

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 24

of August

2018

DECISION

ZSOŚS.440.9.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) 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) 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) after administrative proceedings regarding the complaint of Mr. M. M., residing in in C., for the provision of his personal data by the Prosecutor of the District Prosecutor's Office in C. for the benefit of Ms M. C.

I refuse to accept the application

JUSTIFICATION

On [...] November 2017, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr MM (hereinafter referred to as the "Complainant") about the disclosure by the Prosecutor of the District Prosecutor's Office in C. during the preparatory proceedings (reference number files [...]) of the complainant's personal data regarding his name and surname, parents' names, date of birth, PESEL number, address of residence, family situation, income, property status, earnings and criminal record, to Ms MC

Justifying his request, the applicant argued that the Prosecutor of the District Prosecutor's Office in C., R. S., without his consent, had disclosed the above-mentioned personal data to Ms M. C., against whom the indictment had been brought, and then sentenced. Consequently, as the complainant claims, disclosure of his personal data to the other accused creates the possibility of their unauthorized use, in particular, their further disclosure to unauthorized persons.

From the documents attached to the application in the form of a copy of the indictment of [...] October 2016 in the case No. [...] together with a copy of the application of Prosecutor RS of [...] November 2016, a copy of the judgment of the District Court in C. of [...] March 2017 and the judgment of the District Court [...] of [...] June 2017 and a copy of the official note of the

Prosecutor's Office of the District Prosecutor's Office in the CRS of [...] May 2018, it follows that as a result of the victim's notification, Mr. MR was initiated investigation for the misappropriation of a found mobile phone, i.e. for an act under Art. 284 § 3 of the Act of June 6, 1997, Code of Kama (Journal of Laws of 1997, No. 88, item 553, as amended), hereinafter referred to as the Criminal Code, which was run by the 4th Police Station in C. under the supervision of the Public Prosecutor's Office Rejonowa in C. (file reference [...]). In these proceedings, an objection was raised under Art. 292 § 1 of the CC Ms M. C., who purchased and used the telephone lost by the aggrieved party. Moreover, based on the explanations of Ms M. C., the objection under Art. 291 § 1 of the CC Mr M. M., whom she had indicated as the person from whom she bought the telephone in question. Consequently, on [...] October 2016, the Police issued a bill of indictment against Ms M. C. and Mr M. M., in which, pursuant to Art. 332 § 1 of the Code of Criminal Procedure included, among others names and surnames of the accused and their other personal data. On [...] November 2016, prosecutor R. S. approved the indictment against the above-mentioned persons. On [...] November 2016, the indictment together with the request for voluntary submission to the punishment of Ms M. C. pursuant to Art. 335 § 2 of the CCP sent to the District Court in C. 335 § 2 of the CCP (file reference [...]), and M. M.'s case was excluded for separate management (file reference [...]). The District Court in C., by a judgment of [...] March 2017, acquitted M. M. of the alleged act.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", defines the rules of conduct in the processing of personal data and the rights of individuals, whose personal data are or may be processed in data files (Article 2 (1) of the Act). In the event of a breach of any of these principles, in particular Art. 23 or 27 of the Act, the President of the Personal Data Protection Office pursuant to Art. 18 sec. 1 of the act issues an administrative decision. In this regard, it may order the data controller to remove deficiencies (Article 18 (1) (1) of the Act), supplement, update, rectify, disclose or not disclose personal data (Article 18 (1) (2) of the Act).

In the present state of facts, one should also indicate the provisions contained in the Act of June 6, 1997, Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555, as amended), hereinafter referred to as the CCP. and the Ordinance of the Minister of Justice of April 7, 2016 - Regulations of the internal operation of common organizational units of the prosecutor's office (Journal of Laws of 2017, item 1206, as amended), which regulate in detail the issues of disclosing information contained in the files of criminal proceedings and formal requirements to be met by the indictment.

Pursuant to Art. 2 of the Code of Criminal Procedure the provisions of this code are aimed at shaping criminal proceedings in such a way that the perpetrator of the crime is detected and brought to criminal liability, and the innocent person does not bear this responsibility; that through the correct application of the measures provided for in criminal law and the disclosure of the circumstances conducive to the commission of a crime, the tasks of criminal proceedings not only in combating crimes, but also in preventing them and strengthening the respect for the law and the principles of social coexistence, are achieved; that the legally protected interests of the aggrieved party are taken into account while respecting their dignity and that the case is resolved within a reasonable time. On the other hand, the provision of Art. 10 of the Code of Criminal Procedure provides that the authority established to prosecute crimes is obliged to initiate and conduct preparatory proceedings, and the public prosecutor also to bring and support the accusation - for an act prosecuted ex officio. Moreover, the provisions of the CCP grant parties to criminal proceedings a number of powers with which they can defend their legitimate interests.

Next, it should be noted that the Code of Criminal Procedure specifies what elements should be included in the indictment, what is the procedure for supplementing any shortcomings in this letter and the consequences of timely and untimely supplementing. The indictment should, in the first place, meet the requirements of the pleading specified in Art. 119 § 1 of the Code of Criminal Procedure, i.e. it should contain the designation of the authority to which it is addressed and the case to which it relates, the designation and address of the person submitting the letter, the content of the application or statement, with justification if necessary, and the date and signature of the person submitting the letter. Additionally, pursuant to Art. 332 § 1 of the Code of Criminal Procedure the indictment should contain the name and surname of the accused, other data about his person and data on the application of a preventive measure, precise specification of the accused act with an indication of the time, place, method and circumstances of its commission and the consequences, especially the amount of the damage caused, an indication that the act was committed under the conditions specified in Art. 64 of the CC or art. 37 § 1 point 4 of the Fiscal Penal Code (Journal of Laws of 1999, No. 83, item 930, as amended), indication of the provisions of the criminal act under which the alleged act is subject, indication of the court competent to hear the case and the procedure to be followed, and justification of the accusation. Therefore, Art. 332 § 1 point 1 of the Code of Criminal Procedure clearly requires that the indictment also includes other personal identification data of the accused, which means, inter alia, the number of the Universal Electronic System of Population Registration (PESEL), parents' names, property status, address, as indicated also by the content of Art. 213 of the Code of Criminal Procedure: "In the proceedings, it is necessary to establish the identity of the

accused, his number of the Universal Electronic System of Population Registration (PESEL), and in the case of a person who does not have a PESEL number - the number and name of the document confirming the identity and the name of the authority which issued the document, as well as the accused's age, family and property relations, education, profession and sources of income, data on his criminal record, and if possible, a telephone number or e-mail address enabling contact with the defendant and a tax identification number (NIP). With regard to the accused who is a public official, at the time of committing the act or during the proceedings, data should also be collected on the course of public service, distinctions and disciplinary punishments (Article 213 § 1 of the Code of Criminal Procedure). from the ICT system of the minister responsible for public finance regarding property relations and sources of income of the accused, including ongoing and completed tax proceedings, based on the current data contained in this system. Information is obtained electronically (Article 213 § 1a of the Code of Criminal Procedure).

In turn, art. 337 of the Code of Criminal Procedure stipulates that the indictment, which does not meet the formal conditions specified in Art. 119 of the Code of Criminal Procedure, Art. 332 of the Code of Criminal Procedure, Art. 333 of the Code of Criminal Procedure or art. 335 of the CCP, as well as those indicated in Art. 334 of the Code of Criminal Procedure shall be returned by the president of the court to the prosecutor in order to remedy the deficiencies. In addition, attention should also be paid to the regulation of § 225 of the Regulation of the Minister of Justice of 7 April 2016 - Regulations of the internal operation of common organizational units of the prosecutor's office, which indicates that in the indictment, in addition to the title and date, and the data listed in Art. 119 § 1 of the Code of Criminal Procedure and art. 332 of the Code of Criminal Procedure in the header, provide the name and surname of the person subject to the accusation, indicating the legal qualification of the alleged act, in the case of indictment of several persons, list the perpetrators, instigators, helpers and other persons whose crime is closely related to the crime of the perpetrator, using the data about the person of each of them, the accusations against them, in principle, in chronological order, so that acts subject to obviously more severe penalties precede other accusations, in the case of drawing up separate conclusions with regard to individual accused, list in each of them the names and surnames of all accomplices covered by the indictment, if however, separate proceedings are pending against the accomplice, his name is not included in the conclusion, but only in the justification. The above-mentioned provisions clearly show that the indication in the indictment of the complainant's data, including his name and surname, parents' names, date of birth, PESEL number, address of residence, family situation, income, financial status, earnings and criminal record, and also the data of the second

Defendant, i.e. Ms MC, is directly supported by the provisions of criminal procedure and issued on the basis of the provisions of the Act of 28 January 2016 - Law on the Public Prosecutor's Office (Journal of Laws of 2017, item 1767, as amended) The rules of internal operation of common organizational units of the prosecutor's office and is also necessary for the effective prosecution of the indictment.

In addition, it should be noted that the President of the Personal Data Protection Office, within the powers conferred on him by the Act, may not interfere in the manner of conducting proceedings conducted by other authorities authorized under separate provisions. Thus, it cannot interfere with the content of documents collected in the files of such proceedings, such as, for example, the content of the indictment. The President of the Office is not a body that controls or supervises 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 (file reference [...]). Referring the above to the circumstances of the case under examination, it should be stated that any allegations concerning the actions of the prosecutor or the judgments issued by him should be considered on the basis of, inter alia, provisions of criminal procedure or the provisions of the Act of 28 January 2016 - Law on the public prosecutor's office. While justifying the request, the complainant also pointed to the criminal provisions of Art. 51, 52 sec. 2 of the Personal Data Protection Act. It should be pointed out that in the light of the provisions of Art. 18 sec. 1 and art. 19 of the Act on the Protection of Personal Data, the person concerned may request the President of the Personal Data Protection Office only to issue an administrative decision, while the notification of a crime is within the discretion of the administrative authority. The cited art. 18 sec. 1 provides that in the event of a breach of the provisions on the protection of personal data, the General Inspector (currently the President of the Personal Data Protection Office) ex officio or at the request of the person concerned orders the data controller, by way of an administrative decision, to restore the legal status. On the other hand, pursuant to Art. 19 of the Act, if it is found that the action or omission of the head of the unit, the head of the organizational unit, its employee or another natural person who is the data controller meets the criteria of an offense specified in the Act, the Inspector General (currently: the President of the Personal Data Protection Office) directs the of offenses, notification of the commission of the offense, attaching evidence of the suspicion. The facts of the present case do not, however, provide grounds for such actions. In this case, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. Undoubtedly, the

data of participants in criminal proceedings are processed for the purpose necessary to fulfill the legal obligation incumbent on law enforcement authorities, which is the performance of tasks in the field of prosecuting crimes and upholding the rule of law. According to the principle of legalism, public authorities operate on the basis and within the limits of the law. The scope of activities of the Public Prosecutor's Office is determined primarily by the provisions of the Code of Criminal Procedure, which are based on the actions of the authority questioned by the applicant.

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

Based on Article. 127 § 3 of the CAP, 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 submitted through the Inspector General for Personal Data Protection. 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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