

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

June

2019

## DECISION

ZSOŚS.440.81.2018

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. 18 sec. 1 point 2 in connection with joke. 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) and 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 of 2018, item 1000, as amended) after conducting administrative proceedings regarding a complaint from the Director of the Social Welfare Center in C., about irregularities in the process processing by the Director of the Correctional Facility in J. at ul. [...],

I order the Director of the Correctional Facility in J. (ul. [...]) to provide the Director of the Social Welfare Center with its seat in C. at ul. [...] personal data concerning Mr. G. K. for the period from [...] December 2014 to [...] March 2017 in the scope of: the number of visits by D. K. to his father, Mr. G. K. during his imprisonment in J., the number of phone calls made and the number of correspondence sent between Mr. G. K. and his son D. K.

### Justification

On [...] April 2017, the Office of the Inspector General for Personal Data Protection (currently: the "Office for Personal Data Protection") received a complaint from the Director of the Social Welfare Center in C. (hereinafter: the "Complainant") about irregularities in the processing personal data by the Director of the Correctional Facility in J. at ul. [...] (hereinafter referred to as: the "Director") consisting in the refusal to provide the Director of the Social Welfare Center in C. with information from the personal data file - the records of prisoners concerning Mr. GK, the complainant indicated that the requested data are necessary for the performance of statutory obligations specified in the Act of November 28, 2003 on family benefits (Journal of Laws of 2018, item 2220, as amended). At the same time, he explained that due to the initiation of the proceedings, on the basis of an application submitted by Ms JG, on the determination of the right to family allowance with allowances for a minor child and the fact that the applicant is unmarried and the child's father, Mr. is to establish his participation in the upbringing of a

son while serving a sentence of imprisonment. In connection with the above, the applicant, in letters of [...] January 2017, [...] February 2017 and [...] March 2017, requested the Director of the Prison in J. to provide information on the frequency of contacts between the inmate and the son of DK and his mother, Ms JG, including the number of phone calls made, correspondence sent and passes granted, as well as to indicate the dates of imprisonment. In response to the above-mentioned The Director of the Prison provided the complainant with information on the period of Mr. G. K.'s stay in the Prison, and in the remaining scope refused to provide it, which in consequence, as indicated by the complainant, deprived him of the possibility of fulfilling his statutory obligation consisting, inter alia, on the determination of the right to family allowance by way of an administrative decision.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

By letters of [...] September 2018, the President of the Personal Data Protection Office informed the Complainant and the Director about the initiation of the investigation and asked the Director to comment on the content of the complaint and provide written explanations. On [...] October 2018, the Office for Personal Data Protection received a letter from the Director ([...]) explaining that the Prison Service processes information and personal data of persons currently or previously deprived of liberty in order to perform its statutory tasks , as well as people who are to be deprived of liberty in order to serve the sentence of imprisonment. In addition, data may also be processed of persons other than those mentioned above, i.e. for example aggrieved persons or visitors deprived of their liberty in penitentiary establishments. Moreover, as explained by the Director, in accordance with Art. 24 sec. 3 of the Act of April 9, 2010 (Journal of Laws of 2018, item 1542, as amended), which is *lex specialis* in relation to the provisions regulating the protection of personal data. The Prison Service provides information and discloses personal data about persons, upon a written request in paper or electronic form, to entities authorized by law, to the extent specified in the acts. Provision of information and personal data is based on the principles set out in the Regulation of the Minister of Justice of 29 July 2010 on the procedure for submitting and specifying the application for information or disclosure of personal data about a person currently or previously deprived of liberty in a pre-trial detention center or a prison. (Journal of Laws No. 142, item 965). He also indicated that the unit complied with the entity's request for the dates of the detainee's stay in J. The remaining requested information did not constitute, in the Director's opinion, personal data, as pursuant to Art. 6 of the Act on the Protection of Personal Data, personal data is any information relating to an identified or

identifiable natural person. On the other hand, an identifiable person is a person whose identity can be determined directly or indirectly, in particular by reference to an identification number or to one or more specific factors determining his physical, physiological, mental, economic, cultural or social characteristics. Moreover, pursuant to Art. 25 sec. 3 of the Act of 28 November 2003 on family benefits, the competent authority, in this case the Social Assistance Center in C., may request entities to provide explanations and information on the circumstances affecting the right to family benefits. At the same time, as explained by the Director, the authority may not request information on circumstances only indirectly related to the case or beyond the scope of establishing the right to family benefits. In the present situation, due to the fact that the Complainant requested information only indirectly related to the case concerning the determination of the right to family benefits. The director refused to provide this data. Moreover, it pointed to the unjustified reliance by the Complainant on Art. 23b of the Act of 28 November 2003 on family benefits and the failure to submit the authorization referred to in Art. 20 paragraph 3 above the law.

The complainants and the Director were informed by letters of [...] October 2018 that the administrative proceedings had been conducted, as a result of which evidence sufficient to issue an administrative decision was collected and that they could express their views on the collected evidence and materials as well as the requests submitted in accordance with the content of art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure, within 7 days from the date of receipt of the above-mentioned writings.

Due to the need to supplement the evidence, the President of the Office for Personal Data Protection, in a letter of [...] February 2019, asked the Complainant to provide additional explanations. In a letter of [...] February 2019, the complainant indicated that the data on the frequency of contacts, including telephone and correspondence contacts, with the son of DK and his mother, Ms JG, was necessary to verify the rights of the party - Ms JG to family benefits in periods serving a sentence of imprisonment by Mr. DK, and, consequently, to the resolution of an administrative case. To the above-mentioned The complainant attached a document entitled "certificate of release" indicating the dates of the deprivation of liberty of Mr. GK in a prison and the decision of the Local Government Appeals Court of [...] January 2014, in which it was indicated that the stay of the child's father in prison does not exclude the possibility of a joint raising a child with his mother, which has an impact on the granting of the right to family benefits.

After receiving the explanations, the President of the Office informed the Complainant and the Director by means of letters of

[...] April 2019 about the collection of the evidence and about the possibility to comment on the collected materials within 7 days from the date of delivery of this letter.

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 Inspector General for Personal Data Protection became the President of the Office for Personal Data Protection. Pursuant 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 pursuant to the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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

The evidence collected in the present case shows that the complainant, in the course of the investigation into the determination of the right to family allowance and supplements to the family allowance for a minor child - DK, son of Mr. GK and Mrs. JG, who submitted an application for family benefits, asked three times Prison in J. for information on the frequency of contacts, including by phone and correspondence, with the son of DK and his mother, Ms JG, and the granted passes, as well as to indicate the dates of imprisonment. As it results from the files of the present case, the complainant obtained from the Director information on the dates of serving the imprisonment sentence, and in the remaining scope he refused to provide information.

With reference to the content of the complaint (letter of [...] April 2017), it should be noted that the subject of the proceedings conducted by the President of the Personal Data Protection Office is the issue of the refusal to provide information by the Director of the Prison about the number of visits by the Head of the Police to his father, Mr. GK during his imprisonment in the Prison in J. and the number of telephone conversations and the number of correspondence sent between Mr. GK and his son DK

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal 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. In this case, the content of Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, 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. In this regard, the Act on the Protection of Personal Data refers to the provisions regulating in detail the activities of specific entities and institutions. The legal basis for the operation of social assistance centers is the Act of 12 March 2004 on social assistance (Journal of Laws of 2018, item 1508, as amended), which in Art. 2 clause 1 indicates that social assistance is an institution of the social policy of the state, aimed at enabling individuals and families to overcome difficult life situations which they are unable to overcome, using their own powers, resources and possibilities. The tasks of social assistance in communes are performed by organizational units - social welfare centers (Article 110 (1) of the above-mentioned Act). The head of this center may be authorized in writing to conduct proceedings in cases of family benefits (Article 20 (2) and (3) of the Act of 28 November 2003 on family benefits). At the same time, Art. 25 sec. 3 of the Act on family benefits grants the authority competent to conduct the proceedings, in this case the Complainant, the right to request, inter alia, to public institutions for explanations and information as to the circumstances affecting the right to family benefits. It should be pointed out that the above-mentioned right has been broadly defined, which is necessary for the competent authority to perform its judicial function. At the same time, it creates an obligation to provide information and explanations on the part of a designated group of entities, which include public institutions. The literature on the subject indicates that the category of public institutions is very broad and should be understood very broadly, including all public administration bodies, state and local government legal persons and organizational units, administrative units and public utility units. Therefore, it is undoubted that prisons will be classified as such institutions.

When referring to the definition of "personal data", it should be noted that under Polish law it includes all information relating to a natural person, as long as it is possible to identify that person. An identifiable person is a person whose identity can be identified directly or indirectly, in particular on the basis of identifiers specified in art. 6 sec. 2 of the Act on the Protection of

Personal Data of August 29, 1997. These factors include not only information of a personal nature, related to private and family life, but also information on all activities, as long as they would allow for the fulfillment of the condition of relationship and identification of a given natural person. The above catalog is therefore open and exemplary, as evidenced by the term "in particular", which means that there may be other factors that make it possible to identify a natural person. The concept of "personal data" in question has a wide subject scope and covers various types of information of a personal nature relating to an individual. Therefore, the personal data the disclosure of which is requested by the Complainant falls within the statutory definition of "personal data", because on the basis of all their features and connection with other data, it is possible to identify an inmate.

Bearing in mind the above, it should be stated that the request by the Complainant to disclose by the Director personal data regarding the frequency of contacts, including telephone and correspondence contacts of the inmate - Mr. GK with the son of DK and his mother, Mrs. - Mrs. JG to family benefits and is justified in art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the protection of personal data. Pursuant to the applicable provisions of law, the Complainant conducts proceedings regarding family benefits, and therefore his application for the above-mentioned information was the exercise of statutory rights to determine the circumstances necessary to resolve the case regarding the granting of the right to benefits. Therefore, in the light of the above-mentioned provisions, the Director's refusal to provide the requested information was unjustified. Moreover, it should be emphasized that pursuant to Art. 24a paragraph. 1 (formerly art. 24 section 3) of the Act of April 9, 2010 on the Prison Service (Journal of Laws of 2018, item 1542, as amended). The Prison Service is obliged to provide information and disclose personal data about persons upon a written request in paper or electronic form, to entities authorized by law, to the extent specified in the acts. The content of the above-mentioned provision leads to the conclusion that it also constitutes the fulfillment of the condition of the legality of the processing of personal data specified in art. 23 sec. 1 point 2 of the Act, according to which data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision.

Consequently, it should be stated that both the provisions of the Act of 28 November 2003 on family benefits and Art. 24a paragraph. 1 (formerly art. 24 section 3) of the Act of April 9, 2010 on the Prison Service, constitute a premise for the legality of the processing of personal data referred to in art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data and create a legal interest in obtaining such data by the Complainant, as well as making them available by the Director. Thus, these

provisions constitute an independent legal basis for social assistance bodies to obtain personal data from the Director in order to verify the entitlement to granting family benefits, and for the Director they constitute the basis for disclosing the data in question. In this tactical 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. 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 (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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