

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

September

2018

DECISION

ZSOŚS.440.54.2018

Based on Article. 105 § 1 of the Act of June 14, 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), after administrative proceedings regarding the complaint of Mr. M. in L. (hereinafter: the Complainant) for the refusal by the Municipal Police Commander in L. to disclose the personal data of persons who on [...] August 2015 were unlawfully staying on the campsite run by the Complainant, President of the Office for Personal Data Protection (formerly: Inspector General for Personal Data Protection) discontinues the proceedings

Justification

On [...] March 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 refusal to disclose personal data of persons who on [...] On August 2015, they unlawfully stayed at the campsite operated by the Complainant. In his complaint, the complainant indicated that on [...] April 2016 he sent a request to the Municipal Police Commander in L. for disclosure of the said personal data. In a letter of [...] April, the Municipal Police Commander refused to disclose the complainant's disclosure of his data in the indicated scope. In connection with the above, the applicant appealed against the above decision to the District Court in L., which by a decision of [...] August 2016 (file number [...]) rejected the appeal, and then to the District Court in P. [...] January 2017 (file reference [...]) also dismissed, pointing to the substantive competence of the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) in the discussed case.

In connection with the above, the Inspector General for Personal Data Protection, in a letter of [...] April 2017 ([...]), asked the Municipal Police Commander in L. to comment on the content of the complainant's request. In response, in a letter of [...] May

2017 ([...]), the Municipal Police Commander explained that he was processing personal data of 2 persons in terms of their names, surnames, PESEL numbers and addresses of residence, which on [...] August 2015 . have been identified at the campsite in connection with the intervention reported to them by the Complainant. Moreover, it explained that, after re-examining the legal basis of the complainant's request, it transferred to the applicant pursuant to Art. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), personal data of identified persons, excluding PESEL numbers, as not covered by the interest of the applicant.

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 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 state of an administrative case. In this way, the public administration body implements the goal 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., EI / 2012).

Moreover, in the judgment of May 7, 2008 in the case no. 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 on the date of issuing 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 all the complainants requested under Art. 23 sec. 2 point 4 u.o.d.o. data of persons who were identified during the intervention carried out on [...] August 2015 in the campsite in B. and processed by the Municipal Police Commander in L. , except for their PESEL numbers. This decision should be assessed as right and realizing the complainant's legal interest, because, as indicated in Art. 2081 Act of November 17, 1964 - Code of Civil Procedure (i.e. Journal of Laws 2018.1360, as amended), the court determines ex officio the PESEL number of the defendant who is a natural person, if he is obliged to have it or does not have it having such an obligation, or a number in the National Court Register, and

in the case of its absence - a number in another appropriate register, records or NIP number of a defendant who is not a natural person, who is not required to enter in the relevant register or records, if he is obliged to have it. 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 merits ".

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.

