

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

May

2019

## DECISION

ZSOŚS.440.153.2018

Based on Article. 104 § 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 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. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), following administrative proceedings regarding the complaint of Mrs. A. D., residing in ul. [...], for the processing of her personal data by the President of the District Court in W., based in W.,

I refuse to accept the application

### Justification

On [...] September 2013, the Office of the Inspector General for Personal Data Protection received a complaint from Ms AD (hereinafter: "the Complainant") about irregularities in the processing of her personal data by the President of the District Court in W. (hereinafter: " President of the Court "), consisting in: 1) processing her sensitive personal data, including data on mental health and philosophical views, contained in the psychological tests applied to the applicant and her son by the Family Diagnostic and Consulting Center in [...] without statutory authorization; 2) failure to provide in an intelligible form the content of the data processed by the Family Diagnostic and Consulting Center together with the information on the source from which they originate; 3) refusal of access to personal data in breach of the statutory right to request their supplementation, updating, rectification, temporary or permanent suspension of their processing or their removal if they are incomplete, out of date, untrue or have been collected in violation of the law; 4) exceeding the time limit of 30 days for providing information on the processed data.

Justifying her request, the complainant argued that in the course of the court proceedings in case no. act [...] The District Court in W. referred the applicant, her child and former partner for examination to the Family Diagnostic and Consulting Center in [...]

([...]), hereinafter referred to as: "RODK". As the complainant points out, after obtaining the opinion from the RODK, it turned out that the data contained therein about the complainant and her situation were inconsistent with the facts. Therefore, the complainant asked the head of the RODK in a letter of [...] April 2013, asking for access to her data, in particular to the originals of the psychological tests she completed. As the complainant explains, the reply received indicated that the materials related to the opinion issued and the personal data contained therein are not processed. Moreover, the applicant did not receive in the above-mentioned writing responses to inquiries regarding her personal data held by RODK, i.e. who is the administrator of the RODK database containing test results and research protocols of the complainant and her son, what data are in the data file, and for what purpose and scope and in how this data is processed. By another letter addressed to the head of the RODK, the complainant repeated her request for access to her personal data. By letter of [...] June 2013, the original psychological tests and answers to the questions asked were refused. In view of the above, the complainant, in a letter of [...] May 2013, asked the President of the District Court in W., as the personal data administrator, with inquiries previously addressed to the head of the RODK, i.e. who is the administrator of the RODK database containing the test results and the protocols of the complainant's and her son's examinations, what data are in the data filing system and to what purpose and scope and how the data are processed. In a letter of [...] July 2013, the applicant was informed by the Vice-President of the District Court in W. that the administrator of personal data obtained for the purposes of psychological-psychiatric-pedagogical diagnosis by RODK in W. is the President of the District Court in W. The President of the Court He also explained that personal data contained in the files are processed only to the extent to which they are transferred to the content of opinions issued by the RODK and to the extent of superior supervision carried out by the Minister of Justice in accordance with art. 84 of the Act of October 26, 1982 on juvenile delinquency proceedings. It was also indicated that the files of cases referred to the RODK by the court are kept for a period of 10 years, an alphabetical list of people examined in a given calendar year for a period of 10 years, a list of cases commissioned by the Court to the RODK - for a period of 10 years, a schedule of classes in the RODK - for a period of 5 years, and the case record book and other recording devices for a period of 5 years. Moreover, by letter of [...] August 2013, the applicant received a reply from the President of the District Court in W. with information about her personal data in the documents of the RODK. At the same time, by a decision of [...] August 2013 (No. test protocols. The justification indicated that the application in question to issue a copy of the prepared opinion should not be taken into account, as the above-mentioned The applicant received a copy from the Court which ordered her to be executed. With regard to the

request for disclosure of test results and research protocols, the Vice President of the Court considered that this request also did not deserve consideration, because the results of psychological tests contain significant data on the cognitive, emotional and psychosocial development of the subjects, and the dissemination of the above information may violate the personal rights of the respondents. persons to whom the indicated test results and test protocols apply. Moreover, the Vice-President of the Court indicated that the request for disclosure of the above-mentioned information would circumvent the provisions of the act on the profession of psychologist and statutory self-government, in particular Art. 14 of the same act, according to which, without any time limit, the psychologist is obliged to keep secret information related to the client obtained in connection with the exercise of the profession and to comply with the provisions of the professional and ethical code of psychologists by the Polish Psychological Association.

Considering the above, in the content of the complaint, the complainant asked the Inspector General for Personal Data Protection to take steps to protect her personal data by removing deficiencies in the processing of her personal data by the President of the District Court in W.

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

By letters of [...] May 2014, the Inspector General for Personal Data Protection informed the Complainant and the President of the Court about the initiation of explanatory proceedings in the case and asked the President of the Court to comment on the content of the complaint and to provide written explanations.

On [...] June 2014, the Office of the Inspector General for Personal Data Protection received a letter from the President of the District Court in W. ([...]), in which it was explained that Family Diagnostic and Consultation Centers operate at regional courts on the basis of Regulation of the Minister of Justice of August 3, 2001 on the organization and scope of operation of family diagnostic and consultation centers (Journal of Laws of 2001, No. 97, item 1063; hereinafter: "the regulation"), and the administrator of personal data is the President of the District Court in W., in the district of which RODK in W. at ul. [...] had its seat. In view of the above, the President of the Court decides on the purposes and means of processing personal data in the data files of this center. The President of the Court also explained that the complainant's personal data, obtained as a result of psychological tests completed by her and contained in the opinion of the RODK, were processed pursuant to Art. 27 sec. 2 point 5 of the Act of August 29, 1997 on the Protection of Personal Data, at the request of the District Court in W., in the case

with the file number [...], which is currently marked with the reference number [...] as part of the tasks carried out by family diagnostic and consultation centers, specified in § 14 of the above-mentioned regulation. Data in the RODK are processed only to the extent to which they are transferred to the content of opinions issued by the center at the request of the court and for the purposes of court proceedings and in the scope of superior supervision performed by the Minister of Justice, referred to in art. 84 of the Act of October 26, 1982 on proceedings in juvenile cases. The President of the Court also explained that the scope of data processed by the GDPK is specified in detail in § 12 of the Regulation, which is also the legal basis for the collection of this data by the GDPK. The President of the Court also pointed out that the persons conducting the tests at the RODK are authorized to process personal data, and the complainant's data, which were collected in the psychological tests, as well as the information contained therein, were made available only to the Ministry of Justice on the basis of a request of [...] February 2013, in which a request was made to send all the research documentation to the complainant in order to investigate her complaint. [...] in March 2013, these documents were returned after use, but these data were not made available to other entities.

In response to the letter of the Inspector General for Personal Data Protection requesting supplementary explanations, the President of the Court indicated that he is the administrator of personal data in the GDPR - obtained both as a result of completing the tests and contained in the opinion issued on the basis of completed tests. The President of the Court explained that the above-mentioned data is processed in a file called "ROD-K Documents", and the Family Diagnostic and Consulting Center in [...] is currently processing the complainant's personal data in order to prepare examination files for archiving. There are two research files in RODK due to the fact that in the case of Ms A. D. two opinions were issued, ie the opinion of [...] July 2012, L.dz. [...] issued in accordance with the decision of [...] March 2012 in the case [...] and supplementary opinion of [...] December 2012, Ref. [...] issued pursuant to the court's order of [...] December 2012 in the same case.

The President of the Court explained that the complainant's data collected in connection with issuing the opinion on the case [...] are contained in the audit file ([...] / 12) in the following documents: opinion no. [...] of [...] July 2012, the protocols of the study conducted on [...] and [...] May 2013, and [...] and [...] June 2013, a note drawn up in connection with the complainant's contact with RODK on [...] April 2012, SPR Plopy answer sheet, DKO test performed [...] June 2012, EPQ-R Eysenck, copy of the invoice [...] June 2012, court cover letter directing the matter for review in RODK, a letter from the head of the RODK of [...] September 2012 addressed to the Complainant regarding the return of materials sent by the above-mentioned after completing

the diagnosis and issuing an opinion. The President of the Court also explained that in the audit file ([...]), the complainant's personal data are contained in the supplementary opinion of the case no. [...] of [...] December 2012 and a copy of the invoice and copies of the protocols from the study conducted [...] in May 2012. Additionally, in the case file ref. the file [...] (previously reference number [...]) of the District Court in W. from [...] July 2012 there is the final opinion issued in RODK, while the case files do not contain psychological tests or protocols from the research on the basis of which this opinion was prepared.

The President of the Court also pointed out that the applicant referred to the above-mentioned the following applications submitted pursuant to Art. 32 of the Act of August 29, 1997 on the Protection of Personal Data: a) a letter of [...] May 2013 and by e-mail a letter of [...] June 2013 - the complainant received a reply to both letters in a letter of [...] July 2013; b) a letter of [...] July 2013, to which the applicant received a reply in a letter of [...] August 2013 and to which a decision was issued on [...] August 2013 (no. [...] ...).

In a letter of [...] September 2017 (reference number [...]), the President of the Court explained that he was maintaining the explanations he had submitted so far. The President of the Court also indicated that on [...] January 2016, Family Diagnostic and Consultation Centers in W. changed their name to Opinion Teams of Forensic Specialists [...] (hereinafter: "OZSS"), and this change is related to the entry into force of the Act of August 5, 2015 on consultative teams of forensic specialists. In connection with the transformation of Family Diagnostic and Consultation Centers into Opinion Teams of Forensic Specialists, RODK in W. was transformed into II OZSS, whose personal data administrator is the President of the District Court in W., while personal data of II OZSS are processed in a data set called "Documentation OZSS "at the headquarters at ul. [...] The President of the Court also stated that the legal basis and the purpose of processing the complainant's personal data had not changed, and that they are still processed in connection with the archiving of the documentation relating to her case.

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 of 2018, item 1000, as amended), on May 25, 2018, the Office of the Inspector General for Data Protection Personal Data 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 on the basis of 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 Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended). All activities undertaken by the Inspector General for Personal Data

Protection before May 25, 2018 remain effective.

In response to the letter of the President of the Personal Data Protection Office of [...] March 2019, the President of the Court explained that the Opinion Teams of Judicial Specialists operate on the basis of the Act of August 5, 2015 on consultative teams of court specialists (Journal of Laws of 2015, item 1418), and pursuant to Art. 1 clause 1 above of the Act, the OZSS are responsible for drawing up, at the request of the court or the prosecutor, opinions on family and guardianship matters as well as in juvenile cases, on the basis of psychological, pedagogical or medical examinations. The activities performed by the OZSS are governed by the implementing regulations to the above-mentioned of the Act, ie the Ordinance of the Minister of Justice of February 1, 2016 on establishing the standards of the methodology for issuing opinions in opinion-making teams of forensic specialists (Journal of Laws of February 18, 2016, item 76). The President of the Court also pointed out that pursuant to Art. 9.3 above ordinances, materials from the study, which are the basis for issuing the opinion, may not be made available to the respondents. The President of the Court also explained that at present the applicant's personal data, obtained as a result of completing psychological tests, commissioned by the District Court in W. in the case no. [...] are kept in the reference archive of the 2nd Opinion Team of Court Specialists. The President of the Court also pointed out that, according to the uniform material list of files in the District Court in W., introduced by Order No. [...] of the President of the District Court in W. of [...] October 2016, in consultation with the Director of the State Archives in W., the documents being the subject of the complaint constitute non-archival documentation (archival category B10; classification symbol 5182, classification code: "Reports and materials from psychological and medical examinations carried out." after which the documentation may be missing, which will result in the deletion of data.

The President of the Office for Personal Data Protection informed the complainant and the President of the Court in letters of [...] March 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment on the collected evidence and materials, and submitted requests in accordance with the content of art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

In such a factual and legal state, 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 issuance 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. Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, as referred to in Art. 7 point 2 of this act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time. Pursuant to Art. 1 clause 1 of the Act of August 5, 2015 on opinion-giving teams of forensic specialists (Journal of Laws of 2015, item 1418), the OZSS are responsible for preparing, at the request of the court or the prosecutor, opinions on family and guardianship matters and in juvenile cases on the basis of the conducted psychological, pedagogical or medical examinations. The tasks are performed as a result of an order issued by a court or a public prosecutor. The basis for issued opinions are psychological, pedagogical or medical tests. Contrary to the previous time, the team members were indicated more precisely. They are specialists in the field of psychology, pedagogy, pediatrics, family medicine, internal medicine, psychiatry and psychiatry of children and adolescents.

Moreover, Art. 4 sec. 1 above of the Act establishes the supervision of the Minister of Justice over the activities of the OZSS in the field of compliance with the standards of the methodology of giving opinions and the procedure of psychological, pedagogical or medical examinations, as well as the timely preparation of opinions and the performance of activities related to the conduct by teams, at the request of the court, of mediation, and conducting environmental interviews in juvenile cases and conducting specialist counseling for minors, minors and their families. Additionally, pursuant to Art. 4 sec. 4 of the OZSS Act, the Minister of Justice, after consulting the minister responsible for health and the minister responsible for education and upbringing, establishes, by means of an ordinance, the standards of the methodology for issuing opinions for teams.

The executive act to the Act of 5 August 2015 on opinion-making teams of judicial specialists is the ordinance issued by the

Minister of Justice of 1 February 2016 on establishing the standards of the methodology for issuing opinions in opinion-making teams of court specialists. The justification for the implementation of these changes was the care both for the people covered by the study (in a way that ensures more conscious participation in it) and for the specialists responsible for its course. The order specifies: 1) the rules of conduct for the team leader and specialists; 2) research procedures and opinion-making methodology (as a guarantee of the correct execution of orders, including in particular the protection of minors and minors, and the compliance of the research methods and techniques used with the current knowledge in the field of psychology, pedagogy and medical sciences); 3) stages of the diagnostic process; 4) rules of conduct in special cases; 5) requirements for the diagnostic process; 6) a diagram of opinions on family and guardianship matters as well as in juvenile matters.

Pursuant to § 5 of the Ordinance, the diagnostic process consists of three stages. The first is to read the case files, prepare for the examination (including, in particular, planning the organization of the examination, taking into account objective conditions, e.g. the premises of an opinion-making team of forensic specialists, as well as subjective conditions, e.g. the attitude of the respondents) and preparation of the place and appropriate conditions for the examination. The second stage is a fairly broadly defined proper examination. It covers all activities related to direct contact with respondents. During this stage, the team confirms the identity of the respondents, provides them with relevant information, and receives written consent to participate in the study. The scope of the information provided relates to: the purpose and plan of the study, the prohibition of registration of its course, the possibility of interrupting the study and withdrawing from it (in the event of non-compliance with the registration prohibition), participation in the study only of persons indicated in the order, use of data to prepare an opinion. The team then conducts a survey. The respondents inform about its completion. These persons are also provided with information on the deadline for drawing up an opinion and the possibility of submitting comments on the course of the study. The third stage comes down to the preparation of the collected material (analysis and interpretation of the test results, data integration), subjecting it to team consultations and drawing up a written opinion.

The test conditions are set out in § 9. Pursuant to point 1, they are to ensure discretion and security. The basic research methods are listed in point 4. Among them were: analysis of the case files, interviews with the respondents, observation of the behavior and mutual relations of the respondents. Research techniques, in accordance with § 9 point 7, are defined as one of the instruments of the diagnosis process. The final diagnosis is the result of "comprehensive analysis, interpretation and integration of data obtained with all research methods".



From the point of view of the present case, the decisive factor is § 9 point 3 of the above-mentioned the ordinance according to which the materials from the research, constituting the basis for issuing the opinion, may not be made available to the respondents.

Referring to the allegations made by the complainant, the President of the Personal Data Protection Office found that the President of the Court responded to the complainant's letters requesting the fulfillment of the statutory information obligation, applications submitted pursuant to Art. 32 of the Act of August 29, 1997 on the Protection of Personal Data. It should be pointed out that the response to the application of [...] May 2013 and by e-mail a letter of [...] June 2013 - the complainant received a letter of [...] July 2013, and the response to the the application of [...] July 2013, the applicant received a letter of [...] August 2013 and against which a decision was made of [...] August 2013 (no. [...]).

Moreover, the President of the Office established that at present the applicant's personal data, obtained as a result of completing psychological tests, commissioned by the District Court in W. in case no. the files [...] are kept in the reference archive of the 2nd Opinion Team of Court Specialists, and according to the uniform material list of files in the District Court in W., introduced by the Order No. [...] of the President of the District Court in W. of [...] October 2016, in consultation with the Director of the State Archives in Warsaw, the documents being the subject of the complaint constitute non-archival documentation (archival category B10; classification symbol 5182, classification slogan: "Protocols and materials from psychological and medical examinations carried out." that, in view of the above, the complainant's documentation will be kept until the date after which the documentation may be missing, which would be tantamount to deletion of the data. the applicant's data collected in the psychological tests, as well as the information contained therein Artes were made available only to the Ministry of Justice on the basis of an application of [...] February 2013, in which it was requested to send all the research documentation to the complainant in order to investigate her complaint. [...] in March 2013, these documents were returned after use, but these data were not made available to other entities. It should also be emphasized that, in accordance with § 9 point 3 of the ordinance of the Minister of Justice of February 1, 2016, the materials from the study, constituting the basis for issuing the opinion, may not be made available to the respondents.

Bearing in mind the above, it should be stated that the manner of proceeding by the President of the District Court in W. in the discussed scope does not raise any doubts.

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

Based on Article. 127 § 3 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), from this decision, the party has the right to submit an application for reconsideration within 14 days from the date of delivery of the decision side. If a party does not want to exercise the right to submit an application for reconsideration of the case, 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 its delivery to the party. 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.

2019-05-28