THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 28

June

2019

DECISION

ZSOŚS.440.50.2019. II

Based on Article. 138 § 1 point 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 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 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000, as amended), following administrative proceedings regarding the application of Mr. S. Ś. (residing Ł.) for reconsideration of the case concluded with the decision of the President of the Personal Data Protection Office of 23 May 2019 (ref. no .: ZSOŚS.440.50.2019) regarding the complaint of Mr. S. Ś. for the processing of his personal data by the Opinion Team of Judicial Specialists at the District Court in E. ([...]),

uphold the contested decision

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint [...] from Mr. S. Ś., Residing in in Ł., (hereinafter referred to as the "Complainant"), concerning the processing of his personal data by the Opinion-Providing Team of Judicial Specialists at the District Court in E. (formerly: Family Diagnostic and Consulting Center in E.).

The complaint indicated that the opinion of [...] July 2015, prepared by the Opinion Team of Judicial Specialists (hereinafter "OZSS") at the District Court in E. (hereinafter the "Court"), contains - without legal basis - personal data The applicant. The applicant complained that he had not consented to be placed in the above-mentioned the opinion of their personal data or the content concerning it, and the opinion was drawn up "without a court order". As the Complainant pointed out when justifying the complaint, "the demand to prevent the use of the challenged (...) content of the opinion in further court proceedings is justified by the fact that the content was included in the opinion without legal justification, in particular without the consent of the court, and therefore should not be the subject of further court proceedings. evaluation of courts in pending court

proceedings ”. Moreover, the Complainant, specifying the categories of his personal data, the protection of which had been violated, indicated the use of the term "paternal grandfather" in the OZSS opinion, identifying - according to the Complainant - his person. In connection with the above-mentioned allegations of the complaint, the Complainant requested the President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office") to initiate proceedings in the case, including demanding the removal of his personal data and his family members from the OZSS opinion.

In the course of the investigation in this case, the President of Personal Data Protection determined as follows:

In a letter of [...] April 2019 ([...]), the President of UODO asked the President of the District Court in E. (hereinafter the "President of the Court") to provide explanations as to whether, and if so, on what basis legal, for what purpose and scope OZSS obtained and processes the complainant's personal data. The President of the Court, referring to the above-mentioned of the letter of the President of UODO, he explained in a letter of [...] April 2019 ([...]) that "the cited in the letter of Mr. S.Ś. the opinion of [...] July 2015 was prepared in accordance with the order of the Court of Appeal in G. (...) and in accordance with the applicable (...) standards of opinion in the ROD-K developed by the Ministry of Justice (...), taking into account also the opinion template in guardianship matters in accordance with the Regulation of the Minister of Justice of 3 August 2001 ”. The President of the Court also pointed out that "(...) despite the access to the applicant's personal data, included in the court documentation, they were not included in the opinion (...)". The President of the Court also argued that "(...) in accordance with the applicable procedure, the opinion after its execution was sent only to the principal to be used by the Court in the pending proceedings, it constituted evidence in the case, it was not made available by the investigators or used by them in other proceedings. ”. After conducting the administrative procedure, on May 23, 2019, the President of the Personal Data Protection Office issued an administrative decision (reference number: ZSOŚS.440.50.2019), discontinuing the procedure in this case.

Then, within the statutory deadline, the Complainant filed an application of [...] June 2019 for reconsideration of the case concluded in the above-mentioned decision. In the justification to the request, the Complainant did not present any new circumstances, i.e. other than those reported so far in the case, which would affect the decision contained in the decision issued by the President of the Personal Data Protection Office.

After re-examining the facts of the case, including reading the entire evidence gathered in the case, the President of UODO considered the following:

It should be pointed out again that, in accordance with the legal status in force on the date of the decision of May 23, 2019, the

processing of personal data in the OZSS took place in connection with the tasks set out in the Act of August 5, 2015 on consultative teams of judicial specialists (Journal U. of 2018, item 708). In the previous legal status, i.e. until December 31, 2015, the tasks and principles of operation of family diagnostic and consultation centers, transformed from January 1, 2016 - pursuant to Art. 25 sec. 1 above of the Act - the opinion-making teams of court specialists were regulated by the provisions of the Act of October 26, 1982 on proceedings in juvenile cases (Journal of Laws of 2018, item 969) and the ordinance of the Minister of Justice of August 3, 2001 on the organization of and the scope of operation of family diagnostic and consultation centers.

According to art. 1 of the Act of August 5, 2015 on opinion-giving teams of judicial specialists (Journal of Laws of 2018, item 708), the tasks of the OZSS include the preparation of opinions on family and guardianship matters and in juvenile cases at the request of the court or prosecutor. on the basis of the conducted psychological, pedagogical or medical examinations. Moreover, pursuant to the said provision, the OZSS act in district courts. The fact that OZSS prepares an opinion only at the request of a court or a prosecutor, which then constitutes evidence in proceedings conducted by courts (Article 1 (1) of the Act of August 5, 2015 on consultative teams of judicial specialists - Journal of Laws of 2018 item 708), determines the relationship between the activities of the OZSS and the administration of justice by the court. The judicial activity of courts is, in turn, determined by the provisions contained, inter alia, in the Act of 17 November 1964, the Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended). Also, the explanations of the President of the Court contained in the letter of [...] April 2019 ([...]) indicate that the activities of the OZSS, which are the subject of the complaint, include activities related to the administration of justice by courts. In addition, the explanations of the President of the Court in comparison with the content of the attached copy of the letter of the Court of Appeal in G. of [...] March 2015 (file reference: [...]) leave no doubt that the opinion was drawn up by the OZSS at the request of the Court of Appeal in G., and therefore with its consent, as a result of admitting it as evidence in court proceedings.

In view of the above, it should be stated that the main reason for the discontinuation of the proceedings in this case is the lack of substantive jurisdiction of the President of the Personal Data Protection Office in the scope of considering cases concerning the processing of personal data by courts in the administration of justice. Pursuant to Art. 175 dd § 1 of the Act of 27 July 2001 Law on the System of Common Courts (Journal of Laws of 2019, item 52, as amended), the supervisory authority towards the Court as the administrator of personal data processed in court proceedings as part of justice or the implementation of legal

protection tasks is not the President of the Personal Data Protection Office, but the president of the court of appeal. On the other hand, pursuant to Art. 175 dd § 2 point 1, as part of the supervision referred to above, the president of the court of appeal (in the case of regional courts) examines complaints from persons whose personal data is processed unlawfully. Thus, the President of the Personal Data Protection Office does not have the power to interfere with the content of documents drawn up as part of the administration of justice by courts, even if these documents contain personal data. In other words, there are no legal grounds for the President of UODO to order the Court to change the content of the above-mentioned documents, including the removal of personal data from them.

It should be clarified that the main purpose of excluding the competences of the President of the Personal Data Protection Office in the above-mentioned scope is the protection of the constitutional independence of courts. The performance by the President of the Personal Data Protection Office (UODO) - as the authority competent in data protection matters - of supervision over the processing of data in the scope of judgments by courts, could constitute an unacceptable interference in their judicial activity. The President of the Personal Data Protection Office, within the scope of the powers conferred on him by the Act, cannot therefore interfere in the course of the proceedings or in the manner of its conduct by other authorities authorized under separate provisions, including in particular courts. Thus, the President of the Personal Data Protection Office may not interfere with the rules governing the preparation and collection by courts in the files of such proceedings of documents commissioned by those courts and constituting part of the evidence material. The above view is confirmed by the jurisprudence of the Supreme Administrative Court, which in its judgment of March 2, 2001 (file number II SA 401/00) stated that the Inspector General for Personal Data Protection (currently: President of the Personal Data Protection Office) is not a controlling or supervising body 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 determined by appropriate procedures.

Referring once again the above argument to the established facts of the case, it should be emphasized that the complainant's personal data were processed by the OZSS as an organizational unit of the Court only in court proceedings and in connection with the administration of justice. This circumstance determines the lack of competence of the President of UODO to substantive examination of the complaint submitted by the Complainant. In this situation, the arguments put forward by the applicant in the request for reconsideration not only add to the case, but are irrelevant. In particular, it is not the task of the

President of UODO to discuss which persons and for what purpose should be examined by the OZSS and then listed in the opinion. These circumstances are decided, in accordance with the law, only by the court ordering the study (on the issue to be the subject of the opinion) and OZSS specialists (on the methodology of the research and the final content of the opinion).

It should be noted, by the way, that, contrary to the Complainant's suggestion, the wording of the above-mentioned Art. 1 clause 1 of the Act of 5 August 2015 on opinion-giving teams of forensic specialists does not prejudge the fact that, as the complainant states in the request for reconsideration of the case, "The order for the OZSS to issue an opinion by the Court may, after all, concern only parties to the proceedings". The provisions of the said Act do not limit the substantive scope of the content of the opinion to the parties to the proceedings, and furthermore, pursuant to Art. 2 clause 2, an OZSS specialist, participating in the activities referred to in Art. 1 of the Act (and thus when drawing up the opinion), is independent, and the president of the regional court cannot give him orders to perform activities in which the specialist is independent. The content of all the above-mentioned provisions indicates that OZSS specialists have the freedom to shape the content of their opinions, which may and at the same time should contain all information resulting from the research and which are important, in the opinion of OZSS specialists, to clarify the issue specified by the court in the order to prepare opinion.

In view of the above explanations, the complaint made in the request for reconsideration of the case of [...] June 2019 that the President of the Personal Data Protection Office "made an error in the question to the President of the District Court in E." and that he should "demand the content of the order and theses commissioned to OZSS in E. by the Court of Appeal in G. specifying the list of persons subject to examination", primarily due to the lack of competence of the President of the Personal Data Protection Office to examine the case for the reasons described above. However, it should be noted that the President of the Personal Data Protection Office, despite the above, referred in the decision being the subject of the request for reconsideration of the case, the copy of the Court of Appeal's letter in G. of [...] March 2015 (ref. No. . file: [...]), commissioned by the OZSS to prepare an opinion.

In this situation, the proceedings conducted in the first instance were discontinued pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257), hereinafter referred to as "Kpa", as it is irrelevant. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed

groundless, the body conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Proceedings means that there is no specific material element of the legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Commentary", 7th edition, Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007).

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliged him to discontinue the proceedings, because then there are no grounds for resolving the substance of the case, and further conduct of the proceedings in such a case would make it defective, having a significant impact on the result of the case. Therefore, the present proceedings have become redundant, and thus, it should be stated again that the President of the Office is not entitled to issue a substantive decision in the matter in question.

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

The decision is final. Based on Article. 21 sec. 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and in connection with joke. 3 § 2 point 1, art. 13 § 2, art. 53 § 1 and article. 54 of the Act of August 30, 2002, Law on Proceedings before Administrative Courts (i.e. Journal of Laws of 2018, item 1302), the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against this decision, within 30 days from the date of delivery of this decision, via the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw).

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