because if this condition arises, there are no grounds for resolving the matter on the merits, and continuing the proceedings in such a case would constitute its defective impact on the outcome of the case. The groundlessness of the proceedings may also result from a change in the facts of the case.

In addition, it should be noted that the chairman of the Judicial Information Department of the Supreme Administrative Court asked the President of the Provincial Administrative Court to carry out immediate verification of judgments previously published in the Central Database of Judgments of Administrative Courts and to remove legally protected data from them, and to draw

the attention of employees responsible for anonymization to legal consequences related to unlawful processing of personal data and as part of training and visits on the principle of correct anonymization.

Referring again to the complainant's applications submitted in the course of the proceedings for the provision of information on employment in the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection), costs of disclosing case files, etc., it should be noted that this type of information does not constitute public information. specified in art. 1 clause 1 of the Act of 6 September 2001 on Access to Public Information (Journal of Laws of 2018, item 1330), therefore the authority could not provide an answer to the Complainant in the requested scope. Taking into account the complainant's request "to submit [...]", it should be noted that in the letter No. which, according to the case file, he did not use. With reference to the application concerning the "indication [...]", it should be emphasized that the statutory competences of the President of the Personal Data Protection Office do not include providing legal advice.

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

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).

2019-04-16