

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

September

2019

DECISION

ZSOŚS.440.131.2018

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), art. 12 point 2, 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. 100 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 of Mr. DS, correspondence address: [. ..], on irregularities in the processing of his personal data by the Director of the Remand Center in P.,

I discontinue the proceedings

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. DS (hereinafter: "the Complainant") about irregularities in the processing of his personal data by the Director of the Remand Center in P. (hereinafter: the "Director"), consisting in disclosing Investigators in P. his personal data in the field of name and surname, father's name, and "registration number, account balance, funds available on the so-called the discharge and funds for the day of release, as well as the possible seizure of a bailiff with a detailed description of what it was for and what amount it appears for, as well as "for the actions of the director of the Remand Center, who, without authorization and medical education, looked through my health book (...) the information contained in the health book is about the diseases I suffer from (...) ".

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. In accordance with 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 justifying his complaint, the complainant argued that "the above may and often causes conflict situations due to the fact that one can see the account balance of other inmates, not only from the cell where the detainee is held, but also from other cells and wards, which is possible forcing the weaker and unable to refuse to do shopping in the canteen of the unit. There is also a situation where the aforementioned signatures from the inmates on monthly printouts are collected not by an authorized employee of the financial department of a penitentiary unit, but by an officer who performs departmental duties (...). "

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 [...] March 2014, the Inspector General for Personal Data Protection (currently: the President of the Personal Data Protection Office) informed the applicant and the Director of the Remand Center in P. (hereinafter: the "Director") about the initiation of the investigation and requested to the Director to comment on the content of the complaint and to provide written explanations. [...] in March 2014, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a letter from the Director ([...]), in which he explained that the complainant's personal data are processed pursuant to Art. 24 sec. 1 and 2 of the Act of 9 April 2010 on the Prison Service, hereinafter referred to as: "the Act on the Prison Service", according to which the Prison Service may process information and personal data, including without the consent and knowledge of the persons they relate to, necessary for implementation of the tasks referred to in art. 2 of the above-mentioned act. Article 2 of the Act stipulates that the Prison Service performs, in accordance with the principles set out in the Act of 6 June 1997 - Executive Penal Code, tasks in the field of temporary arrest and imprisonment and coercive measures resulting in deprivation of liberty, while the basic tasks of the Prison Service include : 1) conducting penitentiary and social rehabilitation activities towards persons sentenced to imprisonment, primarily by organizing work conducive to acquiring professional qualifications, teaching, cultural and educational activities, activities in the field of physical culture and sports, and specialized therapeutic activities; 2) carrying out pre-trial detention in a manner securing the correct course of criminal proceedings for a crime or a fiscal offense; 3) providing persons sentenced to imprisonment or temporarily arrested, as well as persons against whom imprisonment sentences and coercive measures resulting in deprivation of liberty are carried out,

compliance with their rights, especially humane living conditions, respect for dignity, health and religious care; 4) humane treatment of persons deprived of liberty; 5) protection of the public against the perpetrators of fiscal crimes or offenses incarcerated in prisons and pre-trial detention centers; 6) ensuring order and security in prisons and detention centers; 7) execution on the territory of the Republic of Poland of pre-trial detention and custodial sentences and coercive measures resulting in deprivation of liberty, if they are to be performed in prisons and remand centers and if they result from the implementation of a decision issued by a competent authority; 8) cooperation with relevant formations of other countries and with international organizations on the basis of international agreements and arrangements. Moreover, the director indicated the content of Art. 24 sec. 2 of the Act on the Prison Service, according to which, within the meaning of this Act, the processing of information and personal data should be understood as any operations performed on personal data, such as: collecting, recording, storing, developing, changing, sharing and deleting, especially those which are performed in information systems. In the letter in question, the Director explained that the allegation presented by the Complainant in the complaint had already been the subject of an investigation carried out in relation to a complaint by another inmate, which had been sent to the Office of the Human Rights Defender. It was then indicated that, in accordance with the ordinance of the Minister of Justice of 27 October 2003 on administrative activities and financial settlements related to the deposit of valuables and funds of persons deprived of liberty, the balance of the inmate's cash is calculated in Part III of the deposit card, as well as they are specified according to the headings included in the card. The depositor presents the calculated balance on the last day of each month to the inmate for confirmation of its compliance. If the inmate does not have any cash, this action is performed on the last day of each quarter. It has also been explained that the officers of the Remand Center in P. perform the above-mentioned activities in accordance with the applicable regulations.

The director emphasized at the same time that the "Deposit" program is a nationwide program designed to collect and process all information regarding the funds of inmates and that the above program does not provide for the generation of an individual list to familiarize an individual inmate with the status of his account, and collective statements are prepared by departments and target numbers. In addition, the living conditions of inmates make it impossible to perform the act of signing in complete isolation.

The director also pointed out that the officers of the Remand Center in P. make every effort to individualize this activity, when approaching a residential cell, they individually call a given inmate, who signs in the place indicated on the list. It was also

explained that for such a short time, it is not possible for the inmate to find out who is the owner of what amount of money, because the entire list is not made available and that it is not possible to get acquainted with its content in detail. In the opinion of the Director, the list in its complexity would require a deeper study of individual contents, which is prevented by the short time corresponding to the signing, the presence of an officer who watches over the correctness of the activities performed by him, obscuring the part of the list that does not concern the inmate, or the need to focus the inmate's attention on his own statement.

Referring to the complainant's allegations regarding medical care, the Director explained that [...] April 2014 the Complainant lodged a complaint with the Director on this matter. The Director of the Hospital of the Healthcare Center was appointed to conduct an investigation into the allegations contained therein. Based on the report from the above-mentioned of the proceedings, the Director replied in a letter of [...] April 2013, in which he explained that the Director is a body of executive proceedings, pursuant to Art. 2 of the Executive Penal Code, and pursuant to § 3 sec. 1 of the Regulation of the Minister of Justice of August 13, 2003. on the methods of dealing with motions, complaints and requests of persons imprisoned in prisons and remand centers (Journal of Laws of 5 June 2013, item 647) has a delegation to, inter alia, considering complaints from persons deprived of their liberty. The director also explained that explanatory proceedings containing allegations, e.g. in the field of medicine, are always examined by a doctor, so the director has no access to the medical records of the inmate, and when answering, he uses the data contained in the report, therefore, when submitting a complaint, the inmate must be aware that the explanation of the contained in it, the allegations will require collecting evidence, information or conducting an investigation, and examining the files.

In response to the letter of the Inspector General for Personal Data Protection requesting additional explanations regarding the processing of personal data contained in the financial documentation of inmates of [...] November 2016, by letter [...] November 2016 ([...] The director explained that each inmate, with the exception of those transferred from another facility, has a depository at the Remand Center in P. opens a deposit card, consisting of four parts. It is a practice consistent with the standard contained in § 3 sec. 1 of the Regulation of the Minister of Justice of October 27, 2003 (Journal of Laws of 2003, No. 192, item 1881, as amended). It was also clarified that all financial statements are generated by the Deposit program (the latest version of the application v. 14.4.01 of May 30, 2016) approved by the Central Board of the Prison Service for use in all organizational units of the Prison Service, and the technical documentation of the application and documents related to its

transfer for use in organizational units of the Prison Service are kept at the Central Board of the Prison Service. The "Deposit" program generates only summary lists of inmates' account balances by residential wards, however, in the Remand Center in P., when familiarizing an inmate with the list, technical solutions are used to prevent unauthorized access to their personal data.

In response to the letter of the President of the Personal Data Protection Office of [...] May 2019, requesting a written explanation as to what specific technical solutions were introduced to prevent unauthorized persons from accessing the personal data of inmates, including the complainant's data during the examination the inmate with the account balance on the summary list generated by the "Deposit" program, the Director explained that technical solutions have been introduced that prevent unauthorized persons from accessing the inmates' personal data by using an A4 frame with a window, which he uses to familiarize the inmate with his account balance, at the same time concealing the personal data of other inmates. As proof of the above, the Director attached the official note of the Chief Inspector of the Financial Department of the Remand Prison in PKDz [...] May 2019, in which it was indicated that the quotation "while familiarizing the inmates with the status of the deposit account in order to prevent access to the personal data added by other inmates was introduced A4 format, a frame by means of which the inmate sees only the balance of his / her account, the remaining data of the inmates and the status of their accounts is obscured ".

In a letter of [...] June 2019, the President of the Office for Personal Data Protection (ref. Mark: [...]) again asked the Director to submit written explanations and evidence to confirm whether it was described in the letter marked with the reference number [...] technical solutions that prevent unauthorized persons from accessing the personal data of inmates, including Mr. DS, when familiarizing the inmate with the account balance on the summary list generated by the "Deposit" program, have been introduced into the legal order in force at the Remand Prison in P., and if so, to provide documentation confirming the implementation of procedures in this regard.

In a letter of [...] June 2019 ([...]), the Deputy Director explained that a technical solution that prevents unauthorized persons from accessing personal data while familiarizing a given inmate with the account balance on the summary list generated by the program " "Deposit" was introduced after such an instruction was given to an employee of the financial department by the chief accountant. At the same time, he added that the quotation "no less meeting the suggestions arising from this letter of the Personal Data Protection Office, the director of the unit issued an order introducing the adopted procedures for familiarizing

prisoners with all collective lists, including printouts from the Deposit program." Attached to the above-mentioned of the letter of the Deputy Director sent an excerpt from the ordinance No. [...] of the Director of the Remand Center in P. of [...] June 2019 on the procedures for the conduct of officers and civilian employees of the Remand Center in P. towards prisoners, related to the implementation of the arrangements Of the Executive Penal Code, the organizational and order regulations for the execution of pre-trial detention and the organizational and order regulations for the execution of imprisonment and internal order in the Remand Prison. In Chapter XXXII, entitled "Acquaintance of inmates with collective lists", § 1 provides that the review of a given inmate with all collective lists such as: deposit printouts, lists of registered letters, etc., takes place in such a way that each time the officer sends personal data of other persons by using an A4 size frame with a window.

The President of the Office for Personal Data Protection informed the complainant and the Director of the Remand Center in letters of [...] July 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility of commenting on the collected evidence and materials and the requests made 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.

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

In the present case, the complainant alleged that persons detained in the Remand Center in P. had access to his personal data in the scope of his name and surname, father's name and "registration number, account balance, funds available for the so-called the discharge and the funds on the day of release, as well as the possible seizure of the bailiff with a detailed description of what it was for and what amount it appears for, complaining at the same time "about the actions of the director of the Remand Center, who, without authorization and medical education, looked through my health book (...) the information contained in the health book is about the diseases I suffer from (...)" .

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 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.

Well, in the realities of the case at hand, the main issues were to determine whether the Director of the Remand Center was entitled to access the applicant's health book, without, as the applicant argued, no qualifications and medical education, and whether the administration of the Remand Center provided the applicant with information on the deposit account each month for signing. in such a way that other people, including prisoners, could also become familiar with it.

The conducted analysis of the collected evidence proves that there are no grounds to formulate an accusation against the Director of the Investigation Detention Center that he had unlawfully obtained the applicant's data in the form of a health booklet. As the Director explained, on [...] April 2014 the complainant filed a complaint with the Director on this matter. On the basis of the report on the procedure conducted by the Director of the Hospital of the Healthcare Institution, the Director replied to the Complainant in a letter of [...] April 2013, in which it was explained that the Director was a body of executive proceedings, pursuant to Art. 2 of the Executive Penal Code, and pursuant to § 3 sec. 1 of the ordinance of the Minister of Justice of August 13, 2003 on the methods of settling motions, complaints and requests of persons imprisoned in prisons and remand centers (Journal of Laws of 2003, No. 151, item 1467), has a delegation to, inter alia, considering complaints from persons deprived of their liberty.

It cannot be denied that the Director's statements are correct that explanatory proceedings containing allegations, e.g. in the field of medicine, are always examined by a doctor, so the director does not have access to the medical records of the inmate, and when answering, he uses the data contained in the report, therefore, when submitting a complaint, the inmate must be aware that that the clarification of the allegations contained therein will require gathering evidence, information or conducting an investigation and examining the files in order to properly consider the complaint.

In turn, referring to the applicant's allegation that the administration of the Remand Center provided him with information on the balance of the deposit account each month for signing in such a way that other persons could also read it, it was established that steps were taken to prevent unauthorized persons access to the personal data of inmates, including Mr. DS, while familiarizing the inmate with the account balance on the summary list generated by the "Deposit" program. At the same time, it should be emphasized that the procedure was introduced by Order No. [...] of the Director of the Remand Center in P. of [...] June 2019 in Chapter XXXII, concerning the familiarization of inmates with collective lists.

Pursuant to Art. 18 of the Act, the President of the Office, ex officio or at the request of the person concerned, orders, by way of an administrative decision, the restoration of the legal status, only if he finds that there has been a breach of its provisions. It follows from the above that the authority may order the removal of deficiencies by ordering the disclosure of the requested data only after prior assessment of the behavior of the data controller who previously unjustly refused to update them, or remained inactive despite requests addressed to him. It should be emphasized that an administrative decision is a specific and individual act and always concerns a strictly defined, established and current state of affairs at the time of the ruling.

Moreover, according to the judgment of the Provincial Administrative Court in Warsaw of February 12, 2015, file ref. II SA / Wa 1502/14, the state of violation of the provisions on the protection of personal data identified by the authority should exist on the date of issuing the decision, and if the administrative procedure was initiated as a result of the inspection finding irregularities, and the violation of the law ceases during the procedure (e.g. the administrator remedies the deficiencies), the procedure becomes redundant, and the authority issues a decision to discontinue it pursuant to Art. 105 of the Code of Civil Procedure. For the above reasons, the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure. Pursuant to the aforementioned 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, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are

deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. 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 Civil Procedure 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 r., p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case no. act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter 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 Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

For the above reasons, the President of the Personal Data Protection Office resolved as in the dispositive part of the decision. The decision is final. 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), in connection with art. 15 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, within 30 days from the date of delivery to her side. The complaint is lodged through the President of the Personal Data Protection Office. 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.

2019-09-06