

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

October

2018

DECISION

ZSOŚS.440.60.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) and Art. 22 and art. 23 sec. 1 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. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws, item 1000), following administrative proceedings regarding the complaint of Mr. ML ([...]) against the processing of his personal data by the Commander-in-Chief of the Border Guard (al Niepodległości 100, 02-514 Warsaw)

I refuse to accept the application

Justification

The Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) received a complaint from Mr. ML ([...]), hereinafter referred to as the Complainant, about the refusal to remove his personal data from the databases of the Border Guard by the Commander-in-Chief of the Border Guard based in Warsaw (al. Niepodległości 100), hereinafter referred to as KGSG.

In the content of the complaint, which was received by the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) on [...] November 2017, the complainant indicated that in a letter of [...] October 2017, KGSG refused to delete his personal data. The complainant submitted that he considered such action unlawful due to the fact that "the provisions on the Border Guard do not specify in which cases data may be deleted and after what time, and personal data may not be processed without time limitation, only relying on the premises of the Act "- Moreover, the Complainant attached to the complaint a certificate of [...] November 2017 issued by the KGSG, which contained information that the Border Guard had in its databases information on a total of 17 border controls of the Complainant in the period from [...] May 2009. until [...] August 2017, with the proviso that "it may not include all crossings of the state border of the Republic of

Poland, due to the fact that not all border checks are entered in the Border Guard databases".

As a result of the above complaint, the Inspector General for Personal Data Protection (currently: the President of the Office for Personal Data Protection) on [...] March 2018, sent a request to the KGSG for explanations. In a reply received on [...] March 2018, KGSG indicated that "On [...] May, the complainant asked for information whether his personal data was in electronic and paper registers and records of the Border Guard and on which on the basis, they were introduced there and to what extent they are processed, and the Complainant himself specified registers and records of preparatory proceedings in criminal cases and offenses, border crossings of Poland, CBD AK Analyst, Central Archives of Clearance and ID Cards and the Central Database of the Border Guard ". further KGSG on [...] June 2017, a reply was sent indicating the scope and type of the processed data relating to the Complainant, which referred to the legal basis for their processing, i.e. Article 1 (2) (9) of the Act of 12 October 1990 on Border Guard (Journal of Laws 2016.1643 consolidated text). Moreover, the KGSG explained that on [...] October 2017, the Complainant requested that databases of the Border Guard from the period [...] January 2005 to [...] October 2017. In response to [...] November 2017, KGSG sent a reply refusing to delete the above-mentioned data with the recall of the above-mentioned legal basis. In its explanations, the KGSG stated that it maintained its position presented to the Complainant.

As a result, on [...] September, the President of the Office for Personal Data Protection sent the parties information about the collection of evidence sufficient to issue an administrative decision with a 7-day deadline for commenting on the collected evidence, materials and submitted requests.

In such a factual and legal state, the President of the Personal Data Protection Office considered the following:

The Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "PDA", defines the rules of conduct in the processing of personal data and the rights of natural persons, whose personal data are or may be processed in data filing systems (Article 2 (1) of the GDPR). In the event of a breach of any of these principles, in particular Art. 23 or 27 u.o.d.o., the President of the Personal Data Protection Office pursuant to Art. 18 sec., 1 u.o.d.o. issues an administrative decision. In this regard, it may order the data controller to remove deficiencies (Article 18 (1) (1) of the Act), supplement, update, rectify, disclose or not disclose personal data (Article 18 (1) (2) of the Act).

In the present case, Art. 23 sec. 1 point 2 u.o.d.o., which states that the processing of data is permissible when it is necessary to exercise the right or fulfill the obligation resulting from the law. This provision clearly defines the condition of admissibility of

the processing of personal data.

Considering the above, as part of the analysis of the facts in question, attention should also be paid to the provisions contained in the Act of 12 October 1990 on the Border Guard, hereinafter referred to as the Border Guard Act. Pursuant to Art. 1 clause 2 point 9, the tasks of the Border Guard shall include collecting and processing information in the field of state border protection, border traffic control, preventing and counteracting illegal migration, and making it available to competent state authorities.

Therefore, this provision clearly states that the Border Guard is statutorily entitled to collect and process information related to, *inter alia*, crossing the border, which was done in the case of the Complainant. The requirement set by the legislator is a direct relationship between the acquisition of data and the fulfillment of the conditions set out in the said provision.

Continuing this discussion, it is worth referring to the information collected by the Border Guard on the basis of the above provision. At this point, it is worth noting that, as the doctrine indicates, "doubts arise when it comes to cases in which the provisions of law provide for specific rights or obligations not directly related to the processing of personal data, but for which the performance of data processing is necessary. In these cases, it should be assessed whether data processing is necessary to exercise the right or fulfill the obligation resulting from the legal provision (in other words, whether it would be possible to exercise the right or fulfill the obligation without data processing). If the question about the necessity of data processing can be answered in the affirmative, then the processing on the basis of the commented on should be considered admissible in our opinion (see Barta, Janusz, Fajgielski, Paweł i Markiewicz, Ryszard. Art. 23. In: Personal data protection) Commentary, ed. VI. LEX, 2015).

Even if it is considered that the literal wording of Art. 1 clause 2 point 9 of the Border Guard Act does not directly refer to the processing of personal data, as the legislator used the term "information" in a much broader scope, it seems reasonable to say that the processing of personal data falls within the scope of this concept, precisely because of this indispensability. One of the essential elements of border control by the Border Guard is the verification of the identity of persons crossing the border, which involves the processing of personal data. Bearing in mind the above, it should be concluded that Art. 1 clause 2 point 9 of the Border Guard Act meets the premise specified in Art. 23 sec. 1 point 2 u.o.d.o. Therefore, there is no doubt that the Complainant's personal data was collected and stored in order to carry out the statutory tasks carried out by the Border Guard. Therefore, referring to the issue of the period of keeping the Complainant's data by the Border Guard, it should be noted that the Border Guard collects data in accordance with the purpose of ensuring the security and protection of the state border. As

the KGSG explained, these data are also used by other state authorities, in particular the Police, the Internal Security Agency, the Intelligence Agency, the Central Corruption Bureau, courts, prosecutor's offices and others. Therefore, it should be stated that the personal data obtained in this way are still used by the Border Guard to carry out their statutory tasks, but they are also necessary from the point of view of the entire public security system.

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 CAP, 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 submitted through the Inspector General for Personal Data Protection. 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.

2019-03-29