

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

May

2019

DECISION

ZSOŚS.440.73.2018

Based on Article. 105 § 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. 27 sec. 1 and 2, point 2, art. 22 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. 100 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), after conducting administrative proceedings regarding the complaint of Mr. SR, to the extent of illegal processing of his personal data by the Correctional Facility in G.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr SR (hereinafter: "the Complainant") regarding the unlawful processing of his personal data contained in the certificates from [...] and [. ..] on August 2018, issued by the Correctional Facility in G. ([...]).

Considering the above, the complainant requested that the above-mentioned certificates be removed from his personal files.

In the course of the proceedings initiated by the above-mentioned the complaint, the authority obtained explanations regarding the circumstances of the case, familiarized itself with the evidence and made the following findings.

On [...] July 2017, a meeting was held with the inmates who refused to work. Inmates were instructed that the refusal to work is recorded in the opinions and responses to letters addressed to the unit by various institutions such as courts or bailiffs. It was also informed that such information will also be recorded in the certificates that may constitute the basis for the competent authorities to award social benefits.

On [...] August 2017, the applicant asked the G. Prison for a certificate quoted as follows: no remuneration. The above certificate is necessary for me to present at the office. "

The applicant was the only holder of the three copies of the certificate he requested on [...] August 2017.

As it results from the explanations sent by the Correctional Facility in G., the certificates were not attached to the applicant's personal files.

On [...] August 2017, the applicant again applied to G. Prison for a certificate stating that he was not employed and that he was not receiving any remuneration.

The relevant certificate, together with a note that he is not interested in working, was sent directly to the inmate who was then in the Remand Center in Ł. On [...] August 2017.

The certificates issued to the Complainant were not transferred by the Correctional Facility in G. to other entities.

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 General Office The Personal Data Protection Inspector 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. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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

At the outset, it should be noted 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, 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 on the date of issuing the decision and whether it is being processed 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 factual status of an 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).

Regarding the above-mentioned issue of the Complainant's request, removal from the Complainant's personal files, certificates issued on [...] and [...] August 2017, by the Correctional Facility in G., it should be stated that according to the findings of the President of the Data Protection Office Personal shows that the Correctional Facility in G. did not join the above-mentioned certificates for the applicant's personal files. In connection with the above, the complainant's request in the above scope is irrelevant. Taking into account the issues of including the wording in the certificates: "As of [...] July 2017, it has at its disposal the amount of PLN [...] and the ROR accumulation fund in the amount of PLN [...] and BGK in the amount of [...] ." "Or" He was not employed in the local penitentiary unit because he did not show any interest in performing work ", it should be noted that the certificates containing the above information were drawn up at the request of the complainant and received directly or sent directly to the complainant. Additionally, the above-mentioned the certificates were not transferred by the Correctional Facility in G. to other entities. In the above facts, it cannot be concluded that there has been a breach of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended).

In this situation, the proceedings conducted in the first instance are subject to discontinuation pursuant to 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 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 resolving 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 proceeding has become redundant, and thus, it should be stated that the President of the Office is not authorized to issue a substantive decision in this case.

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

Pursuant to Art. 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), the decision may be appealed against by the party to 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 Office (address: ul. Stawki 2, 00-193 Warsaw). The entry 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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