THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

June

2019

DECISION

ZSOŚS.440.57.2019

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), art. 5 sec. 1 point 6 in connection with art. 12 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, hereinafter: the Act of December 14, 2018) after conducting administrative proceedings in on the complaint of Mr. GK, residing in T., for the refusal to delete his personal data by the Police Commander in Chief in Warsaw (Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw) in the National Police Information System (KSIP),

I refuse to accept the application

Justification

The Office for Personal Data Protection received a complaint from Mr. GK (hereinafter: the "Complainant") about irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw (hereinafter: the "Commander"), consisting in the processing of his personal data in the National Information System Police (hereinafter referred to as: "KSIP"). The applicant included in the complaint a request to order the Commander to remove his personal data from the KSIP, which had been found there in connection with the applicant's commission of a crime.

In justifying his request, the complainant argued that in his opinion there were no grounds for which the Police authorities still store and process his personal data in the KSIP system. He emphasized that almost 8 years have passed since he committed the crime and during this period he has not committed any act that would justify a re-entry into the KSIP. He emphasized that he was applying for a job in the Police, therefore he asked the Commander to remove his data from the KSIP.

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 [...] April 2019, the President of the Office for Personal Data Protection informed the Complainant and the

Commander of the initiation of explanatory proceedings in the case and asked the Commander to comment on the content of the complaint and submit written explanations.

In a letter of [...] May 2019, the Commandant indicated that the Complainant, with a request of [...] March 2019 (a copy of the application from the case files) addressed to the Police Commander in Chief, and then forwarded to the Intelligence and Criminal Information Bureau of the Headquarters Of the Main Police, asked for his personal data to be removed from the KSIP.

By letter of [...] March 2019 - Ldz. [...] (a copy of the letter in the case files), the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, acting under the authority of the Police Commander in Chief, replied to the complainant , indicating that the Police process personal data in accordance with art. 20 of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161), hereinafter referred to as: "the Act on the Police". In the justification of the position, the Complainant was provided with the legal grounds for the processing of personal data by the Police, in particular art. 20 paragraph 1-ld, sec. 2b-2c and art. 20 paragraph 2ad and paragraph 2ba of the Police Act, their scope and purpose of processing. In addition, the letter in question clearly indicated that the legal act defining the rules and procedure for collecting and sharing information, including personal data, is the Police Act, in particular Art. 20 paragraph 2a. The complainant was also informed about a different procedure and rules for processing information in the KSIP. It was also explained to the complainant that the fact that his personal data was processed by the KSIP did not stigmatize him in the light of the law, because the information at the KSIP's disposal did not constitute a source of publicly available knowledge, as it was used only for the performance of the Police tasks referred to in Art. 1 clause 2 of the Police Act. While access to information on the criminal record of a person from KRK is universal, the information obtained and produced by the Police authorities at the KSIP is a closed, generally inaccessible set of information and data, used only by the Police authorities to carry out their statutory tasks related to ensuring safety and order. public.

In the above-mentioned letter, it was also pointed out that the Police process personal data only to the extent specified and in accordance with the provisions cited.

The President of the Office for Personal Data Protection informed the Complainant and the Police Commander in Chief in letters of [...] May 2019 about conducting administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility to comment 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.

Until the date of this decision, neither of the parties responded to the collected evidence.

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

The complainant alleged that the Police Commander in Chief of the processing of his personal data in the KSIP were unlawfully processed.

The Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime specifies, inter alia, rules and conditions for the protection of personal data processed by competent authorities for the purpose of identifying, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as the execution of pre-trial detention, penalties, order penalties and coercive measures resulting in deprivation of liberty (art. 1 item 1 point 1).

Based on Article. 8 sec. 2 of the Act of December 14, 2018 in the event of violation of the provisions on the protection of personal data collected for the purposes referred to in art. 1 point 1, the President of the Office, by way of an administrative decision, orders the controller or the processor to restore the lawful state, and in particular:

elimination of shortcomings;

supplementing, updating, rectifying, disclosing or not disclosing personal data;

application of additional security measures for the collected personal data;

securing personal data or transferring them to other entities;

deletion of personal data;

imposing temporary or permanent restrictions on processing and transfer, including the prohibition of processing.

In the field of processing various types of information, including personal data, the function of the Police is special, as it collects information that is subject to a special regime and protection. This is reflected in Art. 20 paragraph 1 and sec. 2a of the Police Act, on the basis of which the Police, subject to the limitations resulting from art. 19, may obtain information, including classified information, collect, check and process it (section 1). The police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about the following persons, also without their knowledge and consent: about persons suspected of committing crimes prosecuted under public indictment, by the Act as crimes prosecuted by public indictment, about persons with undetermined identity or trying to conceal their identity, about persons

posing a threat, referred to in the Act of 22 November 2013 on proceedings against persons with mental disorders posing a threat to life, health or sexual freedom of other persons, on wanted persons, missing persons and persons against whom protection and assistance measures, provided for in the Act of 28 November 2014 on protection and assistance, provided for in the Act of 28 November 2014 on the protection of and help for the victim and the witness (Journal of Laws of 2015, item 21 ) (Art. 20 paragraph 2a of the Police Act).

Detailed rules for the processing of personal data of persons mentioned in art. 20 paragraph 2a of the Police Act is specified in the regulation of the Minister of the Interior and Administration of August 24, 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636), hereinafter referred to as the "Regulation". Pursuant to § 10 of the regulation in question, the Police operates the National Police Information System (KSIP), which is a set of data sets in which information is collected, checked, processed and used, including personal data referred to in art. 20 paragraph 2a points 1-6, sec. 2ac and paragraph. 2b of the Police Act. The KSIP may also process information, including personal data, to which the Police is entitled to collect, obtain and process on the basis of separate acts, if this contributes to the coordination of information and more effective organization and implementation of the statutory tasks of the Police in the field of detecting and prosecuting perpetrators of crimes. and preventing and combating crime, as well as protecting human life and health (§ 10 (2) of the Regulation). It should be emphasized that the criterion of the necessity to process personal data in the KSIP must always be related to the statutory tasks of the Police, the implementation of which is to be achieved by the provisions of Art. 20 paragraph 1, sec. 2a and 2b in connection with Art. 20 paragraph 17 of the Police Act. Pursuant to Art. 20 paragraph 17b, the personal data referred to in para. 17, shall be deleted if the Police authority has obtained credible information that: the act constituting the basis for entering the information into the file was not committed or there is no data sufficient to justify the suspicion of its commission; the event or circumstance in relation to which the information was entered into the collection does not bear the characteristics of a prohibited act; the data subject has been acquitted by a final court judgment.

In addition, Chapter 5 of the Regulation indicates the criteria for verifying the storage of personal data in the system in terms of their further usefulness, which include, inter alia, the type and nature of the crime committed, the type and nature of the infringed good protected by law, the form of the perpetration, the form of the intention, the time that has elapsed since the data was entered into the filing system, the validity of the conditions of legality and the necessity of further data processing to perform statutory tasks, the occurrence of the circumstances specified in art. 20 paragraph 17b and 18 of the Police Act, and in

the case of dactyloscopic data, the occurrence of the circumstances specified in art. 211 paragraph. 2 and art. 21 m of this act.

In the course of the proceedings, the President of the Personal Data Protection Office established that in 2011 the Complainant was subject to criminal proceedings for an offense under Art. 291 §1 of the Act of June 6, 1997, Code of Kama (Journal of Laws of 2018, item 1600), hereinafter referred to as: "Code of Kama". On the terms set out in Art. 20 paragraph 2a of the Police Act, in connection with the allegations made to the complainant, the competent Police authorities entered the complainant's personal data into the KSIP data file as a person suspected of committing an offense prosecuted by public indictment. Subsequently, by a judgment of [...] June 2011, the District Court in T. in the case [...] found the applicant guilty of the offense and imposed on him a penalty of 20 hours of community service.

According to Art. 20 paragraph 17 of the Police Act, this authority is required to verify the data after the end of the case under which these data were entered into the collection, and moreover not less frequently than by 10 years from the date of obtaining or downloading the information, deleting redundant data. Bearing in mind the above, the Commandant explained that the data required by the Act were verified after the end of the case, and additionally in connection with the request to the Police Commander in Chief for the removal of data from the KSIP and a complaint to the President of the Personal Data Protection Office against the decision refusing to delete the complainant's data from the KSIP and ordering the deletion of his data from the KSIP, where in the case of a request for deletion of data, verification was made in particular in terms of the premises of Art. 51 sec. 4 of the Polish Constitution and in terms of legality, in this respect, the premises of Art. 16 of the Act on the protection of personal processed in connection with the prevention and combating of crime. The Commandant emphasized that considering the fact that the ten-year period of compulsory verification of the collected data had not expired yet, there were no statutory grounds for removing the Complainant's data from the KSIP.

In this case, the content of Art. 13 sec. 1 of the Act of December 14, 2018, which provides that the competent authorities process personal data only to the extent necessary to exercise the right or fulfill the obligation resulting from the law. The legal basis for the processing of personal data of persons against whom the proceedings were conducted by the Police authorities is art. 20 paragraph 1 of the Police Act, pursuant to which the Police, subject to the limitations resulting from Art. 19, can obtain information, including covertly, collect, check and process it. The police may download, obtain, collect, process and use, in order to carry out statutory tasks, information, including personal data - about persons suspected of committing crimes prosecuted by public prosecution - also without their knowledge and consent (section 2a).

At this point, attention should be paid to the position of the judicature, including in particular the judgment of the Supreme Administrative Court of April 21, 2017 (file reference number I OSK 2426/15) and the judgment of the Constitutional Tribunal of December 12, 2005 (file reference number K 32/04, publ. OTK-A 2005/11/132), in which it was stated that the provision of Art. 20 paragraph 17 of the Police Act does not provide for the removal from the data files of persons suspected of committing crimes prosecuted by public prosecution, who have been legally acquitted or against whom the criminal proceedings have been legally and unconditionally discontinued, immediately after the relevant judgment becomes final. Final acquittal of a specific person or unconditional discontinuation of criminal proceedings against a specific person does not prejudge whether the collected data may contain information useful for the performance of statutory tasks of the Police towards other persons.
Considering the above, it should be stated that the Complainant's personal data was obtained by the Police authorities in a legal manner and is also processed by them in the KSIP. The Police authorities assess the usefulness of the collected data, which implies that the complainant's data will be kept in the National Police Register. On the other hand, if the data about a person contained in the set becomes useless for preventive, evidence or detection purposes, the Police authority may decide to remove them as a result of the assessment referred to in § 29 of the Regulation of the Minister of the Interior of July 22, 2016 in on the processing of information by the Police (in force on the date of initiation of the administrative procedure). In view of the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts, and the complainant's complaint deserves to be taken into account in nothing.
In this factual and legal state, the President of the Personal Data Protection Office resolved as in the introduction.
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), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, 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. 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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