THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 01

February

2019

DECISION

ZSOŚS.440.133.2018

Based on Article. 104 § 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, art. 22, art. 23 sec. 1 point 2 and art. 26 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, item 1000, as amended) after conducting administrative proceedings regarding the complaint of Mr. PD on the refusal to provide the personal data of Ms AU by the District Prosecutor in R. being the prosecutor of the District Prosecutor's Office in R., in the scope of residence address and PESEL number,

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. PD, hereinafter referred to as the "Complainant", about the refusal to disclose by the District Prosecutor in R. PESEL number. In the content of the complaint, the Complainant pointed out that the requested personal data are necessary for him to fulfill the formal requirements of the lawsuit for the protection of personal rights, which he brought against the abovementioned persons to the District Court in R. As emphasized by the complainant, he requested the disclosure of the data in question to the District Prosecutor in R. as the official superior of Ms AU, because in his opinion he had a legal interest in obtaining such data, however, his request was met with refusal. Moreover, in the complainant's opinion, the unjustified refusal to provide personal data by the District Prosecutor in R. in the above scope prevents him from pursuing claims in civil proceedings.

Considering the above, the Complainant asked the Inspector General for Personal Data Protection to "disclose" his personal data in the above scope in order to bring a civil action.

In the course of the proceedings initiated by the complaint, the Inspector General for Personal Data Protection (currently the President of the Office for Personal Data Protection) obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

The applicant, in a letter of [...] June 2014, requested the District Prosecutor in R. to disclose the personal data of the AU of the prosecutor of the local prosecutor's office - with regard to the address of residence and the PESEL number in connection with the submission of a lawsuit with the Regional Court in R. infringement of personal rights. Justifying his request, he argued that the data was necessary for him to fulfill his legally justified purpose, which was to bring a civil claim. In response, the R. District Prosecutor refused to provide the requested data until the relevant procedural decisions were taken by the R. District Court, justifying it with the possible lack of passive ID on the part of the prosecutor against whom the applicant had initiated civil proceedings.

Then, by letters of [...] December 2014, the Inspector General for Personal Data Protection informed the complainant and the District Prosecutor in R. about the initiation of explanatory proceedings in the case and asked the District Prosecutor in R. to comment on the content of the complaint and provide written explanations. by enclosing a copy of the complaint.

In the submitted explanations, the District Prosecutor in R. indicated that he was collecting and processing personal data of prosecutor A. U. in his personal files, indicating art. 22^1 and art. 94 point 9a of the Act of June 26, 1974, the Labor Code and the order No. [...] of the District Prosecutor in R. of [...] March 2005 on the principles of processing and securing personal data in the District Prosecutor's Office in R. . and district prosecutor's offices [...]. At the same time, the District Prosecutor in R. stated that he had indeed refused P. D. to disclose the personal data of the prosecutor of the unit subordinate to him in the requested scope until the Regional Court in R. made a procedural decision regarding the possibility of the prosecutor's lack of passive ID expressed in Art. 417 of the Civil Code. In the submitted explanations, the Regional Prosecutor in R. also indicated that, after verifying the applicant's claims regarding the filing of the claim for protection of personal rights, the impact of the claim in the administration office of the above-mentioned Of the Court, however, by a non-final decision of [...] July 2014, the Regional Court in R. returned the claim to the applicant. Additionally, the District Prosecutor in R. mentioned that the Prosecutor's Office, after conducting the preparatory proceedings, submitted to the District Court in R. the indictment against the applicant, which constituted its autonomous decision.

It should be noted here that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data

(Journal of Laws, item 1000, as amended), i.e. May 25, 2018, the Office of the Inspector General for Data Protection Personal Data has become 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. Any activities undertaken by the Inspector General for Personal Data Protection before the above-mentioned day remain effective.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

The Act of August 29, 1997 on the protection of personal data defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Act).

Processing, including sharing data, may be considered lawful only if the data controller demonstrates that at least one of the material conditions for the processing of personal data is met. These conditions relating to all forms of data processing listed in art. 7 point 2 of the above-mentioned act, including making them available, have been enumerated in Art. 23 sec. 1 of the quoted act. Pursuant to this provision, data processing is allowed when the data subject gives his consent, unless it concerns the deletion of data concerning him (point 1), it is necessary to exercise the right or fulfill the obligation resulting from the law (point 2), it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract at the request of the data subject (point 3), it is necessary to perform the tasks specified by law carried out for the public good (point 4), it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not violate the rights and freedoms of the data subject (point 5). The occurrence of certain factual circumstances, for example in the realities of the present case, of disclosing the public prosecutor's data, must be associated with the need for the data controller to assess the fulfillment of certain conditions for the legalization of data processing.

In the circumstances of the case at hand, it should be emphasized above all that the legal justification for disclosing this data is not Art. 23 sec. 1 point 2 of the Act, the scope of which should apply to situations where the source of the right (obligation) is directly a legal provision, or Art. 23 sec. 1 point 5 of the Act, emphasizing that the legitimate purpose pursued by the recipient of the data is legally justified. The legislator stipulated that processing on this basis is permissible as long as it does not violate

the rights and freedoms of the data subject. It should be noted that it is important to properly balance the interests of the entity requesting the provision of data and the data controller, and above all of the data subjects. The right to the protection of personal data, as one of the elements of the right to protection of one's own privacy, has its source in the provisions of Art. 47, art. 49, art. 50 and art. 51 of the Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483, as amended). In practice, the right to the protection of personal data, as mentioned above, is limited due to the public interest or the legitimate interest of others, and therefore it is not an absolute right, as most constitutionally protected rights. In the light of the provisions of the Constitution, the content of Art. 51, which stipulates that no one may be obliged, other than under the Act, to disclose information about him (section 1). Public authorities may not obtain, collect, or make available information about citizens other than that necessary in a democratic state ruled by law (paragraph 2). Everyone has the right to access official documents and data files relating to him. Limitation of this right may be specified by statute (section 3). At the same time, everyone has the right to request the correction and removal of untrue, incomplete or collected information in a manner inconsistent with the law (section 4). The rules and procedure for collecting and sharing information are specified in the Act (section 5). The criteria for weighing the above-mentioned constitutional values at stake are assessed from the point of view of the proportionality mechanism. In other words, it is necessary to ensure a balance between the legally protected values, which in turn will allow the realization of claims in order to protect the good name, while guaranteeing the protection of privacy against unauthorized access to it by third parties, while respecting the interests of the individual and the State to which it belongs. see the obligation to ensure order and security of its citizens (see the judgment of the Supreme Administrative Court of April 18, 2014, file reference number I OSK 2789/12).

Against the background of the case at hand, the request for disclosure of personal data was related to P. D.'s intention to pursue a claim at the civil law level. In order to assess the appropriate proportions in terms of the legal interest invoked by the Complainant, it was necessary to take into account the protection of the data of the person whom he wanted to obtain, as well as to consider the actual intentions that accompanied the Complainant requesting the disclosure of data. It is worth pointing out that it was of key importance to determine whether the legal interest of the entity was real and real. Moreover, the intention of the person requesting the disclosure of data for the purposes of court proceedings should be analyzed, in particular whether, in the circumstances of a specific factual state, the fact that this person invokes the will to initiate court proceedings is not of an apparent nature. In the opinion of the President of the Office for Personal Data Protection, the Complainant was

obliged to properly demonstrate the relationship between his legal situation and the activity of the authority, i.e. that his legal sphere depends on obtaining a PESEL number and the address of residence of the person against whom he brought the action. At this point, it should be noted that the personal data of the entity that the Complainant wanted to obtain related to a person having the status of a public official within the meaning of Art. 115 § 13 point 3 of the Criminal Code, i.e. a person holding a position and performing functions related to the broadly understood administration of justice.

Public prosecutors of common organizational units of the public prosecutor's office perform their tasks on the basis of a number of normative acts regulating both the organization of the public prosecutor's office and the mode of its operation. Among the legal acts of fundamental importance for the functioning of the Public Prosecutor's Office, the following should be mentioned in particular: the Act of January 28, 2016, Law on the Public Prosecutor's Office (Journal of Laws 2017, item 1767, as amended) and the Act of June 6, 1997 The Code of Criminal Procedure (Journal of Laws 2018, item 1987, as amended), hereinafter referred to as "the Code of Criminal Procedure". The aforementioned legal acts constitute the legal basis for the processing by the Prosecutor's Office, as part of its proceedings, of data of persons who are their participants. Pursuant to Art. 3 sec. 1 of the Act of 28 January 2016 Law on the Public Prosecutor's Office, this body performs tasks in the field of prosecuting crimes and upholds the rule of law, including by conducting or supervising preparatory proceedings in criminal cases and by performing the function of a public prosecutor before the courts (Article 3 § 1 point 1). On the other hand, detailed regulations on the mode of operation of the Public Prosecutor's Office as part of its preparatory proceedings are contained in Chapter VII of the Code of Criminal Procedure. Provisions of the indicated section of the CCP indicate that preparatory proceedings are conducted or supervised by the prosecutor, and within the scope provided for in the act, they are conducted by the Police (Article 298 § 1 of the CCP). In turn, art. 297 of the Code of Criminal Procedure sets the goals that the Prosecutor's Office is facing in the course of its proceedings, i.e. clarifying the circumstances of a given case in order to determine: whether a prohibited act has been committed and whether it constitutes a crime, detection and, if necessary, apprehending the perpetrator, collecting and securing relevant evidence for the court. As regards the performance of the above tasks, the Public Prosecutor's Office is not only entitled, but also obliged, to collect and further process the data of the persons concerned by the proceedings.

The assessment of the circumstances of the case in the light of the above-mentioned legal provisions leads to the conclusion that the actions of the Public Prosecutor's Office in the scope of processing the complainant's personal data, as a party to the

preparatory proceedings, should have been assigned the value of legality. As indicated in the earlier part of this argument, the provision of Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data, it constitutes the legality of the processing of personal data in a situation where it is necessary to exercise the right or fulfill an obligation resulting from a legal provision. The Public Prosecutor's Office processes personal data (including the Complainant's) within the framework of the rights it exercises and the obligations arising from the provisions of the above-mentioned legal acts. Therefore, it follows that the applicant cannot accuse the Prosecutor's Office of collecting and processing his data unlawfully. However, the subject matter of the examination of this case is, in particular, the refusal by the District Prosecutor in R. to disclose personal data of the prosecutor supervising the proceedings to which the applicant was a party. The District Prosecutor in R. as the reason for the refusal, gave the possible lack of passive ID on the part of the public prosecutor resulting from the content of Art. 417 § 1 of the Act of 23 April 1964 Civil Code (Journal of Laws 2018, item 1025 as amended), hereinafter referred to as "the Civil Code". Pursuant to the wording of the cited provision, the State Treasury is liable for damage caused by the culpable behavior of a state official only if the damage occurred in the course of performing the entrusted activity. This entrustment may apply not only to the officer causing the damage directly, but also to state officials performing supervisory or control activities over the direct perpetrator of the damage, and therefore there must be a connection between the performance of the activity entrusted to the officer and the damage caused. Without going too deeply into civilian considerations relating to these issues, which should be the subject of analysis on the basis of civil and not administrative proceedings. It could not be ignored whether the indicated legal basis falls within the conditions for making the data available, referred to in Art. 23 sec. 1 point 5 of the Act of August 29, 1997 on the protection of personal data. Since processing is permissible on this basis only when it does not violate the rights and freedoms of the data subject, the subject of assessment in the proceedings are therefore the rights and obligations of this person. It should be emphasized that the decision of the District Prosecutor in R. denying the complainant the data in the requested scope depended on the decision of the civil court. In the opinion of the President of the Personal Data Protection Office, the District Prosecutor in R., at that stage of the proceedings, properly protected the data of his subordinate prosecutor. On the other hand, considering the legitimate aim invoked by the applicant, it is necessary to return to the issue of "intention" and the form of the interest that accompanied the public prosecutor supervising the preparatory proceedings, already mentioned in this study. As it has already been raised, the intention of the party requesting the data cannot be of an apparent nature, and the interest must be real, specific, and should also be based on a specific norm of

substantive law.

The indicated features of a legal interest lead to the conclusion that it should be a real interest, not a hypothetical one, capable of being objectively verified. An applicant applying for disclosure of information from data files has a legal interest in obtaining data of a person against whom an action was brought before a common court in a situation where the common court "obliged him" as the plaintiff to provide the requested data of the defendant. This view is justified in the judicial and administrative judgments, for example in the judgment of the Supreme Administrative Court of 29 May 2012, in case no. no. II OSK 417/11, the judgment of the Supreme Administrative Court of February 22, 1984 in case no. I SA 1748/83 and the judgment of the Supreme Administrative Court of November 29, 2018. Moreover, the key issue was to determine whether the applicant's right is based on the provisions of substantive law, which in the actual circumstances of the case are applicable.

In the realities of the present case, the mere filing of a claim in court against the prosecutor supervising the preparatory proceedings may not automatically prejudge the existence of a legal interest, as it does not confirm its reality. It should be emphasized that the applicant had not documented, for example, in the form of a written obligation of the court obliging him to provide the data requested to the District Prosecutor in R. The applicant used only a copy of the statement of claim with a presentation of the application office of the District Court in R. it should be noted that bringing an action is not an irrevocable action, because pursuant to Art. 203 § 1 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2016, item 1822, as amended), hereinafter referred to as the "CCP" it follows that the statement of claim may be withdrawn without the consent of the defendant until the commencement of the hearing, and if the withdrawal is connected with the waiver of the claim - until the judgment is issued. It follows from the above that the action taken by the Complainant, consisting in attaching a copy of the statement of claim to the request for disclosure, was a sham, not a real necessity, causing certain legal consequences for him.

Taking into account the above, it should be noted that the only condition that could constitute the applicant's legally justified purpose in obtaining the above-mentioned data is the existence of a legal provision for obtaining the data necessary to initiate a civil proceeding. Although the provisions of the civil procedure impose certain formal conditions that must be met by a pleading aimed at initiating a given proceeding, nevertheless, pursuant to Art. 187 of the Code of Civil Procedure it does not follow that determining the PESEL number and indicating it in the statement of claim was an obligation on the person submitting the claim, which would mean that the claim could not be properly processed. In order to organize the above issues,

it should also be added that in the current legal situation, the plaintiff is only obliged to indicate his own PESEL number, and not his opponent in the proceedings (Art.126 § 2 point 2 of the Code of Civil Procedure). However, pursuant to Art. 208¹ of the Code of Civil Procedure it is the court of its own motion that determines the PESEL number of the defendant who is a natural person, if he is obliged to have it or does not have it without such obligation. Therefore, it follows that the claimant is not required to provide the court with the defendant's PESEL number, but should provide such information that will enable the determination of the above-mentioned the number of the defendant by the court. At the same time, attention should be paid to the literal and fiercely quoted Art. 126 § 2 point 2 of the Code of Civil Procedure This provision does not require the claimant to indicate the address of the natural person defendant in the first pleading. Place of residence, pursuant to art. 27 § 2 of the Code of Civil Procedure, is determined in accordance with the provisions of the Civil Code, i.e. in accordance with Art. 25 of this code, the place of residence of a natural person is the place where the person is staying with the intention of permanent residence, not a specific address. The provision of Art. 126 of the Code of Civil Procedure orders to indicate not the address but the place of residence. It is enough, therefore, to indicate the town. The applicant was aware of the basic information about the person whom he intended to sue, such as the information contained in the indictment. It should be emphasized that P. D. knew the official position of the data subject and the seat of the specific unit of the Public Prosecutor's Office in which the person held his office. He was therefore in possession of sufficient data to satisfy the formal requirements of the lawsuit. In the light of the cited provisions of civil procedure, it must be stated that the lack of a private address of the defendant does not prevent either suing or establishing the jurisdiction of the local court, or conducting the trial. The court was solely and exclusively competent to request the applicant with an appropriate order ordering the possible supplementation of the statement of claim with the data requested from the District Prosecutor in R. Meanwhile, the applicant did not submit a document that would objectively and clearly confirm the current need in obtaining data address and PESEL number, such as a court order to indicate specific data of the person whom he intended to sue. The very declaration of the initiation of court proceedings determines the lack of legitimate legal and factual grounds for demonstrating a legal interest (see the judgment of the Supreme Administrative Court of July 26, 2016, in the case No. II OSK 286/16).

Complementarily, the principle of legality expressed in art. 26 sec. 1 point 1 of the Act of August 29, 1997 on the Protection of Personal Data, pursuant to which the data controller should exercise special care to protect the interests of data subjects, and in particular is obliged to ensure that these data are processed in accordance with right. In addition, the administrator of

personal data should process them for specified lawful purposes and not subject them to further processing inconsistent with these purposes (Article 26 (1) (2) of the Act). In order to provide personal data, which is one of the legal forms of personal data processing within the meaning of the Act, one of the conditions listed in art. 23 of the Act. Meanwhile, in the case at hand, this condition was not met. It should be noted that the District Prosecutor in R., taking into account all the circumstances in which the applicant wanted to obtain the prosecutor's data and their scope, properly secured the legal interests of his subordinate and, considering the possible lack of passive ID on her side, refused to disclose the data. In addition, in the opinion of the President of the Personal Data Protection Office, the special status of a public prosecutor having its authorization in the provisions of generally applicable law does not entitle to interfere in the course of proceedings conducted by law enforcement agencies. It cannot be denied that the District Prosecutor in R., who in the explanations, indicated that the lodging of the indictment against the applicant constituted an autonomous decision of the Prosecutor's Office. It is undisputed that the President of the Personal Data Protection Office has the competence under Art. 18 of the cited act to take appropriate actions in cases of violations of the provisions on the protection of personal data, including issuing a decision ordering the data controller to restore the legal state, in particular by obliging him in this form, inter alia, to share the data. However, it should be concluded that in the case under consideration the refusal to disclose the personal data of the public prosecutor supervising the preparatory proceedings in which the applicant was a participant was fully justified because PD did not demonstrate a real legal interest, and thus it had to be assessed that the prosecutor's legal interest outweighed the interest of the applicant. .

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, as amended) from this decision, the party has the right to submit an application for reconsideration within 14 days from the date of delivery side decision. 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.

2019-04-16