THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 04

September

2018

DECISION

ZSOŚS.440.26.2018

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. 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 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000), after administrative proceedings regarding the complaint of Mrs. E. K., residing in in O., for the processing of his personal data by the President of the District Court in O., the Social Insurance Institution, the City Council in O. and for the processing by the President of the District Court in O., personal data of Mr. S. K., residing in w O., represented by Ms E. K.

I refuse to accept the application

Justification

On [...] December 2013, through the Patient's Rights Ombudsman, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms EK (hereinafter referred to as "the complainant") against the processing of her personal data by the President of the District Court in O., the Social Insurance Institution and the City Council in O., regarding her health.

In response to the complainant's request, on […] March 2014, and then on […] July, the Office of the Inspector General for Personal Data Protection called on the complainant to supplement the formal deficiencies in the complaint.

In reply by letter of [...] August 2014, the applicant submitted that, without her consent, the Social Insurance Institution had disclosed the above-mentioned personal data to the President of the District Court in O., Mr AD, who then included the information thus obtained in the application in the subject of the applicant's appeal from the function of a lay judge at the District Court in O., which was submitted to the City Council in O. Moreover, the application contained data concerning the conviction issued against SK. Consequently, as the applicant claims, the disclosure of her personal data constituted a breach

of the law.

From the evidence collected during the investigation in the form of documents attached to the application in the form of a copy of the application of the President of the District Court AD of [...] January 2008, reference number [...], a copy of the application of the President of the District Court A. Ł. Of [...] June 2008, explanations of Judge AD of [...] November 2014 attached to the letter of the President of the District Court in O. of [...] November 2014, reference number [...], explanations of the Chairman of the City Council in OTS of [...] November 2014 with reference number [...], explanations of the Deputy Director of the WUT Information Security Management Department of [...] December 2014 with reference number [...], explanations of the President of the City Council in OJC of [...] March 2016 with reference number [...], a copy of the application for disclosure of personal data by the Social Insurance Institution of [...] January 2008 with reference number [...] TC explanations of [...] March 2016 with reference number [...], explanations of Judge AD from [...] March 2016 and [...] April 20 16 it follows that:

The Social Insurance Institution (ZUS) twice, on [...] and [...] January 2008, made available to the applicant's pension files at the request of the President of the District Court in O., Mr. A. D.

In the request to dismiss the applicant from the function of a lay judge at the District Court in O., which was referred to the City Council in O. on [...] January 2008, the President of the District Court, Mr AD, included information obtained from the pension files of the Social Insurance Institution, and which concerned the applicant's state of health, as well as information on the conviction handed down against SK in the case No. [...].

As a result of the investigation, the City Council in O., at the session on [...] May 2008, did not share the arguments of the President of the District Court in O., adopting a resolution not to dismiss the applicant.

Consequently, on […] June 2008, the President of the District Court in O., Mr. A. Ł., Called on the City Council in O. to remove the law and annul the adopted resolution. The summons contained information on the applicant's health condition, obtained from the disability pension records of the Social Insurance Institution, as well as on the conviction issued against S. K. in the case No. [...].

The City Council of O. on […] September 2008, by acclamation, upheld its original decision and closed the pending proceedings.

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 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2001, No. 98, item 1070, as amended), hereinafter referred to as of October 13, 1998 on the social insurance system (Journal of Laws of 1998, No. 137, item 887, as amended), hereinafter referred to as u..sus, the first of which regulates the issue of submitting an application for dismissal from the function of a lay judge, the second, the provision of information contained in the pension files of the Social Insurance Institution.

Pursuant to the wording of Art. 50 sec. 3 u.s.u.s. data collected on the insured person's account, referred to in art. 40, and on the account of the payer of the contributions referred to in art. 45, may be made available to courts, prosecutors, tax authorities, the National Labor Inspectorate, the Internal Supervision Office, the Police, the Border Guard, court bailiffs, enforcement authorities within the meaning of the Act of 17 June 1966 on enforcement proceedings in administration (Journal of Laws No. of 2017, items 1201, 1475, 1954 and 2491 and of 2018, items 138 and 398), to the minister competent for the economy to the extent necessary to resolve cases conducted pursuant to Art. 29, art. 32 and art. 34 of the Act of March 6, 2018 on the Central Register and Information on Economic Activity and the Information Point for Entrepreneurs, the minister competent for family matters, the minister competent for social security, authorities providing family benefits, benefits from the maintenance fund and childcare benefits, social assistance, poviat family assistance centers, public employment services, the Polish Financial Supervision Authority as well as the voivode and the Head of the Office for Foreigners in the scope of conducted proceedings regarding the legalization of foreigners' stay in the territory of the Republic of Poland, taking into account the provisions on the protection of personal data.

The above-mentioned provision clearly shows that the legislator provided for a closed catalog of entities authorized to receive such data. Importantly, in the case of the court, no goal was indicated, the achievement of which would be necessary for the implementation of the indicated right. The only restriction imposed on the court under the said provision is the requirement to take into account the provisions on the protection of personal data.

In connection with the above, attention should be paid to Art. 166 § 2 point 4 of the BRL, which clearly stipulates that the commune council which selected the lay judge may dismiss him at the request of the president of the competent court, in the event of incapacity to perform the duties of a lay judge. The said provision has been thoroughly discussed in the doctrine. First of all, as it is indicated, “the president of the court, in the event of disclosure of the circumstances referred to in § 2, may not remove a lay judge from the list of lay judges of a given court, as deleting from the list is possible only after the lay judge is dismissed by the municipal council (argument from §3). The conditions listed in § 2 points 2-4 are of an assessment nature. The inability to perform the duties of a lay judge is related to the physical or mental state of a given person and may result from appropriate documents (see Gudowski, Jacek, Ereciński, Tadeusz and Iwulski, Józef. Art. 166. In: Commentary to the Act - Law on the System of Courts) law, [in:] Law on the System of Common Courts. Act on the National Council of the Judiciary. Commentary, 2nd edition. Wydawnictwo Prawnicze LexisNexis, 2009.)

Moreover, the literature rightly notices that "the finding of a lay judge's inability to adjudicate may be related to the physical or mental state of a given person and may be confirmed by relevant documents, for example, with a certified disability." (see Świetlicka, Maria. Art. 166. In: Law on the System of Common Courts. Commentary to the changes introduced by the Act of April 15, 2011 amending the Act - Law on the System of Common Courts. Legal Information System LEX, 2011).

In the above context, attention should be paid in the present case to 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 complainant's personal data were provided as part of the control of the legality of the lay judge's performance by the President of the Court. Obtaining information about the applicant's health, which would potentially prevent her from exercising it, had to be verified in the course of the investigation. It also seems understandable that the information obtained in this way was included in the application, otherwise it would not be possible to fully explain the reasons for such a request. These activities were, however, carried out on the basis of the already indicated Art. 50 sec. 3 u.s.u.s and art. 166 § 2 point 4 of the BRL, the standards of which provide a sufficient legal basis.

The disclosure of information on the conviction handed down against S. K. was made in the context of the present application concerning the applicant's dismissal from the function of a lay judge at the District Court in O. The judgment had already been made public and, moreover, its reference was directly related to the actions taken by the applicant. It was supposed to motivate the applicant's actions, which, in the opinion of the President of the Court, struck the dignity of the court, which could

constitute a premise under Art. 166 § 2 point 3 p.u.s.p. Therefore, it should be noted that, according to the position of the Supreme Court, “it cannot be denied that in some cases information about a crime committed in the past may be important when assessing moral qualifications, guarantees of correct operation or specific predispositions. However, such a need must be treated as exceptional, arising in specific circumstances and related to the need to protect particularly valuable values. Disclosure of such a fact should in principle not be made in public, even for persons discharging public office. Nevertheless, the admissibility of disclosing such a fact also in public, if required by the public interest, is not excluded. However, it will be necessary each time to balance the right to freedom of expression and information and the right to protect one's good name by taking advantage of the benefit of obliterating a sentence ”(see judgment of 29 October 2015, I CSK 893/14).

It should also be borne in mind that in the jurisprudence of the Constitutional Tribunal (cf. the judgment of 13 July 2004, K 20/03, OTK ZU No. 7 / A / 2004, item 63) and in the jurisprudence of the Supreme Court (cf. the judgment of 20 April 2001, I CSK 500/10, OSNC 2012, No. 2, item 19) allowed for the possibility of interference with the right to privacy of persons performing public functions, thus excluding the possibility of recognizing these activities as unlawful. A similar position was adopted by the Supreme Administrative Court, which stated that also the protection of the privacy of persons applying for public functions is limited, and the limits of this restriction are, inter alia, whether information about a person is relevant to the public function to which they aspire (cf. judgment of 13 September 2013, II OSK 1413/13). Therefore, it seems correct to conclude that the processing of S.K.'s data meets the above conditions, and thus was permissible in the light of applicable law.

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 an authority controlling or supervising the correct application of substantive and procedural law in matters 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 number II SA 401/00).

In justifying the request, the complainant also referred to the criminal provisions of the Act on the Protection of Personal Data. 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 interested party may request the Inspector General for Personal Data Protection (currently the President of the

Personal Data Protection Office) to issue an administrative decision only, 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 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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