

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

April

2019

DECISION

ZSPU.440.146.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), 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, as amended) in connection with joke. 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) and with Art. 57 sec. 1 points a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal of Laws UE L 119 of 04/05/2016, p. 1, as amended) after conducting administrative proceedings regarding the complaint of the State B. and the Ministry of Finance, residing in Z., for the processing of their personal data by Spółdzielnia Mieszkaniowa "M." with the seat of Z., the President of the Personal Data Protection Office discontinues the proceedings.

Justification

The President of the Personal Data Protection Office, hereinafter referred to as the President of the Personal Data Protection Office, received a complaint from Mr. B. F. and Mrs. M. F., residing in Z., hereinafter referred to as the Complainant, for the processing of their personal data by Spółdzielnia Mieszkaniowa "M." with the seat of Z., hereinafter referred to as the Cooperative.

In the content of the complaint, the complainants indicated that the Cooperative processed their personal data without a legal basis by displaying the announcement of the court bailiff on the auction with the indication of the premises (block and apartment number). the bailiff about the auction of the apartment by the bailiff. Our names and surnames were hidden in the advertisement, but the block and apartment number were left, which was not a problem for tenants to determine who it was for. (...)”.

On the basis of the collected evidence, the President of the Personal Data Protection Office established the following facts:

Housing Cooperative "M." in the submitted explanations of [...] June 2015, reference number [...], confirmed, as cited: (...) we explain that the Bailiff's notice [...] on [...] of [...] February 2015 on the first auction of the right to the premises located in Z., additionally anonymised with regard to the debtor's data, including his name and address, which does not have to be the same as the address of the right to the premises (...) ". "(...) Currently, the Cooperative does not process the personal data of the Complainants and does not make the personal data of the Complainants available in any way on the notice boards or in other places (...)".

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

At the outset, it should be noted that on May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), the General Office The Personal Data Protection Inspector 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, pursuant to 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. All actions taken by the Inspector General for Personal Data Protection before May 25, 2018, remain effective (Article 160 (1-3) of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 18 sec. 1 of the Act of August 29, 1997. In the event of violation of the provisions on the protection of personal data, ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementation , updating, rectification, disclosure or non-disclosure of personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data.

Pursuant to Art. 57 sec. 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on the protection of data) (Journal of Laws EU.L.2016.119.1 of 04/05/2016, p. 1, as amended), hereinafter referred to as the GDPR, without prejudice to other tasks specified under this Regulation, each

supervisory authority on its territory monitors and enforce the application of this Regulation (point a) and handle complaints lodged by the data subject or by a body, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (point f).

Pursuant to Art. 5 sec. 1 GDPR, personal data must be: a) processed lawfully, fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency"); b) collected for specific, explicit and legitimate purposes and not further processed in a manner inconsistent with these purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is not recognized in accordance with Art. 89 sec. 1 to be incompatible with the original objectives ("purpose limitation").

Pursuant to Art. 6 sec. 1 GDPR, processing is lawful only in cases where - and to the extent that - at least one of the following conditions is met: a) the data subject has consented to the processing of his personal data in one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular when the data subject is a child.

Catalog of the above-mentioned the prerequisites are closed, they are, in principle, equal, each of them is autonomous and independent, which means that the fulfillment of one of them determines the lawful processing of personal data. Therefore, in the absence of the data subject's consent, it cannot be considered that the data controller processes his personal data without a legal basis, in breach of the applicable provisions on personal data, in particular the GDPR, because the legislator has allowed for the possibility of data processing also on the basis of other conditions. However, it should be remembered that the assessment of the admissibility of data processing must be made each time on an individual basis, taking into account the specific circumstances and purposes of data processing.

After considering the evidence gathered in the case, the President of the Office states that the Cooperative provided the Complainants' personal data by displaying on publicly available notice boards located in buildings belonging to the Cooperative's resources information containing the Complainants' data on the number of their apartment and the Complainant's apartment without legal basis, i.e. without meeting any of the prerequisites for the legality of the processing of personal data, as specified in art. 6 GDPR. The information contained in the above-mentioned the advertisement constituted personal data and allowed for the identification of the persons to whom the data pertained, because it was easy for people living in the same building to associate the block and apartment number with a specific person.

Pursuant to Art. 953 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2018, item 1360 as amended), the bailiff announces an auction by public announcement, in which he lists, among others the real estate to be sold, with an indication of its location and economic destination, the debtor's name and surname, along with the land register and the place of its storage, or with an indication of the collection of documents and the court in which the collection is kept (§ 1 point 1) . Based on Article. 955 of the Code of Civil Procedure, an auction notice should be published at least two weeks before its date on the website and on the notice board of the court supervising the enforcement of real estate, at the premises of the commune authority competent for the location of the real estate and on the website of the National Council of Bailiffs (§ 1). At the request and expense of the party, the bailiff may also order the advertisement in another manner indicated by him, in particular in a daily newspaper in a given locality (§ 2). There is no legal basis in the aforementioned provisions for posting notices about auctions by the Cooperative on buildings within its resources.

Referring to the questioned disclosure of the Complainants' data, which consisted in displaying on a public notice board information containing the Complainants' data regarding the number of their block and the Complainants' apartment, it should be noted that this process is currently not taking place, because, as stated by the Cooperative, these announcements have been removed. Therefore, there is no breach of data protection regulations at present.

In view of the above, it should be noted that pursuant 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 the Code of Administrative Procedure, when the proceedings for any reason became redundant in whole or in part, the authority public administration issues a decision to discontinue the proceedings, respectively, in whole or in part.

The doctrine of administrative law indicates that the pointlessness of the administrative procedure referred to in Art. 105 § 1 of

the Code of Administrative Procedure, means that in a given administrative procedure there is no element of a material relationship, which consequently prevents the administration authority from issuing a decision resolving a given matter as to the substance. It is also emphasized that the above-mentioned the premise for discontinuation of administrative proceedings may also arise in the course of pending proceedings, ie in a case already pending before a given authority [1].

In turn, the jurisprudence of administrative courts indicates that the groundlessness of the proceedings means a situation in which the administrative case ceases to exist. In order for such a state of affairs to take place, a legal or factual event must occur that would make the special relationship between the fact (the factual situation of a given entity) and the law (the legal situation of a given entity) ceased to exist, with which substantive law is linked by the obligation to make a norm more concrete in the form of issuing an administrative decision [2].

Referring the above comments to the facts of this case, it should be noted that the President of the Office, acting on the basis and within the scope of the competences conferred on him by the provisions of the GDPR, when issuing a decision in a specific case, examines the factual and legal status as at the date of issuing a given decision. The findings of the President of the Office show that the Cooperative removed the bailiff's notice, posted on publicly available notice boards located in buildings belonging to the Cooperative's resources, containing the complainants' data on the number of their block and flat. Considering that at present the Cooperative no longer processes the personal data of the Complainants in the manner questioned by them, further proceedings in the present case should be considered redundant. Therefore, it is subject to redemption pursuant to Art. 105 § 1 of the Code of Administrative Procedure.

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

Based on Article. 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) in connection with joke. 21 sec. 1 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 joke. 129 § 2 and art. 127 § 3 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149), the party dissatisfied with this decision is entitled to, within 14 days from the date of its service, the right to submit to the President of the Personal Data Protection Office an application for reconsideration of the case (address: Personal Data Protection Office, ul. Stawki 2, 00-193 Warsaw). If a party does not want to exercise the right to submit an application for reconsideration, it has the right, pursuant to Art. 52 § 3 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2016, item 718,

as amended) to lodge a complaint against the decision with the Provincial Administrative Court in Warsaw within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Personal Data Protection Office. The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs.

[1] B. Adamiak, J. Borkowski, Code of Administrative Procedure, Commentary, C.H. Beck, Warsaw 2006, p. 489

[2] yes, the Provincial Administrative Court in Łódź in the judgment of 18 April 2013, file ref. no. II SA / Łd 1194/12

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