

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

June

2019

## DECISION

ZSOŚS. 440/11/2019

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. 12 point 2, art. 22, art. 23 sec. 1 point 2, art. 27 sec. 1 and 2 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 a complaint from Mr. AG, residing in J., to disclose his personal data to an unauthorized person by judges or employees of the District Court in K.,

I discontinue the proceedings

### Justification

The Office of the Inspector General for Personal Data Protection (currently the President of the Office for Personal Data Protection) received a complaint from Mr. A. G., residing in J., hereinafter referred to as "the Complainant", about disclosure of his personal data to an unauthorized person, heard in the case of the Disciplinary Court of the Bar Association in R. ref. No. files [...] pending against the applicant, by judges or employees of the District Court in K.

In the content of the above-mentioned of the complaint The complainant indicated that the report concerned disclosure to an unauthorized person of information on the proceedings pending under his action against the tenant of the apartment building in J. owned by the complainant, the file number [...] and information on the content of the complainant's pleading from [...] January 2015 submitted to this case. An unauthorized person to whom the Complainant's personal data has been disclosed is an attorney who, during a hearing before the Disciplinary Court of the Bar Association in R., in the case No. in K.

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. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the 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 in accordance with the principles set out in the Code of Civil Procedure. In the course of the proceedings initiated by the above-mentioned through the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, familiarized himself with the evidence and made the following arrangements.

In a letter of [...] March 2019, the President of the Personal Data Protection Office informed the complainant about the initiation of proceedings in the case and asked the President of the District Court in K. (hereinafter: the "President of the Court") to submit written explanations. On [...] April 2019, the Office for Personal Data Protection received a letter from the President of the Court (letter number: [...]), explaining that he had conducted an explanatory proceeding, during which it found that judges, referendaries and employees The District Court in K. did not disclose to anyone the information concerning the case with reference number [...]. Moreover, it also pointed out that the files of the case No. [...] do not contain the letter of [...] January 2015.

In view of the above, the President of the Personal Data Protection Office considered the following.

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority has been equipped with powers to sanction any irregularities found in the processing of personal data. This means that the personal data protection authority, assessing the status of the case and subsuming, determines whether the questioned processing of personal data is based on at least one of the premises legalizing the processing of personal data, indicated in art. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the request, or discontinues the proceedings. The issuing of an order to remedy deficiencies in the processing of personal data takes place when the personal data protection authority states that there has been a violation of legal norms in the field of personal data processing. It does not appear from the collected evidence that the applicant's personal data had been disclosed by persons employed at the District Court in K.

Due to the findings made in the course of the conducted administrative proceedings, in particular the fact that in the course of the proceedings initiated by a complaint against the President of the Court, the allegations made by the Complainant had not

been confirmed, the proceedings had to be discontinued as redundant, pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure.

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as the Code of Administrative Procedure, when the proceedings for any reason became redundant in whole or in part, the administration body public issues a decision to discontinue the proceedings, respectively, in whole or in part. The doctrine indicates that: "the redundant nature of administrative proceedings, as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance. The prerequisite for discontinuation of the proceedings may exist even before the initiation of the proceedings, which will be revealed only in the pending proceedings, and it may also arise during the proceedings, i.e. in a case already pending before the administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491). It should also be mentioned the judgment of the Supreme Administrative Court of 21 September 2010, II OSK 1393/09, in which the position was expressed that the pointlessness of administrative proceedings means the lack of any element of the legal relationship, resulting in the fact that it is impossible to settle the case by adjudication its essentially. The discontinuation of administrative proceedings is a formal decision that ends the proceedings, without a substantive decision. Moreover, the Supreme Administrative Court stated in its judgment of 15 January 2010, I OSK 1167/09, that if the procedure is groundless, no decision on its essence can be issued.

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. . The irrelevance of the proceedings may also result from a change in the facts of the case.

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the Personal Data Protection Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office 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) supplementing, updating,

rectifying, or failure to provide 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. The condition for issuing by the authority the decision referred to in the above-mentioned provision is the existence of a breach of the right to the protection of personal data at the time of issuing the administrative decision.

In a situation where the President of the District Court in K. did not disclose the complainant's personal data, the legality examination, in the context of determining the possible existence of premises for the formulation of the order referred to in Art. 18 sec. 1 of the act would of course be redundant.

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 June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096), the parties have 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, 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 delivery of its pages. 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.

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