

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

July

2018

## DECISION

ZSOŚS.440.13.2018

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149) 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 and of 2018, item 138) 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, item 1000), after administrative proceedings regarding the complaint of Mr. M. S. 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,

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. 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,

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:

[...]

[...]

[...]

[...]

[...]

[...]

[...]

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.

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

In the proceedings in question, the President of the Personal Data Protection Office 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 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.

Taking the above into account, it should be pointed out that pursuant to Art. 18 of the Act on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138) in the event of violation 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 a lawful state, in particular the removal of deficiencies, supplementing, updating, rectifying, disclosing or not providing 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 them to other entities, deletion of 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.

Pursuant to the provisions of Art. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), hereinafter referred to as the Administrative Procedure Code, when the proceedings for any reason became redundant, the authority administration issues a decision to discontinue the proceedings.

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

Regarding, however, the complainant's applications submitted in the course of the proceedings for the provision of information regarding employment in the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal

Data Protection), the 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 (i.e. Journal of Laws of 2018, item 1330), therefore the authority could not provide the Complainant with an answer in the requested scope. Taking into account the complainant's request "to provide (...) a detailed list of correspondence in the case", it should be noted that in the letter No. their notes, copies or copies, which, as it appears from the case files, he did not use. With reference to the application concerning, "indication of legal and technical measures, thanks to which it will be possible to continue monitoring where the data is, where it was transferred to", 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.

Based on Article. 127 § 3 of the Code of Administrative Procedure, 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.

2019-03-29