

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

November

2018

DECISION

ZSOŚS.440.115.2018

Based on Article. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and art. 12 point 2, art. 22, art. 23 sec. 1 point 2, art. 25 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", 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 Mr. T. K., residing in in R., for the processing of his personal data by the Police Commander in Chief with headquarters in Warsaw at ul. Puławska 148/150 in the Schengen Information System (SIS), President of the Office for Personal Data Protection discontinues the proceedings

JUSTIFICATION

The Personal Data Protection Office received a complaint from Mr. T. K., residing in in R., hereinafter referred to as the "Complainant", for the processing of his personal data by the Police Commander in Chief based in Warsaw at ul. Puławska 148/150, in the Schengen Information System (SIS), hereinafter referred to as the "Commandant".

In the content of the above-mentioned of the complaint The complainant submitted that, in his opinion, there was no condition entitling the Commander to process his personal data in the Schengen Information System. The applicant explained that he was studying and working in N. and that he had accidentally exceeded the period of his stay. Therefore, he tried to leave the territory of N. as soon as possible and return to the U. to the Schengen area.

Considering the above, the Complainant requested that his personal data be deleted from the SIS by the Police Commander in Chief, so that he could enter the territory of N.

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.

By letters of [...] October 2018, the President of the Office for Personal Data Protection informed the Complainant and the Commander of the initiation of explanatory proceedings in the case and asked the Commander to comment on the content of the complaint and provide written explanations. On [...] October 2018, the Office for Personal Data Protection received a letter from the Commander ([...]), in which he explained that in the Schengen Information System as of [...] October 2018 at 15:33, the applicant's data is missing.

In these facts, the President of the Personal Data Protection Office considered the following.

Referring first of all to the processing by the Commander in Chief of Police of the Complainant's personal data in the Schengen Information System, it should be noted that as a result of the investigation conducted in the case, it was found that the entity did not process the above-mentioned data.

Thus, pursuant to the provisions of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), hereinafter referred to as hereinafter, the Administrative Procedure Code, when the proceedings for any reason have become groundless in whole or in part, the public administration body 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 proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority "(B. Adamiak, J. Borkowski," Kodeks administracyjny. Komentarz, 14th edition, CHBeck Publishing House, Warsaw 2016, p. 491).

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 groundlessness of the proceedings may also result from a change in the facts of the case.

The Supreme Administrative Court in its judgment of November 19, 2001 (file reference number II SA 2702/00) stated: "(...)

since in the course of the (...) administrative proceedings conducted (...) the state of violation of the law to which the decision was to be subject was lifted, this proceeding has become pointless. In the light of the provision of Art. 18 sec. 1 of the Act, initiated by GIODO ex officio or at the request of the person concerned, the proceedings concerning the infringement of the provisions on the protection of personal data may only end with the issuance of an administrative decision ordering the data controller to restore the legal status, in particular: removal of deficiencies, supplementing, updating, rectifying, disclosing or not sharing personal data, applying additional security measures to the collected data, suspending the transfer of personal data to a third country, securing data or transferring it to other entities, deleting personal data. In the facts of the case at hand, no such decision could have been issued, as the violation had previously been restored to the lawful state (...)”.

In a situation where the Police Commander in Chief is not currently processing the complainant's personal data, examination of the legality, in the context of determining the possible existence of premises for the formulation of an 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), 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 to the party . 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.

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