THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

April

2019

DECISION

ZSOŚS.440.129.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and Art. 12 point 2, art. 22, 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 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000, as amended), after conducting administrative proceedings regarding the complaint of Mr. MO about irregularities in the processing of personal data by the Director General of the Prison Service in Prison in R. related to the implementation of the application for permission to visit the inmate,

I refuse to accept the application

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. MO, hereinafter referred to as the "Complainant", about the processing of his personal data by the Prison Service (Correctional Facility in R.) in connection with the execution of the application for a visit from a person deprived of liberty in the above-mentioned a penitentiary unit. At the same time, the complainant contained a request in the content of the complaint to order the Director of the Prison in R. to remove his personal data from the data set.

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, i.e. May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. According to Art. 160 of this Act, the 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 under the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code administrative proceedings.

Therefore, all activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain

effective.

In the course of the proceedings initiated by the complaint, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

The applicant, in a letter of [...] May 2014, asked the Correctional Facility in R. to delete his personal data contained in the identity card obtained in order to fulfill the request for a visit to a person deprived of liberty, because in his opinion the purpose for which they were collected. In response, the Director of the Prison in R., in a letter of [...] June 2014, asked the Complainant to provide detailed personal data. As a result, the complainant asked the Inspector General for Personal Data Protection to order the Director of the Prison in R. to fulfill the obligation to remove the above-mentioned personal data.

In a letter of [...] September 2014, the Inspector General for Personal Data Protection informed the Complainant and the Director of the Prison in R. about the initiation of the proceedings and asked the Director of the Prison in R. to comment on the content of the complaint and to submit written explanations by attaching a copy of the complaint.

In the explanations submitted to the Inspector General for Personal Data Protection, the Director of the Prison in R., responding to the content of the complaint of Mr. MO, indicated that the complainant's request for deletion of personal data had indeed been received by the penitentiary unit subordinate to him, because the purpose for which they were collected had ceased therefore, further processing is necessary. In the further part of the explanations, the Director of the Prison in R. submitted that due to the lack of detailed data allowing the applicant to be identified, by letter of [...] June 2014 the complainant was asked to clarify the said request. As the basis for the processing of personal data consisting in the deposit of the identity document of a person staying in the penitentiary unit, the Director of the Prison in R. indicated art. 18 sec. 1 point 1 of the Act of April 9, 2010 on the Prison Service (Journal of Laws of 2014, item 173). He also explained that the mentioned provision of the act entitles Prison Service officers to specific behavior (ID cards) towards persons applying for access to the premises of penitentiary establishments. Then he explained that the purpose of this behavior was mainly the record of visits with prisoners, placed in the Central Database of Persons deprived of their liberty Noe.NET established by the order of the Director General of the Prison Service of [...] November 2010 under the number [...] . It was also added that all data contained in the above-mentioned in the electronic system, they constitute archival material within the meaning of the Act of 14 July 1983 on the national archival resource and archives (Journal of Laws of 2011, No. 123, item 698), and that the complainant's data is not

processed.

Considering that the administrator of the data entered into the Central Database of Persons Imprisoned by Noe.NET is the Director General of the Prison Service, which clearly results from the content of the above-mentioned ordinance of this body of [...] November 2010, Inspector General for Personal Data Protection in a letter of [...] December 2014, he asked for an opinion on the complaint and to indicate whether the Director General of the Prison Service was processing the complainant's personal data. In response to the above-mentioned The authority, in a letter of [...] December 2017, indicated that the issue of depositing the identity card of a person applying for a visit to the inmate is regulated in the Act of 9 April 2010 on the Prison Service (Article 18 (1) (1)) . Moreover, it was pointed out that the depositing of the applicant's identity document served the purposes of recording people visiting prisoners, and at the same time was an obligation resulting from the letter of the Director General of the Prison Service of [...] June 2012 (reference number [...]), in which the units were ordered to organizational, starting from July 1, 2012, keeping a record of visits only in electronic form.

The Director General of the Prison Service also submitted that the data collected by the applicant in the abovementioned IT system constitute archival material within the meaning of the provisions on the national archival resource and archives, and are not processed.

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

In the present case, the Complainant complained about the unauthorized processing of personal data by the Prison Service in connection with the execution of the request for a visit to a person deprived of liberty, and also demanded the removal of his data obtained during a visit to a prison.

First of all, it should be emphasized that the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as: "the Act", creates legal grounds for applying state protection in situations of unlawful processing of citizens' personal data by both public law entities 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 issuing 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 aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of the cited act, it is admissible 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. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time. Personal data is any information relating to an identified or identifiable natural person (Article 6 (1) of the Act). Pursuant to Art. 3 sec. 1 above of the act, it is applied, inter alia, to to state authorities. For this reason, it is obliged, inter alia, to comply with its provisions Prison Service. At the same time, it was necessary to take into account the principle of legality (Article 26 (1) (1) of the Act), according to which the data controller processing the data should exercise special care to protect the interests of the data subjects, and in particular is obliged to ensure that these data are processed lawfully. In addition, the administrator of personal data should process them for specified lawful purposes and not subject them to further processing inconsistent with these purposes (Article 26 (1) (2) of the Act). In the opinion of the President of the Personal Data Protection Office, in the discussed case, the above-mentioned conditions have been met.

In the reality of the case at hand, the main issue was to determine whether the Prison Service was entitled to process personal data without the consent of the person concerned, in a situation where the acquisition of such data served the purpose of performing tasks towards persons deprived of liberty. Moreover, it was also necessary to consider the adequacy of the processed data.

The conducted analysis of the collected evidence proves that there are no grounds for formulating an accusation against the Director of the Prison in R. that he had unlawfully obtained the complainant's data and processed it in a manner that was inadequate to the purpose for which it was obtained. As indicated by the Provincial Administrative Court in Warsaw in its judgment of 27 January 2016 in the case with reference number no. II SA / Wa 1026/15 "the adequacy principle is absolutely binding". The court further indicated that this principle "should be understood as a balance between the right of a person to dispose of his data and the interests of the data controller".

In the present case, it was indisputable in what circumstances the officers of the Prison Service from the Prison in R. came into possession of the applicant's data, and for what purpose the data were processed. As indicated by the Complainant, in order to

obtain a visit with the inmate, it was necessary to deposit an identity document and then enter the data into the appropriate IT system. The arguments raised in the complaint that the purpose for which his data was processed ceased to exist once the inmate, who was a person from the applicant's environment, left the penitentiary facility.

In this context, reference should be made to the principle of adequacy of the purpose for which the data were processed, mentioned earlier in this explanation. As explained by the Director of the Prison in R., the issue of using the applicant's identity document was dictated by the necessity to establish the identity of the visitor. It cannot escape attention that the area of the penitentiary unit is a place of a special nature, aimed at isolating persons deprived of their liberty from the rest of society. Therefore, it is a place with strict security, to which access by "outsiders", although possible, must also be secured with adequate measures to ensure, above all, the safety of people and order in a given penitentiary unit. Hence, the legislator equipped the Prison Service with powers allowing it to monitor the movement of people and contacts between inmates and people from outside. It cannot be denied that the statements of the Director of the Prison in R. that the processing of the complainant's personal data were legally permissible were right. Well, the provision regulating this issue, as it was rightly pointed out, is Art. 18 sec. 1 point 1 of the Act of April 9, 2010 on the Prison Service (Journal of Laws of 2018, item 1542, as amended) from the wording which states that "officers, when performing official duties, have, inter alia, the right to ID persons applying for admission and leaving the premises of organizational units and depositing identity documents of persons staying on the premises of the organizational unit ". Determining the identity of persons applying for access to the premises of a penitentiary unit by identifying them by an officer on duty at the entrance to the premises of the unit is the first right mentioned in the act. It should be noted that the ordinance of the Council of Ministers of August 4, 2010 on the detailed course of action of the Prison Service officers during the performance of official duties (Journal of Laws No. 147, item 984), hereinafter referred to as: "the ordinance", in § 4 sec. 1 indicates that the officer on duty at the entrance to the unit determines the legitimacy of applying for a person to enter or leave the unit and identifies the person in order to establish their identity. The identity of the person who applies to enter the premises of the unit is established on the basis of photo documents containing data that enable identification, i.e. identity card, passport or driving license (Mazuryk Marcin (ed.), Zoń Michał (ed.), The Prison Service. Commentary, Lex 2013).

When analyzing the above-mentioned legal provisions, it is also impossible to ignore those expressed in par. 2 § 4 of the above-cited regulation of the expressions: "the officer shall deposit identity documents in a designated place". Therefore, this

provision imposes on an officer of the Prison Service an obligation to perform this activity, while at the same time "securing" documents during the stay of persons staying on the premises of the unit. Against the background of the case at hand, securing the Complainant's ID card came down to entering the data contained therein into the electronic record of visits with inmates in the Noe.Net Central Database of Persons Deprived of Freedom. It is worth pointing out that the legislator did not limit the addressee of this legal norm, ie the Prison Service, to taking specific precautionary measures. He left discretion in this regard, pointing only to the adequacy of the means to the intended purpose. For this reason, the Director General of the Prison Service, fulfilling his legal obligation, decided to create an electronic record on the use by organizational units of the Prison Service of the Central Database of Persons Deprived of Freedom Noe.Net (files 15-21).

By the way, it should be added that in the light of the position of the Director of the Archives of New Records expressed in the letter of [...] February 2012, the personal data obtained from the Complainant, which were then entered into the above-mentioned Noe.Net databases are archival material that should be kept intact. At the same time, the authority expressed the conviction that the data included in the database are not subject to the deletion process. This, in turn, implies a statement that the Complainant's request to delete data is impossible to fulfill, which guarantees that his data contained in the aforementioned database are subject to due protection, and thus will not be processed in a manner inconsistent with the provisions of the law.

In the light of the above-mentioned facts, it cannot be assumed that there has been an infringement of the provisions on the protection of personal data. The Prison Service, fulfilling the legal obligation resulting from special provisions, processed the complainant's personal data in a proper and adequate manner.

For the above reasons, the President of the Personal Data Protection Office resolved as in the dispositive part of the decision.

Based on Article. 127 § 3 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), from this decision, the party has the right to submit an application for reconsideration within 14 days from the date of delivery of the decision side. 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. 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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