THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 17

of December

2018

DECISION

ZSOŚS.440.51.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 201 8, item 2096), 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) and Art. 20 of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, 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 complaint of Mrs. M. C., residing in in J. for the processing of her personal data in the National Police Information System (KSIP) by the Police Commander in Chief (Warsaw, ul. Puławska 148/150)

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection (now: the Office for Personal Data Protection) received a complaint from Ms MC (hereinafter referred to as: "the Complainant") residing in J. about the processing of her personal data in the National Police Information System (KSIP) by the Police Commander in Chief (hereinafter referred to as: "Commander") In the content of the above-mentioned of the complaint. The complainant submitted that she was asking for supervision of the proceedings conducted by the Commander in the matter of deleting the complainant's data from the KSIP.

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.

In a letter of [...] March 2018, the complainant asked the Inspector General for Personal Data Protection to supervise the procedure on deleting her personal data from the KSIP

In a letter of [...] March 2018, the Inspector General for Personal Data Protection called on the complainant to supplement the formal deficiencies.

In a letter of [...] April 2018, the complainant supplemented the formal deficiencies by paying stamp duty.

By letter of [...] June 2018, the complainant informed that the Police Headquarters of the Intelligence and Criminal Information Office had removed her personal data from the KSIP and attached a letter of [...] March 2018, the Police Commander in Chief, informing about deletion of the complainant's personal data from the KSIP.

In such a factual and legal state, 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 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 fulfills the purpose of the administrative procedure, which is the implementation of the binding legal norm in the field of administrative and legal relations. when these 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 the above 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 [...] February 2018, and therefore are not processed at the KSIP at the moment.

In this situation, the proceedings conducted in the first instance were discontinued 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 Administrative Procedure Code, 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, in the literature on the subject it is indicated. that the redundancy of the administrative procedure provided for in Art. 105 § 1 of the Code of Administrative Proceedings means that there is no element of the 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. Warszawa 2005, p. 485) The same position was taken by the Provincial Administrative Court in Kraków in the judgment of 27 February 2008 (III SA / Kr 762/2007): "The proceedings become redundant when one of the elements of the substantive law relationship, which means that it is impossible to settle the matter 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.

Based on Article. 127 §3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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 Office (address: ul. Stawki 2. 00-193 Warsaw). 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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