

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 08

July

2019

DECISION

ZSOŚS.440.88.2018

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096 as amended, hereinafter: the Code of Administrative Procedure), 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. 100 sec. 1 and 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), following administrative proceedings regarding the complaint, Ms L., represented by a legal advisor PM, ul. [...], for the processing of their personal data by the Police Commander in Chief (ul. Puławska 148/150, 02-624 Warsaw) in the Visa Information System (hereinafter: VIS),

I discontinue the proceedings

Justification

The Office for Personal Data Protection received a complaint from Ms L., hereinafter referred to as "the Complainant", about the processing of her personal data by the Police Commander in Chief.

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 decision of [...] January 2018 No. [...] the Commander of the Border Guard Post [...] ruled on the withdrawal of the Schengen visa [...] Ms L. due to the fact that the applicant did not justify the purpose or conditions of stay on the basis of a Schengen visa.

The complainant appealed against the above decision and requested that the contested decision be annulled and the administrative proceedings in the case be discontinued.

By a decision of [...] March 2018, [...] the Commander-in-Chief of the Border Guard revoked the challenged decision in its entirety and discontinued the proceedings of the first instance authority in its entirety. In the justification of the decision, it

stated that the validity period of the applicant's visa expired [...] February 2018, therefore the premise on which the decision was issued ceased to exist and the appealed decision had to be revoked and the proceedings on revoking the Schengen visa should be discontinued.

In a letter of [...] August 2018, the complainant reported to the Office here that the Police Commander in Chief had refused to remove her from the Visa Information System about visa revocation and requested that the administrator be ordered to remove the data on visa revocation from the Visa Information System about number [...]. The applicant disagreed with the decision of the Police Commander in Chief and argued that, following the repeal of Decision No. [...], the data in the VIS should be corrected, as they did not correspond to the factual and legal status that had arisen in connection with the revocation of the decision. She emphasized that the authority revoked the decision of the first instance authority and discontinued the proceedings, which means that the decision was defective and required removal from the legal system.

In a letter of [...] October 2018, the President of the Personal Data Protection Office asked the Police Commander in Chief to comment on the content of the complaint and to provide written explanations on what legal basis and for what purpose and scope the complainant's personal data are processed in the Visa System Informative by attaching a copy of the complaint.

In the explanations submitted to the President of the Personal Data Protection Office, the Police Commander in Chief stated that he had asked the Border Guard Post [...] for explanations, which he had attached to the explanations. He also stressed that the purpose, scope and conditions of access by authorized Member States' authorities to the VIS were set out in the VIS Regulation and in Council Decision (EC) No 2008/633 / JHA of 23 June 2008 on access by designated authorities of the Member States and Europol to The Visa Information System (VIS) for the purpose of viewing it, the prevention, detection and prosecution of terrorist offenses and other serious criminal offenses (Official Journal EU L 218 of 2008).

The explanations of the Commander of the Border Guard Post [...] indicated that the decision of the second instance authority, i.e. repealing the decision no. [...] of the Commander of the Border Guard Post [...] revoking the applicant's visa, was not due to the fact that the decision no [...] was incorrect. [...] but due to the irrelevance of the appeal procedure. The authority emphasized that the redundancy was due to the fact that [...] February 2018, the validity period of the visa to which the proceedings concerned expired and the second instance authority could no longer proceed with the case.

By letters of [...] May 2019, the applicant's representative and the Police Commander in Chief were informed that an administrative decision would be issued on the basis of the collected evidence. The parties were informed that within 7 days of

the delivery of this letter to them, they have the opportunity to comment on the collected evidence and materials as well as on the demands made. Until the date of this decision, neither party responded to the collected evidence.

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

First of all, it should be noted that pursuant to Art. 100 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, proceedings conducted by the President of the Office for Personal Data Protection, initiated and not completed before the date of entry into force of this Act (i.e. before February 6, 2019.) are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Administrative Procedure (hereinafter: the Code of Administrative Procedure).

In the present case, the complainant alleged that her personal data had not been removed from the VIS - data relating to the revocation of a Schengen visa number [...].

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 issuance 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. Pursuant to Art. 3 sec. 1 above of the act, it is applied, inter alia, to state authorities. For this reason, it is

obliged, inter alia, to comply with its provisions Police. At the same time, the principle of legality should be in sight (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 such data were processed in accordance with the law. 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 realities of the present case, in order to consider the issue of the legitimacy of entering into the VIS data on the revocation of the visa No. [...]

Pursuant to Art. 38 sec. 4 of the Regulation of the European Parliament and of the Council (EC) of 9 July 2008 on the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (Journal of Laws EU L 2018 of 13 August 2008, hereinafter: the VIS Regulation) if it is found that data recorded in the VIS are inaccurate or have been recorded unlawfully, the Member State responsible shall correct or delete the data in accordance with Art. 24 sec. 3. The Member State responsible shall confirm in writing to the person concerned without delay that steps have been taken to correct or delete the data concerning him.

In the opinion of the President of the Personal Data Protection Office, the conditions set out in the above-mentioned provision have not been met, i.e. there has been no situation of inaccuracy of the registered data or their unlawful registration.

First of all, it requires attention to the fact that the Commander of the Border Guard Post [...] by decision of [...] January 2018 ruled on the withdrawal of the applicant's visa. Information about this Decision was entered in the VIS in accordance with Art. 13 sec. 1 point 1-e of the VIS Regulation, according to which: in the case of issuing a decision on annulment, revocation or shortening of the visa validity period, the visa authority which made the decision shall add the following data to the application file:

(a) status information indicating that the visa has been annulled or revoked or that its period of validity has been shortened; (b) name and address of the authority that annulled, revoked or reduced the validity of the visa; (c) place and date of the decision; (d) where relevant in cases, the new expiry date of the visa; (e) the number of the visa sticker, if the shortening of the visa takes place by issuing a new visa sticker.

It should be emphasized that at the time when the Commander of the Border Guard Post [...] issued the decision, he had a

legal obligation to enter this information into the VIS, without having to wait for its final character. It results directly from Art. 94 sec. 1 of the Act of 12 December 2013 on foreigners, according to which the decision to withdraw or annul a Schengen visa or a national visa is subject to immediate execution.

One should also pay attention to the wording of Art. 5 (1) (a) of the VIS Regulation, pursuant to which the alphanumeric data referred to in Art. 9 sec. 1-4 and art. 10 to 14 concerning the applicant and concerning the visas applied for, issued, refused, annulled, revoked or extended.

The analysis was carried out on the basis of the collected evidence, i.e. explanations of the Police Commander in Chief, explanations by the Commander in Chief of the Border Guard [...], letters of [...] July 2018 addressed to the applicant's attorney and decisions of [...] March 2018, No. [...], indicates that in the light of the above-mentioned legal status, there has been no breach of the provisions on the protection of personal data. From the very beginning, ie from the moment of entering the information about the withdrawal of decision No. [...], the complainant's personal data were processed pursuant to the provisions of generally applicable law. Moreover, there is no basis referred to in Art. 23 sec. 1 of the VIS Regulation.

Pursuant to Art. 23 sec. 1 of the VIS Regulation, each application data file is stored in the VIS for a maximum period of five years, without prejudice to the possibility of data deletion referred to in Art. 24 and 25, and the possibility of keeping the register referred to in Art. 34. The period begins on the date on which the visa authority takes the decision, if the visa has been refused, annulled, revoked or its validity has been shortened.

As a result of the above, the Complainant may request the deletion of her data from the VIS from [...] January 2023.

Pursuant to Art. 105 § 1 of the Code of Civil Procedure when the proceedings for any reason have become redundant, in whole or in part, the public administration authority shall issue a decision to discontinue the proceedings, respectively, in whole or in part.

The doctrine indicates that "the objectivity of the administrative procedure" referred to in Art. 105 §1 of the Code of Civil Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that it is impossible to settle the matter by deciding on its substance. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). 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 as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. .

As indicated above, there was no breach of the provisions on the protection of personal data in the present case, which makes the entire procedure redundant.

For the above reasons, the President of the Personal Data Protection Office resolved as in the sentence.

Based on Article. 9 sec. 2 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), the party has the right to lodge a complaint against this decision of the President of the Personal Data Protection Office to the Provincial Court Administrative Office in Warsaw within 30 days from the date of its delivery to the website, via the President of the Office for Personal Data Protection (address: ul. Stawki 2, 00-193 Warsaw).

2019-07-16