THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 26

October

2018

DECISION

ZSOŚS.440.62.2018

Based on Article. 105 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), 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, as amended) in connection with joke. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended), following administrative proceedings regarding the complaint of Mr. M.W. residing in A. (hereinafter: the Complainant), regarding the entry of his personal data into the Schengen Information System (SIS) President of the Office for Personal Data Protection (formerly: Inspector General for Personal Data Protection) discontinues the proceedings

Justification

On [...] February 2017, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a letter from the Complainant regarding a complaint about the processing of his personal data in the Schengen Information System. In his complaint, the complainant indicated that due to the theft of his identity card and its use by an unknown person, he was arrested during passport checks in order to provide explanations.

In connection with the above, the Inspector General for Personal Data Protection, in a letter of [...] April 2017 ([...]), asked the Police Commander in Chief to comment on the content of the complainant's request, as well as to provide the following information: 1) whether the Complainant applied to the Polish SIRENE Bureau regarding the inclusion of his personal data in the SIS database, and if so, how the Bureau responded to the Complainant's request 2) whether, and if so, on what legal basis, the Complainant's data are processed in SIS 3) whether there are grounds for deleting the data in question from the above-mentioned system. In reply by letter of [...] June 2017 ([...]), the deputy director of the Intelligence and Criminal Information Bureau of the Police Headquarters (hereinafter: BWIIKGP) explained that the complainant had sent an inquiry by e-mail, which had been received by the Office for International Cooperation of the Headquarters Of the Chief Police on [...]

December 2016, and subsequent ones on [...] January 2017. On [...] January, by letter [...] of the abovementioned the unit forwarded the correspondence to the Data Administration Department of SIS and VIS BWilK KGP. In reply, the Complainant was informed by a letter of [...] February 2017 ([...]) that until sending a hand-signed application, it would not be considered, and that until the date of the letter to COT KSI, no supplemented application had been received from the Complainant. Subsequently, the applicant's personal data was checked, which resulted in the conclusion that his personal data were entered in the system and were entered by the District Court in S. as the sixth alias to the entry under Art. 26 SIS II Decisions - Alert for arrest or surrender and extradition. Considering the above, BWilKGP consulted SO [...] in order to obtain information requested by the Inspector General for Personal Data Protection. As a result of the above actions, it was found on [...] May 2017 that the S. District Court had deleted the applicant's personal data. As a result of a re-check, BWilKGP confirmed that the Complainant's data was not in the system as of [...] June 2017 at 15:45.

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. As indicated in the literature, “a 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 a public administration authority issues an administrative decision based on 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 state of an administrative case. In this way, the public administration body fulfills the objective of administrative proceedings, which is the implementation of the applicable 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, M. Jaśkowska, A. Wróbel, Lex., El / 2012).

Moreover, in the judgment of May 7, 2008 in the case with reference number Act I OSK 761/07, the Supreme Administrative Court stated that "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed as of the date of the decision on the matter and whether it is done in a lawful manner" .

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the present case is the fact that the complainant's personal data were removed from the Schengen Information System (SIS). Therefore, it should be stated that the proceedings have become redundant and therefore should be

discontinued.

In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), 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, 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 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, 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 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 of substance, and continuing the proceedings in such a case would be defective, significantly affecting the result of the case.

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 submit an application for reconsideration of the case within 14 days from the date of delivery of the decision to the party. 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 Personal Data Protection Office.

2019-03-29