THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

of December

2018

DECISION

ZSOŚS.440.148.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096), art. 12 point 2, art. 22, art. 23 sec. 1 point 2, art. 27 sec. 1 and 2 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. 175 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as the "Act", after administrative proceedings regarding the complaint of Ms AG, residing in W., for processing his personal data by the Police Commander in Chief in the National Police Information System,

I refuse to accept the application

Justification

The Office for Personal Data Protection received a complaint from Ms A. G., residing in W., hereinafter referred to as "the Complainant", against the processing of her personal data by the Police Commander in Chief, hereinafter referred to as "KGP". In the content of the complaint, the complainant argued that she asked the President of the Office for Personal Data Protection to order the Police Commander in Chief to remove her personal data from the National Police Information System (hereinafter "KSIP"), arguing that no criminal proceedings were pending against her at present, which in the light of Art. 20 paragraph 2c of the Police Act makes further processing of personal data redundant.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office determined the following.

The following criminal proceedings were conducted against the applicant, namely in 2001 in a case for an act under Art. 177 § 1 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", in 2010 in the case of an act under Art. 178a § 1 of the Penal Code, in 2014 in the case of an act under Art. 286 § 1 of the Penal Code and in 2015 in the case of an act under Art. 286 § 3 of the Penal Code. On the terms set out in Art. 20

paragraph 2a of the Act of 6 April 1990 on the Police (Journal of Laws of 2017, item 2067, as amended), in connection with the presentation of charges, the competent Police authority made the so-called trial registration, i.e. he entered the complainant's personal data into the KSIP data file as a person suspected of committing an offense prosecuted by public indictment.

By letter of [...] August 2018, the complainant requested KGP to remove her personal data from the KSIP, because their processing resulted in the inability to work in the justice authorities, and the criminal proceedings against the complainant had been discontinued.

In a letter of [...] October 2018, the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters replied to the above-mentioned the complainant's request, informing that, as it results from art. 20 paragraph 2a, section 2ac and paragraph. 2b of the Police Act, the Police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, about persons suspected of committing crimes prosecuted by public prosecution. The letter explained that the information may include: personal data referred to in art. 27 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, features and special characters, nicknames, information about: place of residence or stay, education, profession, place and position of work as well as material situation and the condition of property, documents and objects use the method of the perpetrator's actions, his environment and contacts, the perpetrator's behavior towards the aggrieved parties. The police are not obliged to inform the person whose personal data they process about the processing of such data as well as about the scope of processing or sharing personal data. It was further explained that this position, pursuant to Art. 20a paragraph 2a of the Police Act is a lex specialization in relation to the standards specified in Art. 51 of the Polish Constitution and Art. 25, 32 and 33 of the Act. Moreover, this position is directly related to Art. 20a paragraph 1 of the Police Act, according to which, in connection with the performance of statutory tasks, the Police ensure the protection of forms and methods of performing tasks and information.

As further noted by the Governor, personal data collected in order to detect a crime, in accordance with art. 20 paragraph 17 of the Police Act are stored for the period in which they are necessary for the performance of statutory tasks performed by the Police. Police authorities verify these data at least every 10 years from the date of obtaining the information, removing redundant data. Moreover - in accordance with the content of Art. 20 paragraph 17b of this Act - the personal data in question shall be deleted if the Police authority has obtained reliable information that:

the act constituting the basis for entering 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.

The complainant was informed that the development of the above legal norms was developed in the ordinance of the Minister of the Interior and Administration of 23 August 2018. on the processing of information by the Police (Journal of Laws of 2018, item 1636), hereinafter referred to as "the regulation". According to the wording of § 29 sec. 1 of this regulation, when verifying personal data in terms of their usefulness in conducted proceedings, the following are taken into account:

the type and nature of the act that constitutes a crime;

the type and nature of the goods protected by law, infringed upon by the committed crime;

forms of perpetration and intention to commit the crime;

the form of the intention and effects of the act, including the type and extent of the damage caused or threatened;

threat of a criminal sanction for the committed crime;

the number of crimes committed;

time elapsed from the time the information was entered into the dataset until the evaluation;

other information collected about the person;

the grounds for obtaining, downloading or collecting data and their accuracy;

the validity of the premises of legality and the necessity of further data processing to perform the statutory tasks of the Police;

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.

The above-mentioned verification is carried out ex officio with the use of information collected in data files kept by the Police related to personal data selected for verification, contained in the applications of data subjects, submitted under the provisions of the Act on the Protection of Personal Data, as well as obtained from other authorities. , state services or institutions (§ 30 (1) of the Regulation). In addition, the type of protected good, the expiry of the time limits provided for archiving the files of pending cases, the statute of limitations of the criminal record of the act constituting the basis for the collection of data, the cessation of circumstances or the fulfillment of the purpose justifying the introduction of these data to the data set, is taken into

account in the case of data collected for a purpose other than the detection of crimes.

As the Governor further emphasized, - another aspect important from the point of view of the case in question is the further usefulness of the processing of personal data, taking into account the circumstances indicated in § 29 para. 1 of the above-mentioned regulation. The nature of the act indicated in the request for deletion of the complainant's personal data, its intention and the basic form of its commission, however, in the opinion of the Head of the Office, support the usefulness of this type of information for statutory activities of the Police, in particular activities of a detective nature and aimed at preventing a crime in the future. However, one cannot lose sight of the fact - the Governor noted - that registration in the police data file does not prejudge any culpability of the person whose data is processed. Such registration is only of auxiliary nature for the criminological assessment of a given person by the Police. In addition, he argued that the fact of possible data processing in the KSIP did not affect - as a rule - the choice of profession or job and, apart from a few exceptions specified in the Acts, the KSIP collection was unavailable to employers. This does not apply to professions and functions requiring - by virtue of the provisions of the law - unblemished opinion. In such a case, not only the criminal record of the person (indicated by an inquiry to the National Criminal Register) is subject to assessment, but also other behaviors of the person who are not crimes within the meaning of the law (including the expulsion of the conviction), raising any doubts in the context of performing a special role (function). ) social assigned to a given professional group (position) - explained the Head.

Considering the above, the Head of the Information Service Department of the Intelligence and Criminal Information Office of the KGP stated that the Police process personal data only in the above-mentioned scope - in accordance with the provisions cited.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

Pursuant to Art. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Act", personal data may be processed if it serves the public good, the good of the person the data subject or the good of third parties. Pursuant to Art. 7 point 2 of this Act, data processing shall mean any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems.

Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, allows the processing of personal data if it is necessary to

exercise the right or fulfill an obligation resulting from a legal provision.

The legal basis for the processing of personal data of persons against whom the police proceedings were conducted is Art. 20 paragraph 1 of the Act of April 6, 1990 on the Police (i.e. Journal of Laws of 2016, item 1782 as amended), hereinafter referred to as the "Police Act". According to this provision, the Police, subject to the limitations resulting from Art. 19 of the Police Act, may obtain information, including secretly, collect, check and process it. Pursuant to Art. 20 paragraph 2a of this Act, the Police may download, obtain, collect, process and use information in order to perform statutory tasks, including personal data, e.g. about persons suspected of committing crimes prosecuted by public prosecution, also without their knowledge and consent. Pursuant to Art. 20 paragraph 2b above of the Act, the information in question, concerning, inter alia, persons suspected of committing an offense prosecuted by public indictment, may include: 1) personal data referred to in art. 27 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, however, the data on the genetic code includes information only about the non-coding part of DNA; 2) fingerprints; 3) photos, sketches and descriptions of the image; 4) features and special characters, nicknames; 5) information about: a) place of residence or stay, b) education, profession, place and position of work as well as material situation and the condition of property, c) documents and objects used by the perpetrator, d) the way of acting of the perpetrator, his environment and contacts , e) the manner in which the perpetrator behaves towards the aggrieved parties. Pursuant to Art. 20 paragraph 2c above. of the Act, the above information is not collected if it is not useful for detection, evidence or identification in the conducted proceedings.

Pursuant to § 10 of the Regulation of the Minister of Interior and Administration of 23 August 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636) to perform activities in the field of downloading, obtaining, collecting, checking, processing and the use of information, including personal data, referred to in art. 20 paragraph 2a points 1-6, sec. 2ac and paragraph. 2b of the Police Act, the National Police Information System (hereinafter KSIP), which is a set of data files processed in ICT systems (section 1), is maintained in the Police. 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, and protecting human life and health (paragraph 2).

At this point, it should be noted that the KSIP does not constitute a register (a set of personal data) of convicted or punished

persons, as such functions are performed by the National Criminal Register. The information at the disposal of the KSIP does not constitute a source of generally 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. One should agree with the argumentation of the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, presented for the purposes of this proceeding, in which he argues that "The police data set, such as the KSIP, is a register generating (used to collect and process) information on proceedings initiated and conducted by the Police (mainly criminal), irrespective of the way in which they are ended, so as such it cannot constitute the basis for inference about the way of ending these proceedings. Moreover, none of the authorities competent to legally terminate these proceedings (mainly common courts and prosecutor's offices) is obliged to inform the Police about the way of terminating the proceedings. The effect of this nature of the police dataset is, inter alia, the fact that the possible discontinuation of the proceedings (with the exception of the discontinuation due to the lack of features of a prohibited act or due to the lack of data sufficient to justify the suspicion of a crime or if the act has not been committed) or expungement of the conviction (recognition as void) does not result in the removal of data from this collection by law but it is one of the criteria for assessing the usefulness of data in conducted proceedings in the field of Police tasks. The nature of the data collected in the KSIP proves that this set is not a criminal record (see: Art. 106 of the Penal Code - upon seizure of a conviction, it is considered void; an entry on a conviction is removed from the register of convicts, not from other data files, not generating the fact of a conviction for a crime) ”.

The issue of the storage period of data collected in the KSIP is set out 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. When verifying personal data in terms of their usefulness in the conducted proceedings, the above-mentioned criteria specified in § 29 para. 1 of the Regulation of the Minister of Internal Affairs and Administration of 23 August 2018 on the processing of information by the Police.

However, according to § 29 sec. 2 of the same regulation, the Police authority which collected data in the data file for a purpose other than that specified in sec. 1, by assessing these data, takes into account: 1) the type of protected good; 2) the expiry of the time limits provided for archiving the files of the cases conducted; 3) the statute of limitations on the criminal

record of the act constituting the basis for the collection of data, and 4) the cessation of circumstances or the fulfillment of the purpose justifying the introduction of data to the data set. Pursuant to § 30 of the above-mentioned of the regulation, the assessment referred to in § 29 of the regulation is made by Police authorities with the use of information, including personal data: 1) collected in data files kept in the Police, related to the data selected for evaluation, 2) contained in the applications of data subjects , submitted pursuant to art. 32 sec. 1 points 1-6 and article. 33 of the Act on the Protection of Personal Data, 3) obtained from other state authorities, services or institutions.

According to the judgment of the Provincial Administrative Court of January 28, 2014. (ref. II SA / Wa 1366/13) “in the light of the above regulations, Police authorities are authorized to process data of persons not only suspected of committing a crime, but also convicted by a final court judgment, as well as those against whom the conviction has been seized. This is because the implementation of the goal of ensuring public safety and order by the Police authorities demonstrates the necessity to process personal data in the National Police Information System for the fulfillment of the legal obligation (Article 1 (2) of the above-mentioned Police Act), which means that the very process of processing contained in this set of data is based on the legal premise of data processing referred to in art. 23 sec. 1 point 2 of the above-mentioned the Act on the Protection of Personal Data. The criterion of the necessity to process personal data in the KSIP must be related to the statutory tasks of the Police, the implementation of which is to be served by the provisions of Art. 20 paragraph 1, sec. 2a and 2b in connection with Art. 20 paragraph 17 above the Police Act. The mechanism of operation of the principle of proportionality requires that the implementation of these tasks be carried out with respect to general constitutional principles, i.e. the rule of law (Article 2 of the Constitution of the Republic of Poland) and the principle of legality, derived from Art. 7 of the Basic Law. The introduction of statutory regulations that allow Police authorities to process personal data of persons in conflict with the law is therefore within the framework of the principle of a democratic state ruled by law and the principle of legality, after all, ensuring public order and the safety of citizens is the overriding interest of the State, implemented, inter alia, by the authorities. Police. Thus, it would be inappropriate to deprive the Police authorities of access to the most complete information that the Police themselves produced legally ”.

Moreover, in the justification to the judgment of April 21, 2017, file ref. No. I OSK 2426/15 The Supreme Administrative Court stated that in the case at hand, the control of the legality of data processing should take into account, first of all, the principles resulting from the content of Art. 20 paragraph 2a of the Police Act. It cannot be lost sight of the fact that the information

collected by the Police, including the personal data of a participant in the proceedings, serves the implementation of statutory tasks imposed on this formation, which are very important from the point of view of the functioning of the state, and in particular the safety of citizens. They include, among others detection and prosecution of perpetrators of crimes and other activities of an operational nature. Due to the special nature of the KSIP, as well as to ensure the security of the state and citizens, when assessing the legality of the processing of personal data in the KSIP, it is not possible to apply only the Act on the Protection of Personal Data, without taking into account the detailed regulations on this matter contained in the Act on the Police, which are to guarantee the performance of statutory tasks by the Police.

In the course of the administrative proceedings, the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters stated that in connection with the implementation of the legal norms specified in the Police Act, the Police authorities had verified the collected data of the complainant in the scope of acts under Art. 178a § 1, art. 286 § 1 and article. 286 § 3 of the Penal Code, after the completion of cases, i.e. in 2010, 2014 and 2015, respectively, and in connection with the complainant's request for data deletion, as well as the subsequent complaint to the President of the Personal Data Protection Office regarding the processing of her data at the KSIP, while in the case of an act under Art. 177 § 1 of the CC additionally, even after the expiry of the ten-year period resulting from Art. 20 paragraph 17 of the Police Act. Above The head stated that the verification required by the act had been carried out, in particular in terms of the premises under Art. 51 sec. 4 of the Polish Constitution and in terms of legality, including the premises of Art. 20 paragraph 17b and 18 of the Police Act. When performing the above-mentioned verification of the data (assessment in terms of their usefulness), the Police did not have any information indicating the existence of the premises listed in Art. 20 paragraph 17b and 18 of the Police Act.

According to the current factual and legal status of the case, in the light of the verification criteria carried out pursuant to Art. 20 section 17 of the Police Act, as well as § 29 and 30 of the above-mentioned of the regulation it was established that at present the Police are processing the complainant's personal data necessary for the performance of her statutory tasks on the basis, to the extent and for the purpose specified in the above-mentioned provisions of the Police Act and does not process unnecessary personal data in relation to which the Complainant would have the right to access data and the right to request deletion of such data.

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, as 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. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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.

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