THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

April

2019

DECISION

ZSOŚS.440.5.2019

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. 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), after conducting administrative proceedings regarding the complaint of Mr. L. M., residing in in the town of S., on irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw (Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw), consisting in the processing of the complainant's personal data in the National Police Information System (KSIP ) and at the National Criminal Information Center (KCIK),

I refuse to accept the application

JUSTIFICATION

On [...] December 2018, the Office for Personal Data Protection received a complaint from Mr LM (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 Police Information System (hereinafter: "KSIP") and in the National Criminal Information Center (hereinafter: "KCIK"). The applicant included in the complaint a request to order the Commander to remove his personal data from the KSIP and KCIK in the scope of information obtained in the course of criminal proceedings against him.

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 and KCIK systems. Moreover, the Complainant indicated that the consequences of the existence of his personal data in the above-mentioned I feel the systems to this day, because “during the roadside control, the policemen who checked I found my presence in their system and they started asking me what I had done

(...). The inspection was carried out in the presence of my potential clients who were traveling with me to the site of the planned work that day. As a result of the policemen's actions, clients lost their trust in me and withdrew from the transaction ”.

The applicant further argued that there were no grounds for the usefulness of this type of information for the statutory activities of the Police, in particular for activities of a detective nature and aimed at preventing a crime from being committed in the future. Considering the above, in the content of the complaint, the Complainant demanded that the President take action to protect his personal data by deleting his personal data from the files of the KSIP and KCIK.

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 [...] January 2019, the President of the Office for Personal Data Protection informed the Complainant and the Commander about the initiation of the investigation procedure and asked the Commander to comment on the content of the complaint and submit written explanations. [...] February 2019, the Office for Personal Data Protection received a letter from the Commander ([...]), in which he explained that the Complainant with the application of [...] August 2017 (copy of the application from the case file) to to the Police Commander in Chief, and then transferred to the Intelligence and Criminal Information Bureau of the General Police Headquarters, asked for the removal from the KSIP and KCIK of his personal data entered as part of the proceedings conducted in 2006, in which the applicant was suspected of committing a crime, but not he was sentenced. In a letter of [...] September 2017 - Ref. No. [...] (a copy of the letter in the case files) the 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 processes 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 indicated the legal grounds for the processing of personal data by the Police, in particular art. 20 paragraph 2a, section 2ac, paragraph 2b, section 17 of the Police Act, their scope and purpose of processing, paying attention to the particularity of these standards (lex specialis) in relation to general provisions, such as the provisions of the Act on the Protection of Personal Data and Art. 51 sec. 5 of the Constitution of the Republic of Poland, which refers to specific regulations in terms of the principles and procedure for collecting and disclosing information about a person. 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. The complainant was also explained that the fact that his personal data was processed by the National Clearing House and the National Clearing House does not stigmatize him in the light of the law, because the information at the disposal of KCIK and KSIP is not a source of publicly available knowledge, as it is 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 KSIP and KCIK 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 security. and public order.

In the above-mentioned In the letter, it was also noted that the Police process personal data only to the extent specified and in accordance with the provisions cited. At the same time, the Commandant indicated that after [...] November 2018 the complainant did not apply for the removal of personal data from the KSIP and KCIK.

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

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

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 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, as referred to in Art. 7 point 2 of this act, it is allowed 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.

The right to the protection of personal data, as one of the elements of the right to the protection of a person's privacy, has its source in the provisions of the Act of April 2, 1997, the Constitution of the Republic of Poland. According to the Basic Law, everyone has the right, inter alia, to to the legal protection of private and family life, honor and good name (Article 47 of the Constitution), and disclosure of information about a person is specified by statute (Article 51 (5) of the Constitution). The instruction of Art. 51 sec. 5 of the Constitution is fulfilled by the Personal Data Protection Act, which defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Personal Data Protection Act of August 29, 1997 r.).

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 people with mental disorders posing a threat to life, health or sexual freedom of other persons, persons wanted, missing persons and persons against whom protection and assistance measures have been applied, provided for in the Act of 28 November 2014 on the protection and assistance for the victim and witness (Journal of Laws of 2015, item 21) (Article 20 (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. 21 l of paragraph 2 and art. 21m of this act.

In addition, the Police maintains a criminal information database of the National Criminal Information Center (KCIK), the legal basis of which is Art. 5 in connection with Art. 26 of the Act of 6 July 2001 on the collection, processing and transmission of criminal information (Journal of Laws 2019, item 44), hereinafter referred to as: "the Act on KCIK". The National Criminal Information Center was established within the structure of the General Police Headquarters in order to collect, process and transmit criminal information; keeping databases and determining the organizational and technical conditions for the maintenance of such databases; developing analyzes of criminal information; ensuring the security of collected and processed data on the terms set out in u.o.d.o. and in the Act of 5 August 2010 on the protection of classified information (Journal of Laws

of 2018, item 412).

KCIK may collect, process and transfer criminal information only for the purpose of preventing and combating crime (Article 2 (1) of the Act on KCIK). In addition, these processes take place on the principles set out in the Act on the KCIK and without the knowledge of the persons to whom the information relates (Article 2 (2) of the Act on the KCIK).

At this point, attention should also be paid to the tasks entrusted to the Police, including the protection of human life and health, property, against unlawful attacks violating these goods, protection of public safety and order, initiating and organizing preventive actions aimed at preventing committing crimes and petty offenses as well as detecting crimes and petty offenses and prosecuting their perpetrators. In order to perform the above tasks, it is important to be able to collect and process personal data without the knowledge and consent of the data subject. Additionally, art. 2 clause 1 of the Act on KCIK emphasizes that this information may only be processed for the purpose of combating and preventing crime. Therefore, one should agree with the Provincial Administrative Court in Warsaw, which in its judgment of 10 January 2014 (file reference number II SA / Wa 1648/13) stated that the lack of these attributes would deprive the Police of "(...) one of the instruments enabling its real concern for safety and public order. This, in turn, would make it difficult, and sometimes even prevent the Polish State from correctly fulfilling the obligations described in the Constitution of the Republic of Poland towards its citizens (...). It would, therefore, result in subordinating the higher value, which is the good of all citizens, to a lower value, which is the individual's right to protection. her personal data ".

In the course of the proceedings, the President of the Personal Data Protection Office established that in 2006 the Complainant was subject to criminal proceedings concerning acts under Art. 286 § 1 and article. 258 § 1 of the Act of 6 June 1997 Penal Code (Journal of Laws of 2018, item 1600), hereinafter referred to as: "Penal Code", and in 2008 for an act specified in Art. 190 § 1 of the Criminal Code. 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. In the context of the above, it should be added that the appropriate verification of the Complainant's collected data in the field of crimes under Art. 286 § 1, art. 258 § 1, art. 190 § 1 of the Criminal Code, the Police authorities carried out after the completion of the cases, i.e. in 2006 and 2008, and in connection with the complaint submitted by the Complainant to the President of the Personal Data Protection Office regarding the removal of personal data from the KSIP. 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 verifications required by the Act were carried out, i.e. in 2006 and 2008, after the completion of the cases, and additionally each time in connection with requests for the deletion of personal data from the KSIP and a complaint regarding the deletion of data from the KSIP, with which in the case of requests for the removal of personal data from the KSIP, the verification was made in terms of the prerequisites of art. 51 sec. 4 of the Polish Constitution and Art. 20 section 17b and 18 of the Police Act. When assessing the data in terms of their usefulness, the Police did not have any information indicating the existence of the premises under Art. 20 (17) of the Police Act. The commandant also explained that the indicated in Art. 20 (17) of the Police Act, the ten-year period of compulsory verification of the collected personal data has expired, but there are no statutory grounds for deleting the Complainant's personal data from the KSIP, because the type of crimes committed under Art. 286 § 1, art. 258 § 1, art. 190 § 1 of the Criminal Code.
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. 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, according to which the Police, subject to the limitations resulting from Art. 19, may 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).
Moreover, it was explained that pursuant to Art. 14 sec. 1 of the Act on KCIK, criminal information is stored in KCIK databases for a period of 15 years. The conditions for removing information from NCIC databases are specified in Art. 25 of the Act on KCIK, according to which criminal information is subject to removal from databases if: 1) its collection is prohibited; 2) the recorded criminal information turned out to be untrue; 3) the purpose of their collection has ceased to exist; 4) the periods referred to in Art. 14 sec. 1-3; 5) it is justified with regard to state security or its defense, or may result in the identification of persons providing assistance in the performance of operational and reconnaissance activities carried out by authorized entities. The submitted explanations also indicated that in each case, if a citizen requests the removal of his personal data from the KCIK files, steps are taken to verify the usefulness of the personal data being processed. The entity that provided criminal

information removes it if one of the conditions of Art. 25 points 1, 2, 3 or 5 of the Act on KCIK. In the presented explanations, the Commandant explained that the answers received by the Complainant to the submitted requests were provided on the basis of the provisions of law in force at that time. Due to the fact that the Act on KCIK is a lex specialis in relation to the norms specified in Art. 25, art. 32, art. 33 and art. 35 of the Act on the Protection of Personal Data, the Police Commander in Chief, as the Head of the Center, is not obliged to inform the person whose personal data may be collected and processed about the fact of processing such data, as well as about the scope of processing or making this data available, because it is justified by the assigned For the head of the Center, statutory tasks and the purposes of collecting and processing criminal information in KCIK databases - preventing and combating crime.

In the case under consideration, the provisions of the Regulation of the Minister of Internal Affairs and Administration of 23 August 2018 on the processing of information by the Police (Journal of Laws 2018, item 1636), which replaced the Regulation of the Minister of the Interior of July 21, 2016, should also be taken into account. on the processing of information by the Police, in force at the time of initiation of administrative proceedings before the President of the Office for Personal Data Protection. § 4 of the ordinance of 23 August 2018 defines the procedure for collecting information, including personal data, as well as procedures ensuring the collection, collection, obtaining of information and organization of the files in a way that allows for the control of access to the files and supervision over the processing of information. At the same time, according to § 27 sec. 1 of the Regulation, access to the indicated data is strictly regulated, which means that it is limited to the authorized persons indicated in this provision. Moreover, in accordance with para. 2 of this provision, information, including personal data, collected in data files is made available only to authorized persons, which at the same time proves, as mentioned above, the non-widespread nature of this collection, which is used to perform the statutory tasks of the Police.

The above argumentation is justified in the judgment of the Supreme Administrative Court of April 21, 2017 (file reference number I OSK 2426/15) and in 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 and KCIK. The Police authorities assess the usefulness of the collected data, which implies that the complainant's data will be left with the National Police Information Center and KCIK. On the other hand, if the data about a person contained in the file 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 Internal Affairs and Administration of August 24, 2018. on the processing of information by the Police. 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 does not deserve to be taken into account.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

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.

2019-04-26