THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 29

May

2019

DECISION

ZSOŚS.440.114.2018

Based on Article. 105 § 2 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 12 point 2, art. 22, art. 23 sec. 1 point 2, art. 27 sec. 1 and 2 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. 100 sec. 1 and 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), after conducting administrative proceedings regarding the complaint of Mr. KC, residing in P ., for incorrect processing of his personal data by an officer of the Prison in S.,

I discontinue the proceedings

Justification

The Personal Data Protection Office received a complaint from Mr K.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office determined the following.

The applicant was detained in S. Prison to serve a sentence of imprisonment. In the content of the complaint, he accused the officers of that prison of disclosing their personal data to unauthorized persons by issuing orders to undergo identification in the presence of other inmates while leaving the premises of the prison to go to work.

In response to the complaint, in a letter of [...] November 2018, the Director of the Prison in S., hereinafter referred to as the "Director", explained that he had conducted an investigation into the complaint.

As indicated by the Director, pursuant to Art. 24 of the Act of April 9, 2010 on the Prison Service (Journal of Laws of 2018, item 1542, as amended). The Prison Service may process information and personal data, including without the consent and knowledge of the data subjects, necessary to perform the tasks referred to in art. 2 of the same act. In turn, art. 2 clause 1 above of the Act imposes on the Prison Service the obligation to implement, on the terms set out in the Act of 6 June 1997

Executive Code (Journal of Laws of 2018, item 652, as amended), hereinafter referred to as "the Executive Penal Code", tasks in the scope of performing temporary arrests and custodial sentences and penal measures resulting in deprivation of liberty.

As the Director further explained, the legal basis for the rights of officers to verify the personal data of convicts is Art. 116 § 1 point 6 of the Executive Penal Code, which shows that the convicted person is obliged to comply with the provisions specifying the rules and procedure for the execution of the sentence, the order established in the prison, and to follow the instructions of his superiors and other authorized persons, and in particular to submit to activities aimed at identifying the person.

In order to provide a detailed explanation of the issues relating to the identification of persons deprived of their liberty in S. Prison, the President of the Office for Personal Data Protection again asked the Director to present the way of organizing the activities of leaving prisoners from the prison to work.

In response from [...] December 2018, the Director provided further explanations, which show that the identity is verified by providing the inmate's name and surname and on the basis of a photo in the system [...]. Identity verification by additionally providing a middle name or date of birth takes place only when the kama facility leaves the inmate who starts work and is therefore unknown to prison officers. As also explained, in order to prevent the access to the personal data of individual convicts, the identity is verified in private, in a way that ensures the confidentiality of these data.

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

On February 6, 2019, 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) entered into force, which in Art. 100 specifies that the proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry into force of this Act, are conducted on the basis of the existing provisions, i.e. 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". Pursuant to Art. 7 point 2 of the Act, data processing is understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Providing personal data as one of the methods of their processing may be considered lawful only if the data controller demonstrates that at least one of the material conditions for data processing is met. These conditions regarding ordinary personal data are set out in Art. 23 sec. 1 point 2, and regarding the so-called sensitive personal data in art. 27 sec. 2 point 2 of the act on the protection of

personal data.

Act of April 9, 2010 (Journal of Laws of 2018, item 1542, as amended) on the Prison Service in Art. 24 sec. 1 gives the right to process information and personal data to the Prison Service, including without the consent and knowledge of the persons to whom they relate, necessary to perform the tasks referred to in art. 2 of the same act. Within the meaning of the above-mentioned of the Act, the processing of information and personal data should be understood as any operations performed on personal data, such as: collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems.

It should be noted here that on February 6, 2019, the Act on the Prison Service was amended, including Art. 24 of the same Act, which in the current wording gives the Prison Service the right to process personal data, inter alia, of persons currently or previously deprived of their liberty in prisons and pre-trial detention centers - to the extent related to deprivation of liberty in these establishments and detention centers, including to the extent necessary to execute the judgment, in accordance with the principles set out in the Act of 6 June 1997 - Code of Execution of Criminal Procedure (Article 24 (4) (1) (a)).

Moreover, pursuant to § 4 sec. 1 of the Regulation of the Council of Ministers of 4 August 2010 on the detailed mode of actions of Prison Service officers during the performance of official duties (Journal of Laws of 20L0r., No. 147, item 984), the officer serving at the entrance to the unit determines the legitimacy of applying for a person to enter or leave the premises of the facility and identify that person in order to establish their identity.

According to the evidence collected in the case, officers of the Prison Service in Prison in S. are entitled to process personal data of persons deprived of liberty, including their identification. In addition, as it results from the explanations of the Director of the Prison, procedures are applied when a person deprived of liberty leaves the organizational unit of the Prison Service, consisting in verifying personal data in private, in a manner ensuring the confidentiality of such data.

In connection with the findings made in the course of the administrative proceedings, in particular the fact that in the present case the information provided by the complainant regarding the unlawful processing of his personal data by the Director of the Prison in S. to the content of Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure.

The doctrine indicates that: "the objectivity of administrative proceedings", as provided for in Art. 105 § 1 of the Code of Administrative Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that nothing can be settled by deciding on its substance. The discontinuation of administrative proceedings is a formal ruling that

ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). 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. .

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. 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), in connection with art. 15 of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court, within 30 days from the date of its delivery side. 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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