THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 26

November

2018

DECISION

ZSOŚS.440.135.2018

Based on Article. 138 § 1 point 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096), art. 22 and art. 23 sec. 1 point 2 and point 5 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), after conducting administrative proceedings regarding the request of Ms KH (correspondence address: [...]) about reconsideration of the case ended with the decision of the Inspector General for Personal Data Protection of May 12, 2016 (DOLiS-440-2396) regarding the complaint against the processing of personal data by the District Court in W.,

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 Ms KH, hereinafter referred to as "the complainant", about the processing of her personal data contained in the identity card by the District Court in W. In the content of the complaint, the complainant argued that be able to enter the building of the District Court in W., the judicial police - under the order No. [...] of the president of the local court - takes ID cards from people entering the building, and then places them in a device that reads their data, i.e. name and surname, date of birth, ID number and photo of the person entering.

At the same time, the applicant indicated that in her opinion the provisions of the above-mentioned the orders of [...] of the President of the District Court in W. of [...] May 2014 are not based on the provisions of applicable law. In the further part of the complaint, the complainant asked the Inspector General for Personal Data Protection to verify the correctness of the procedure described by the President of the District Court in W. against persons entering the court building. Moreover, the complainant indicated that it would be reasonable to check whether the president of the above-mentioned court keeps an appropriate data

collection and whether he informed the Inspector General for Personal Data Protection about the collection and processing of personal data and the image of persons entering the facility.

In supplementing the complaint, the complainant further specified that the said complaint mainly related to the processing of her personal data contained in the identity card by the District Court in W. and photographing people entering the court, as well as taking appropriate actions against the President ".

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

The President of the District Court in W. in the explanations submitted in the case in question indicated that in the District Court in W. the protection of a public building is carried out by the judicial police. The legal basis for its operation is Art. 4 sec. 2 of the Act of April 6, 1990 on the Police (Journal of Laws of 2015, item 355, as amended) and the ordinance of the Minister of Internal Affairs and Administration of August 16, 2007 on the detailed scope of tasks and rules for the organization of the police court proceedings (Journal of Laws No. 155, item 1093).

Information on the identification of persons entering the court and the legal basis for such action is posted at the entrance to the Court building. Video monitoring conducted at the Court premises is an element of the security system for buildings and rooms as well as control of pedestrian traffic at the customer service point, in communication routes, server rooms, or in the secretariats of divisions and branches, and at judge's offices.

It was also explained that the court does not permanently process the images of persons and the data from monitoring after three weeks are quoted as "overwritten".

As the President of the District Court in W. explained, no scanning of ID cards is performed in his unit, and the judicial police, in accordance with their powers and in order to perform the tasks for which they were appointed, only performs the activities of identifying and verifying the authenticity of documents, i.e. identity cards, and these activities are undertaken due to the necessity to maintain public safety.

An electronic book of entries is kept in the District Court, and data on persons staying in the facility are removed from the electronic system after 7 days.

At present, the applicant's data contained in her ID card are not processed in the electronic system of the book of entries due to the applicant's presence in the Court building. However, these data are processed to the extent resulting from the nature of

the applicant's participation in pending court proceedings.

The case files include the order No. [...] of the President of the District Court in W. of [...] May 2014 on the introduction of safety and order rules in the District Court in W.

Based on the facts thus established, the Inspector General for Personal Data Protection issued a decision of May 12, 2016 (DOLiS-440-2396), in which he refused to accept the request.

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

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), i.e. May 25, 2018, the Office of the Inspector General for 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 Code of Administrative Procedure. Therefore, all activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

After re-analyzing the evidence collected in the case, the President of the Office for Personal Data Protection upholds the position expressed in the appealed decision. In the request for reconsideration, the complainant did not present any circumstances that could constitute the basis for its change, and the arguments raised in the application are limited only to the complainant's polemics with the correct findings made in the course of the administrative procedure conducted in the present case.

After reviewing all the evidence gathered in the case, the President of the Office for Personal Data Protection considered the following.

First of all, it should be emphasized that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing 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 of May 7, 2008 (file reference number I OSK 761/07), where it was unequivocally stated that when examining (...) the legality of personal data processing, [Inspector General] is obliged to establish whether the data of a specific entity are processed as at

the date of the decision on the matter and whether it is done lawfully (...) ".

On the other hand, adjudication in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body realizes 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).

The regulation on the protection of personal data is guaranteed in principle in Art. 51 of the Act of April 2, 1997, the Constitution of the Republic of Poland (Journal of Laws No. 78, item 483, as amended), however, the scope of the constitutional regulation does not extend to all forms of personal data processing. According to paragraph 1 and sec. 3 of the cited provision of the Constitution of the Republic of Poland, no one may be obliged, other than under the Act, to disclose information about him (section 1) and everyone has the right to access official documents and data files relating to him; limitation of this right may be specified in the act (section 3), however, the rules and procedure for collecting and sharing information are specified in the act (section 5).

Bearing in mind the above, it should be noted that the provisions of law that regulate the processing of personal data are the above-mentioned Act on the Protection of Personal Data of August 29, 1997, which creates the legal basis for the application of state protection in situations of illegal processing of citizens' personal data by both entities public law 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 cited act, everyone has the right to the protection of personal data relating to 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.

When transposing the above into the present case, it should be noted that the President of the Personal Data Protection Office established in the course of explanatory proceedings that identification of persons entering the building of the District Court in W. is carried out by a unit separated in the organizational structure of the Police, the so-called judicial police. The legal basis for its operation is, in particular, art. 4 sec. 2 of the Act of April 6, 1990 on the Police (Journal of Laws of 2018, item 2102), and the manner of operation is specified in the Regulation of the Minister of Internal Affairs and Administration of April 16, 2007 on the detailed scope of tasks and rules of organization judicial police (Journal of Laws No. 155, item 1093).

In § 3 of the above-mentioned ordinance of the Minister of Internal Affairs on the detailed scope of tasks and rules of organization of the judicial police, the scope of tasks of this formation is enumerated, which include: 1) protection of safety and public order in the buildings of courts and public prosecutor's offices; 2) protection of the life and health of judges, public prosecutors and other persons in connection with the performance of activities by them resulting from the performance of the tasks of the administration of justice; 3) performing procedural actions ordered by the court or the public prosecutor; 4) execution of court orders, issued in order to prevent behavior disturbing the order of the trial or endangering the authority of the court; (5) escorting and escorting people at the request of the court, the prosecutor and the competent Police commander; 6) protection of premises for persons escorted or brought to procedural activities, located in courts and prosecutor's offices, in order to prevent the arbitrary departure of persons placed there, unlawful intrusion of bystanders and to prevent other events dangerous with consequences for public safety and order or threatening with damage or loss protected property. It is also worth repeating that Art. 1 clause 1 of the Act of April 6, 1990 on the Police, establishes the principle that this formation, in general terms, serves the general public, ensuring the protection of people's safety and maintaining public safety and order. This rule is complemented by Art. 14 sec. 1 point 1 of the above-mentioned act, from which it follows that the Police within the scope of its tasks performs, inter alia, administrative and cleaning activities in order to, for example, identify, prevent and detect crimes and offenses. In turn, art. 15 sec. 1 point 1 of the Police Act, expressly expresses the norm that police officers - including judicial police - when performing the above-mentioned activities are entitled to identify persons in order to establish their identity, on the basis of, inter alia, ID card (§ 4 point 1 of the Regulation of the Council of Ministers of 29 September 2015 on the procedure for exercising certain powers of police officers (Journal of Laws of 2015, item 1565).

In the realities of the case at hand, detailed safety rules in the District Court in W. are specified in the order No. [...] of the

president of that court of [...] May 2014 on the introduction of safety and order rules in the District Court in W. issued pursuant to Art. 54 § 2 of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws of 2018, item 23). Pursuant to the provision referred to above, the president of the court may order the use of measures to ensure safety in court buildings and to prevent violations of the prohibition referred to in § 1, i.e. the prohibition of bringing weapons and ammunition, explosives and other dangerous substances into the court building. The above-mentioned regulation of the president of the court in § 4 clearly indicates the obligation to undergo inspection activities by anyone entering the court building, which consists in presenting an identity card, passport or other document with a photo confirming identity and scanning the MRZ code in a reader specially installed for this purpose. . Moreover, this provision regulates the issue of persons authorized to carry out the indicated control activities, who are Police officers. At this point, reference should also be made to § 16 of the ordinance [...] stating that the direct protection of the Court during its office hours is carried out by the judicial police operating on the basis of the above-mentioned legal acts.

In the light of the above considerations, it should be stated again that the actions taken by the President of the District Court in W. in order to ensure safety and order in the court building are fully supported by the provisions of the applicable law. Thus, it is impossible to agree with the complainant's statements that the aforementioned order was issued without a legal basis regulated by the act.

Article 54 § 2 of the Act of 27 July 2001, Law on the System of Common Courts, gives the presidents of courts the power to regulate the issues of safety and order in their subordinate units in the form of an order. A separate question is what measures and regulations will be taken to achieve the goal indicated in the act.

In the present case, the president of the court pointed out that the data on persons entering the court building and staying in it are recorded in the electronic entry book, which are then removed from the system after seven days. He further explained that the mere 'dragging' of the identity card of a person entering the premises through a code reader does not constitute an act of scanning an identity document.

The above is supplemented by the public information provided by the President of the District Court in W. of [...] February 2015 and [...] April 2015. Referring to its content, it should be noted that the President of the Court once again questioned the actions to which the interested parties were subjected. to the court building constituted the collection and processing of their personal data. The only goal indicated is to ensure public security, and the mere pulling of an ID card by officers of the judicial

police through the scanning device is the implementation of the tasks entrusted to them in the regulation of the Minister of Internal Affairs and Administration of August 16, 2007 on the detailed scope of tasks and rules for the organization of the judicial police.

To sum up, it should be stated that there are no grounds - in accordance with the applicant's request - to repeal the decision of 12 May 2016 and issue an administrative decision ordering the restoration to legal status by ordering the President of the District Court in W. to refrain from its assessment of the violations described in the complaint. This is because the condition for issuing the decision referred to in Art. 18 sec. 1 u.o.d.o. is a finding of a breach of the provisions on the protection of personal data at the date of the decision. In the context of the above, it should be pointed out that all the factual and legal circumstances in no way justify the President of the Personal Data Protection Office taking action against the complained entity, because as it was established the processing of the complainant's personal data in the electronic register of entries of the District Court in W. is consistent with the Act on protection of personal data, both due to the premise of art. 23 sec. 1 point 2, as well as based on the justified purpose of the data controller pursuant to art. 23 sec. 1 point 5 of the Act, which is the performance of administrative and order-related activities aimed at ensuring public safety.

After re-analyzing the evidence collected in the case, the President of the Office for Personal Data Protection upholds the position taken in the contested administrative decision.

This decision is final. Based on Article. 21 sec. 2 and art. 22 of the Act on the Protection of Personal Data in connection with Art. 13 § 2, art. 53 § 1 and 54 § 1 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws 2018, item 1302, as amended), 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: ul. Stawki 2, 00-193 Warsaw).

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