

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

July

2019

DECISION

ZSOŚS.440.2.2019

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) 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. 100 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125) after administrative proceedings regarding the complaint of the Lord of the Republic of Poland against disclosure by the President of the District Court in O. personal data from the files of court proceedings for an unauthorized person,

I discontinue the proceedings

Justification

The Office for Personal Data Protection received a complaint from Mr. R. P. (hereinafter referred to as "the Complainants") about disclosure by the President of the District Court in O. of personal data for an unauthorized person in connection with the proceedings in the case of misdemeanor.

In justifying his request, the applicant argued that [...] on November 2018, in the District Court in O., the files of the petty offense proceedings had been made available to a person who was not a party to the proceedings, and thus the personal data contained therein.

At the outset, it should be noted that on the date of entry into force of the Act of May 10, 2018 on the protection of personal data, i.e. May 25, 2018, the Inspector General for Personal Data Protection became the President of the Office for Personal Data Protection. According to Art. 100 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry of this Act into force, are carried out on the basis of the existing provisions, ie the provisions of the Act of August 29, 1997 on the protection of personal

data (Journal of Laws of 2016, item 922, as amended).

In the course of the proceedings initiated by the complaint. The President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

Undoubtedly, it is impossible to deny the correctness of the applicant's assertions that the event described in the complaint took place, which is also indicated by the content of the letter of the Vice-President of the District Court in O. of [...] December 2018 (file reference [...]) (k .2-3). At the same time, it is worth noting that the President of the District Court in O., in a letter of [...] June 2019, indicated that due to the wording of Art. 175dd § 1 of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended), which was added by the Act of 14 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), the President of the District Court exercises supervision over the processing of personal data, the administrator of which is the district court.

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

First of all, it should be emphasized that, as the President of the District Court rightly pointed out in O. On February 6, 2019, the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), hereinafter referred to as: "the Act of December 14, 2018". Pursuant to Art. 1 point 3, the said act regulates the method of supervising the protection of personal data processed by competent authorities for the purposes referred to in point 1 (i.e. recognizing, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as execution of pre-trial detention, penalties, order penalties and coercive measures resulting in deprivation of liberty), with the exception of personal data processed by the prosecutor's office and courts. However, from the wording of Art. 3 point 1 of the Act of December 14, 2018, it follows that the provisions of the cited Act do not apply to the protection of personal data contained in the files of cases (...) conducted, inter alia, on the basis of the Act of August 24, 2001 - Code of Conduct in Petty Offenses (Journal of Laws of 2019, item 1120, as amended).

At the same time, it should be noted that Art. 71 of the Act of December 14, 2018, he amended the Act of July 27, 2001, Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended) by adding Art. 175 db, from which it follows that the courts are the controllers of personal data processed in court proceedings as part of the administration of justice or the implementation of tasks in the field of legal protection. In turn, Art. 175 dd § 1 of the cited act stipulates the principle that the

supervision over the processing of personal data, the data controllers of which are courts, are performed by courts within the scope of the activity of the district court - president of the regional court, district court - president of the court of appeal, court of appeal - the National Council of the Judiciary.

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 natural persons whose personal data are or may be processed in data files (Article 2 (1) of the Act). The processing of personal data is lawful only if their administrator has one of the material conditions for the admissibility of processing, listed in art. 23 sec. 1 of the Act (processing, in accordance with Article 7 (2) of the Act, is understood as any operations performed on these data, including their sharing). Each of the ones indicated in Art. 7 pts 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in Art. 23 sec. 1 point 1-5 of the act in the case of the so-called ordinary data or art. 27 sec. 2 points 1-10 for sensitive data.

Nevertheless, taking into account the factual and legal findings, one should express the conviction that in the realities of the case, the President of the Personal Data Protection Office, within the powers conferred on him by the Act, cannot interfere in the course of proceedings conducted by other authorities authorized under separate provisions. Thus, nothing can influence the specific decisions taken by the competent authorities in order to establish the facts of a given case. The above is confirmed by the jurisprudence of the Supreme Administrative Court, which in its judgment of March 2, 2001 (file number 11 SA 401/00) stated that the Inspector General for Personal Data Protection (currently: President of the Office for Personal Data Protection) is not a controlling body nor supervising the correct application of substantive and procedural law in matters falling within the competence of other authorities, services or courts, whose decisions are subject to review in the course of the instance or otherwise specified by appropriate procedures. Therefore, the personal data protection authority is not competent to control the procedural steps taken by another authority in the proceedings with the use of personal data, be it a prosecutor or a court, as was the case in this case (see the judgment of the Provincial Administrative Court in Warsaw of February 27, 2012, reference number II SA / Wa 2848/11).

Therefore, given the lack of competence of the President of the Personal Data Protection Office to substantively resolve this case, the proceedings initiated by the complaint filed by the Complainant had to be discontinued as redundant, 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: "k.p.a."). The doctrine indicates that: "the objectivity of administrative proceedings", as provided for in Art. 105 § 1 of the Code of Civil Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that it is not possible to settle the matter by deciding on its merits. The discontinuation of the administrative proceedings is a formal decision that ends the proceedings, without a substantive decision (see the judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, file reference number U OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds for resolving the substance of the case, and continuing the proceedings in such a situation would make it defective, significantly affecting the outcome of the case. Only in passing, it should be noted that while the applicant's intention is to continue this case, in accordance with the above-mentioned legal provisions, he should apply to the body supervising the processing of personal data in the scope of judicial activity in the District Court in O.

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

Based on Article. 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), from this decision, the party 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 (address: ul. Stawki 2, 00-193 Warsaw). 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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