THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 12

April

2019

DECISION

ZSZZS.440.659.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), art. 6 sec. 1 lit. c), art. 9 sec. 2 lit. h) and art. 58 sec. 2 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 (Official Journal of the European Union , L 119, May 4, 2016), after conducting administrative proceedings regarding the complaint of Ms AZ, to the processing of her personal data and disclosure of her personal data to a third party by S. based in J., President of the Office for Personal Data Protection refuses to accept the request.

Justification

The Office for Personal Data Protection received a complaint, Ms A.Z., hereinafter referred to as the Complainant, about the processing of her personal data and disclosure of her personal data to a third party by S. based in J., hereinafter referred to as the Team.

In the content of the complaint, the complainant indicated that the Team provided information on her health, i.e. issued a certificate containing her personal data, as well as information on the course of a medical examination and medical conclusions, to her husband W.Z. Therefore, the Complainant requested that the Team be ordered to adjust the processing of personal data to the provisions 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 of such data and the repeal of Directive 95/46 / EC (Official Journal of the European Union, L 119, 4 May 2016), hereinafter also referred to as the GDPR, in particular as regards the prohibition of disclosing its personal data to unauthorized entities, prohibiting the processing of its personal data and ordering rectify the health certificate, because it has a certificate that completely denies the need to refer her to treatment.

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following facts.

The team processes the complainant's personal data contained in the medical documentation, i.e. identification data and health information, for archival purposes.

On [...] February 2018, the applicant was brought to the team by an ambulance service assisted by the police, where she was consulted at the emergency room. Due to the lack of the prerequisites specified in Art. 23 sec. 1 of the act of 19 August 1994 on the protection of mental health (Journal of Laws 2018.1878 i.e.), the complainant was not admitted to the team because she did not consent to it.

The team issued a certificate that the applicant required psychiatric treatment for her husband, Mr. W.Z. in order to implement the procedure for admitting the applicant to a psychiatric hospital upon his request.

Mr. W.Z. requested the District Court to place the applicant in a psychiatric hospital without her consent.

The complainant did not ask the Team to correct her personal data pursuant to Art. 35 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) or art. 16 GDPR.

In this factual state of the case, the President of the Office considered the following.

First of all, it should be noted that Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 sets out the obligations of the data controller, which includes the processing of personal data, in compliance with the conditions set out in this Regulation. The provision entitling data controllers to process ordinary data of natural persons is Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permissible, inter alia, when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (a) of the GDPR). c) GDPR). The prerequisites for the legality of processing special categories of personal data, including personal data concerning health, are set out in Art. 9 sec. 2 GDPR.

These conditions are autonomous, so in order for the administrator to consider the processing of personal data lawful, it is enough for him to meet one of these conditions. Formulated in Art. 9 sec. 2 GDPR, the catalog of circumstances legalizing the processing of sensitive data includes, among others consent of the data subject (Article 9 (2) (a) of the GDPR) or a situation where processing is necessary for the purposes of preventive healthcare or occupational medicine, for the assessment of the employee's ability to work, medical diagnosis, health care or social security , treatment or management of healthcare or social security systems and services on the basis of European Union or Member State law (Article 9 (2) (h) of the GDPR).

It is required to indicate that pursuant to Art. 24 sec. 1 of the Act of November 6, 2008 on patient's rights and the Patient's Rights Ombudsman (Journal of Laws of 2017, item 1318), the entity providing health services is obliged to keep, store and share medical documentation in the manner specified in the Act in question and in the Act of April 28, 2011 on the information system in health care (Journal of Laws of 2016, items 1535, 1579 and 2020, and of 2017, item 599), and to ensure the protection of the data contained in this documentation.

Pursuant to Art. 29 sec. 1 of the Act on Patients' Rights and the Patient's Rights Ombudsman, medical records shall be stored by the entity providing health services for a period of 20 years from the end of the calendar year in which the last entry was made, and during that period, no data may be removed from it. According to § 4 sec. 3 of the Regulation of the Minister of Health of 9 November 2015 (Journal of Laws of 2015, item 2069) on the types, scope and templates of medical documentation and the method of its processing, an entry made in the documentation may not be removed from it only if it has been incorrectly made, it is deleted and an annotation is made about the cause of the error as well as the date and designation of the person making the annotation, in accordance with § 10 sec. 1 point 3.

Bearing in mind the above and the fact that the Complainant was admitted to the Team on [...] February 2018, where a medical consultation was conducted, it should be stated that the Team is required to keep the Complainant's medical records for a period of 20 years from the end of the calendar year, in which the last entry was made. The team is therefore obliged to process the complainant's personal data contained in the medical records in order to fulfill the obligation specified in art. 29 sec. 1 of the Act of November 6, 2008 on patient's rights and the Patient's Rights Ombudsman, which is the fulfillment of the premise legalizing the processing of ordinary personal data, pursuant to art. 6 sec. 1 lit. c) GDPR and personal data regarding health, pursuant to art. 9 sec. 2 lit. h) GDPR.

As regards the disclosure of access to Mr. W.Z. by the Medical Certificate Team, it should be emphasized that the event was

incidental and one-off, and is not being continued at present. Therefore, it should be stated that in this case it is appropriate to apply the provisions in force at the time when the complainant alleged irregularities in the processing of her personal data, i.e. the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922), hereinafter also referred to as the Personal Data Protection Act Prerequisites for the legality of processing the so-called ordinary personal data, including their sharing, was previously set out in Art. 23 sec. 1 u.o.d.o., according to which the processing of data was allowed, e.g. when: the data subject consents to it, unless it concerns the deletion of data concerning him (Article 23 (1) (1) of the GDPR) or when it is necessary to exercise the right or fulfill the obligation resulting from the law (art. 23 (1) (2) of the Act on the Personal Data Protection Act). Each of the above conditions was independent and autonomous, which means that the fulfillment of at least one of them determined the legality of the processing of personal data. In turn, the conditions for the processing of sensitive data are set out in Art. 27 (2) points 1- 10 of the AED Art. 27 sec. 1 of the Act, therefore, introduced a ban on the processing of data concerning health condition. However, there were some conditions, referred to in the Act on the Protection of Personal Data of 1997 (Article 27 (2) of the Act on Personal Data Protection), which allowed for the processing of this type of data. The analysis of the present case in terms of the lawfulness of the processing of the complainant's sensitive data should be made in the context of Art. 27 (2) (2) of the Act on Personal Data Protection, which states that the processing of sensitive data is permissible in a situation where a special provision of another act allows the processing of such data without the consent of the data subject and provides full guarantees of their protection. Thus, the Act refers to specific provisions regulating the activities of specific entities and institutions, indicating in what cases and to what extent they may process, including sharing, personal data so that the obligations and rights imposed on them by these provisions can be implemented. Such a special provision is Art. 29 sec. 1 point 1 of the act of 19 August 1994 on the protection of mental health (Journal of Laws 2018.1878, i.e. her behavior indicates that her admission to hospital will significantly deteriorate her mental health. Pursuant to paragraph 2 above the provision on the need to admit such a person to a psychiatric hospital without their consent is ruled by the guardianship court of that person's place of residence at the request of their spouse, relatives in a straight line, siblings, their statutory representative or the person who actually takes care of them. The application referred to above shall be accompanied by a decision of a psychiatrist in detail justifying the need for treatment in a psychiatric hospital. The decision is issued by a psychiatrist at a justified request of a person or body authorized to submit a request to initiate proceedings (Article 30 (1) of the Mental Health Act).

Bearing in mind the above-mentioned provisions, it should be stated that the Team could have made the psychiatrist's decision available to the applicant's husband, i.e. Mr WZ, who was the person entitled to submit an application to the competent court for the applicant's placement in a psychiatric hospital without her consent, which constitutes the fulfillment of the premise legalizing the trial. processing of ordinary personal data, pursuant to art. 23 sec. 1 point 2 of the then applicable Act on the protection of personal data of 1997 and personal data regarding health, pursuant to art. 27 sec. 2 point 2 of this act.

Regarding the Complainant's request to order the Institution to rectify the health certificate, because she has a certificate that completely denies the need to refer her to treatment, i.e. contradicting the certificate issued by the Institution, clarification requires that the President of the Office for Personal Data Protection is not the competent authority to assess the correctness of the provision of health services, diagnosis or medical opinion. The competence of the President of the Office is limited only to issues related to the protection of personal data.

The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 58 sec. 2 GDPR, aimed at restoring a legal state in the process of data processing - so it is justified and necessary only insofar as there are irregularities in the processing of personal data. In the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that the Complainant's personal data are processed by the Team in a manner inconsistent with the GDPR. The appealed trial is based on the premise specified in Art. 6 sec. 1 lit. c) GDPR in the scope of the so-called ordinary data and art. 9 sec. 2 lit. h) GDPR in the scope of data concerning the complainant's health. As for the disclosure of her personal data by the Team, questioned by the Complainant, this was based on the premise specified in Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data of 1997 in force on the date of this event in the field of ordinary data and in art. 27 sec. 2 point 2 of this Act in the field of data on health.

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. 7 sec. 2 and sec. 4 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) in connection with joke. 13 § 2, art. 53 § 1 and art. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2018, item 1302), the party dissatisfied with this decision has the right to lodge a complaint 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 Office for Personal Data Protection (address: Office for Personal Data

Protection, ul. Stawki 2, 00-193 Warsaw). The fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs or the right to assistance.

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