THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

of December

2018

DECISION

ZSOŚS.440.92.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and 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. 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 administrative proceedings regarding the complaint of Mr. F. K., residing in in A., irregularities in the processing of his personal data by the Police Commander in Chief, consisting in the processing of his personal data in the National Police Information System (KSIP) in a situation where the conviction for offenses has been expunged and the refusal to provide information about data sets and the scope and purpose of processing his personal data,

I refuse to accept the application

Justification

On [...] July 2016, the Office of the Inspector General for Personal Data Protection (now: "Office for Personal Data Protection") received a complaint from Mr. FK (hereinafter referred to as the "Complainant"), represented by the attorney, about irregularities in the data processing process the Complainant's personal data by the Police Commander in Chief in Warsaw (hereinafter referred to as the "Commander"), consisting in the processing of the Complainant's personal data in the National Police Information System (KSIP) in a situation where the conviction for committed crimes has been expunged and the refusal to provide information about data sets and about the scope and purpose of processing his personal data. In the complaint, the Complainant's attorney also requested that the Commander be ordered to remove the Complainant's personal data from the KSIP in the scope of information obtained in the course of the conducted criminal proceedings. He indicated Art. 35 sec. 2 of the Act of August 29, 1997 on the Protection of Personal Data. In justifying the request, he argued that in his opinion there were no grounds for which the Police authorities still store and process the complainant's personal data in the KSIP system, in

the event of the final termination of the proceedings, successful completion of the probation period and seizure of convictions. The representative of the Complainant also indicated the ten-year period of data verification, referred to in Art. 20 paragraph 17 of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended), hereinafter referred to as the "Police Act", having a guarantee character, which means that the authority is obliged to verifying data and deleting redundant data on an ongoing basis, but not less frequently than every ten years from the date of obtaining or downloading. In this case, therefore, it is incorrect to say that the authority may in any event keep the collected data for 10 years after it has been obtained or downloaded. The data subject has the right to request their removal at any time, also within 10 years of their acquisition. He also emphasized that in his opinion, in accordance with § 28 of the Regulation of the Minister of Interior and Administration of September 29, 2015 on the processing of information by the Police, the authority should verify the data at the request of the person concerned. they are no longer useful to the Police authorities due to the fact that the acts committed by him were not serious crimes and their social harm was small. The plenipotentiary also indicated positive changes in the complainant's behavior and his willingness to take up employment in a state institution which, in the recruitment process, also verifies the candidate's personal data at the National Labor Inspectorate.

Considering the above, in the content of the complaint, the Complainant's attorney demands that the President of the Personal Data Protection Office take action to protect the Complainant's personal data by deleting information about the Complainant's commission of prohibited acts from the KSIP file.

In addition, in a letter of [...] February 2017, the Complainant also lodged a complaint about improper performance of the tasks by the Commander, consisting in the refusal to provide him with information regarding his personal data collected and processed in the KSIP. The letter also contained a request for the issuance of a decision by the Inspector General for the Protection of Personal Data ordering the Commander to fulfill his obligations under Art. 32 sec. 1 points 1-6 of the Act of August 29, 1997 on the protection of personal data and art. 72 sec. 10 decision no. 125 of the Police Commander in Chief of 5 April 2013. In support of his request, the applicant admitted that he had committed crimes as a juvenile, for which he had been punished, but due to the passage of time the conviction had already been erased by operation of law. The complainant indicated that he was currently observing the legal order, was improving his professional qualifications and was going to take up employment in a state institution. To confirm his statements, he enclosed a copy of the certificate of attendance ([...]), a copy of a criminal record certificate, a copy of the employment certificate, a statement by Mr. J.T. who is the aggrieved party in

a criminal case and a copy of the decision of [...] August 2012 of the District Court in A. on securing the specified amount for the obligation to redress the damage for the aggrieved party in the criminal case.

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 [...] October 2018, the President of the Personal Data Protection Office informed the Complainant and the Commander of the initiation of explanatory proceedings and asked the Commander to comment on the content of the complaint and submit written explanations. On [...] October 2018, the Office for Personal Data Protection received a letter from the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the KGP ([...]), in which he explained that the complainant, represented by the attorney, requested [...] June 2016 (a copy of the application from the case files) addressed to the Police Commander in Chief, asked for the removal of his personal data entered in the framework of criminal proceedings in the case of an offense under Art. 286 of the Act of 6 June 1997 Criminal Code (Journal of Laws of 2018, item 1600, as amended), hereinafter referred to as "the Penal Code", and in the case of an act under Art. 157 of the Penal Code

In a letter of [...] June 2016 - [...] (a copy of the letter in the case file) the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters replied to the complainant, indicating that the Police processed personal data in accordance with Art. 20 of the Police Act. 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 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 (Journal of Laws of 1997, No. 78, item 483, as amended), which refers to specific regulations in terms of the rules and procedure for collecting and disclosing information about a person. In addition, in the letter in question - it was 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, which allows the processing of personal data without the knowledge and consent of the data subject. The complainant was also informed about the different procedure and rules for processing information in the KSIP and KRK and that, apart from the exceptions set out in the Acts, the KSIP collection is not available to employers. However, this does not apply to professions and functions that require an

impeccable opinion under the provisions of statutes, because in this case both the criminal record of the person is subject to assessment, but also other behavior of the person not constituting crimes within the meaning of the law, but creating doubts in the context of exercising a special social role assigned to a given professional group. be the position. The letter also referred to the provisions of the Regulation of the Minister of the Interior and Administration of July 21, 2016 on the processing of information by the Police, including in particular the premises for assessing the usefulness of data specified in § 28 para. 1 of this Regulation. 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, as he would remain an unpunished person in the event of an expungement of the conviction. 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.

Then, in a letter of [...] January 2017, the applicant asked the Police Commander in Chief for information on "the existing collections and the scope and purpose of processing personal data" concerning his person, including those obtained and collected without his knowledge (copy of the letter in the case file). In the justification of his letter, the Complainant indicated the provisions of Art. 51 sec. 3 of the Polish Constitution, Art. 32 section 1 of the Act of August 29, 1997 on the protection of personal data and § 72 section 10 of the decision no. 125 of the Chief Police Commander of 5 April 2013 on the operation of the National Police Information System (Journal of Laws of the Police Headquarters, item 28). He also pointed to the particular importance of the information he requested. In a letter of [...] January 2017, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the National Police Headquarters, acting under the authority of the Police Commander in Chief, replied to the above-mentioned application (copy of the letter in the case file). He again pointed to the provisions of Art. art. 20 paragraph 2a, section 2b, section 17 of the Police Act regarding the possibility of downloading, obtaining, collecting, processing and using information, including personal data, without the knowledge and consent of the persons concerned, in order to perform statutory tasks. He stressed that the provision of Art. 20 paragraph 2a of the Police Act is an exception to the rule specified in Art. 51 of the Polish Constitution and Art. 25, art. 32, art. 33 of the Act of August 29, 1997 on the Protection of Personal Data. Therefore, the Police are not obliged to inform the person whose personal data they process about the fact and the scope of the processing of such data. There is also no obligation to share them. This position correlates with Art. 20a paragraph. 1 of the Police Act. Considering the above, the Deputy Head of Department informed the Complainant about the lack of legal grounds for disclosing the requested information.

The President of the Office for Personal Data Protection informed the Complainant and the Police Commander in Chief in letters of [...] November 2018 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.

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 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 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 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.

In the course of the proceedings, the President of the Office for Personal Data Protection established that criminal proceedings were conducted against the Complainant in the case of an offense under Art. 286 § 1 of the CC and in the case of an act under Art. 158 § 1 of the CC 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 authority made a trial registration, i.e. entered personal data into the KSIP data file as a person suspected of committing an offense prosecuted by public prosecution. On the day the complaint was lodged with the Bureau of the Inspector General for Personal Data Protection, the conviction has already been seized.

Referring to the institution of exposing a conviction, it should be noted that it aims to enable the full social rehabilitation of the convict, which is associated with the recognition of the conviction as void and the removal of the entry on the conviction from the National Criminal Code. A convicted person has the right to claim that he or she has not been punished, and that no institution may limit his / her rights on the basis of a criminal record. This right is not prejudiced due to the further processing of the data about the offender in the National Police Information System, because the information at the disposal of the National Police Information System does not constitute a source of publicly available knowledge, as it is used only for the performance of the Police tasks referred to in Art. and paragraph 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 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, 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). The period of data storage is specified in Art. 20 paragraph 17 of the Police Act, pursuant to which personal data collected in order to detect a crime is stored for the period necessary to perform the statutory tasks of the Police. Police authorities verify these data after the end of

the case in which the data was entered into the file, and moreover, at least every 10 years from the date of obtaining or downloading the information, deleting redundant data. 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. On the other hand, particularly sensitive personal data, e.g. revealing racial or ethnic origin, religious beliefs and data on the health, addictions or sexual life of persons suspected of committing crimes prosecuted by public prosecution, who have not been convicted of these crimes, are subject to commission and protocol destruction immediately after the relevant decision becomes final (section 18).

Among the above-mentioned grounds for data deletion, there is no seizure of the conviction that would justify the removal of the Complainant's data from the KSIP. This means that the mere seizure of a conviction is not an independent and absolute condition for removing criminal information from the KSIP databases. In addition, attention should be paid to the issue of the data retention period; indefinite storage of personal data is unacceptable. The content of art. 20 paragraph 17 indicates that the Police authorities are obliged to systematically review and remove unnecessary data from the system, therefore there may not be a situation of indefinite processing of personal data in the KSIP by this entity. As a side note, it should be noted that the mentioned in Art. 20 paragraph 17 of the Police Act, the ten-year period for obtaining or downloading information in the case under consideration has not yet expired. Thus, this constitutes another argument in favor of the lawful processing of the Complainant's personal data by the Police authorities in the database. Moreover, according to the letter of 25 October 2018 of the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, the Police authorities properly verified the complainant's data collected in the KSIP after the end of the case, i.e. in 2011, and additionally in connection with with the request submitted by the Complainant to remove his personal data from the KSIP file, and in the case of a request to delete personal data from the KSIP, the verification was made in particular in terms of the premises under Art. 51 sec. 4 of the Polish Constitution and the premises of Art. 20 paragraph 17b and 18 of the Police Act.

In the case under consideration, one should also take into account the regulations, the ordinance of the Minister of Internal Affairs and Administration of 23 August 2018 on the processing of information by the Police (Journal of Laws, item 1636), in

particular § 4 and § 10, which replaced the regulation Of the Minister of the Interior of July 21, 2016 on the processing of information by the Police, in force at the moment of initiating administrative proceedings before the Inspector General for Personal Data Protection.

In addition, Chapter 5 of the Regulation of 23 August 2018 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 set, the validity of the conditions of legality and the necessity of further data processing to perform statutory tasks, the occurrence of 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. 21m of this act.

The above argumentation is justified in the judgment of the Supreme Administrative Court of April 21, 2017 (I OSK 2426/15) and in the judgment of the Constitutional Tribunal of December 12, 2005, file ref. 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.

Moreover, the Constitutional Tribunal indicates that the reason for which the rights of an individual may be limited is the protection of the common good, and in particular - taking into account the needs of the country's security and defense. Therefore, the protection of state security is a special value against which the rights of the individual, even fundamental rights, may be - to the extent necessary - limited. The admissibility of restrictions dictated by such considerations is generally accepted in democratic countries (the judgment of the Constitutional Tribunal of February 16, 1999 in case SK 11/98, OTK of 1999, part I, item 5).

Bearing in mind the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts. The complainant's personal data were, in accordance with the provisions, subject to an assessment of their usefulness.

In this factual 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 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.

2019-04-02