THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

September

2018

DECISION

ZSOŚS.440.77.2018. II

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257 and of 2018, item 149) 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 and of 2018, item 138) in connection with Art. 160 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws, item 1000), after conducting administrative proceedings regarding the request of Mr. ML ([...]) to reconsider the case concluded with the decision of the Inspector General for Personal Data Protection of December 12, 2017 (reference number: [...]), on the complaint of Mr. ML against processing by the Central Forensic Laboratory of the Police ([...]), represented by the attorney of Mrs. KF, attorney from E. spółka partnerska ([...]) his personal data in the Automatic Dactyloscopic Identification System and in the Central Dactyloscopic Registry, President of the Office for Personal Data Protection

upholds 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. ML ([...]), hereinafter referred to as the Complainant, about the processing of his personal data in the Automatic Fingerprint Identification System, hereinafter referred to as the AFIS system and in the Central Dactyloscopic Registry by Central Forensic Laboratory of the Police ([...]), hereinafter referred to as the Central Forensic Laboratory of the Police. In the content of the above-mentioned The complainant submitted that he was an unpunished person and his data quoted as "(...) are not recorded in the National Police Information System (KSIP) in connection with suspicion or commission of an intentional or unintentional crime, as well as a fiscal crime".

In the course of the investigation in this case, the Inspector General for Personal Data Protection (currently: the President of Personal Data Protection) determined the following.

By letter of [...] June 2017, the applicant requested the Central Forensic Laboratory of the Police to remove his personal data, including fingerprints (fingerprints) from the AFIS system and the Central Dactyloscopic Register, due to the fact that it is cited in "(...) an unpunished person and my data are not recorded in the National Police Information System (KSIP) in connection with the suspicion or commission of an intentional or unintentional crime, as well as a fiscal crime (...)".

By letter of [...] July 2017, Insp. AF, Deputy Director of the Central Forensic Laboratory of the Police, informed the Complainant that his request of [...] June 2017 regarding the removal of his dactyloscopic data from the Central Dactyloscopic Register was quoted as follows: "(...) carried out in accordance with the applicable provisions of law (...) "

In a letter of [...] August 2017, by way of explanations submitted to the Inspector General for Personal Data Protection, RZ MD, PhD, Head of the Department [...] of the Central Forensic Laboratory of the Police, acting under the authority of the Director of the Central Forensic Laboratory The police stated that the quotation "(...) [the complainant's] data were removed from the AFIS system and the Central Dactyloscopic Registry on the basis of the request of [...] June 2017 (...)".

After conducting the administrative procedure, on December 12, 2017, the Inspector General for Personal Data Protection issued an administrative decision (reference number: DOLiS / DEC-1498/17), discontinuing the procedure in this case.

Within the statutory deadline, the complainant filed an application for reconsideration of the case ended with the above-mentioned decision. .

In support of the above-mentioned of the application and in the letter of [...] December 2017, the Complainant did not present any new circumstances, i.e. other than those he had reported in the case so far, affecting the decision contained in the decision issued by the Inspector General for Personal Data.

After re-examining the facts of the case, including reading all the evidence gathered in the case, the President of the Office for Personal Data Protection considered the following.

At the outset, it should be emphasized again that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to adjudicate on the basis of the actual state of affairs at the time of issuing this decision. This position is based on the jurisprudence of the courts. In particular, it is necessary to mention the judgment of the Supreme Administrative Court, file no. act I OSK 761/07, where it was unequivocally stated that "(...) when examining (...) the legality of the processing of personal data, [the Inspector General] is obliged to determine whether the data of a specific entity are processed as at the date of issuing the decision, and whether it is done lawfully (...) ”.

Additionally, as it has been expressed in the doctrine, “the public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established facts of the administrative case. . In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the binding legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws 00.98) 1071) M. Jaśkowska, A. Wróbel, Lex., El / 2012).

Referring once again to the established facts of the case, it should be emphasized that the Complainant's personal data were deleted in connection with the Complainant's request of [...] June 2017, and therefore are not currently processed in the AFIS system and in the Central Dactyloscopic Registry.

In this situation, the proceedings conducted in the first instance were subject to discontinuation pursuant to Art. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257), hereinafter referred to as the Code of Administrative Procedure, due to its redundancy. 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 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 deciding on its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 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 procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance ”.

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 on the Protection of Personal Data 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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