THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

June

2019

DECISION

ZSOŚS.440.159.2018

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) 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. 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 a complaint by Ms EK, Mr MK and Mr RK , residing at: ul. [...], irregularities in the processing of their personal data by the Police Commander in Chief in the National Police Information System (KSIP) and the National Criminal Information Center (KCIK),

I refuse to accept the request of Mrs. E. K., Mr. M. K. and Mr. R. K. regarding the removal of their personal data from the data set of the National Criminal Information Center (KCIK) kept by the Police Commander in Chief,

In the remaining scope, I am discontinuing the proceedings.

Justification

The Office for Personal Data Protection received a complaint from Mr. and Mrs. E., M. and RK (hereinafter: "the Complainant") about the processing of their personal data in the National Police Information System (KSIP) and in the National Criminal Information Center (KCIK) by the Police Commander in Chief (hereinafter referred to as: "Chief Commandant") In the content of the above-mentioned Complaints The complainants asked for actions to be taken to verify whether the Police are authorized to process their data in accordance with applicable law. Moreover, justifying their request, the applicants argued that in their opinion there were no grounds for which the Police authorities still store and process personal data in the KSIP and KCIK systems, therefore it is reasonable for the supervisory authority to order the Police Commander in Chief to remove their data from the above-mentioned data sets.

At the outset, it should be noted 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 Personal Data Protection Office (hereinafter the "President of the Personal Data Protection Office" ). In accordance 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), proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry of this Act in life, are carried out on the basis of the existing provisions, ie the provisions of the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended).
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 [...] February 2019, the President of the Office for Personal Data Protection informed the Complainants and the Commander-in-Chief about the initiation of the investigation procedure and asked that authority to respond to the content of the complaint and submit written explanations.
For explanations, the Commander-in-Chief informed that the Complainants, by application of [...] October 2018, asked for an indication whether the Poviat Police Headquarters in W. had fulfilled the obligation to remove their data from the above-mentioned IT systems operated by the Police Commander in Chief. By letters of [...] October 2018 ([...], [...], [...]) the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the National Police Headquarters replied to the complainants, indicating that the Police did not process them personal data in the scope of the KSIP system, because this data has been deleted. The applicants were also informed about a different procedure and rules for processing information in the KCIK system. In the justification of the position, the Complainants indicated the legal grounds for the processing of personal data by the Police in this system, namely the provisions of the Act of 6 July 2001 on the collection, processing and transmission of criminal information (Journal of Laws, item 44, as amended, hereinafter: "Act on KCIK"). In particular, the content of Art. 2, art. 14 sec. 1, art. 16 sec. 1, art. 19 and art. 25 of the above-cited act. Subsequently, it was argued that the fact of processing personal data at KCIK did not stigmatize the Complainants in the light of the law, because the information at the KCIK'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 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 safety and order. public. Moreover, as indicated in accordance with Art. 16 sec. 1 of the Act on KCIK, criminal information collected, processed and transmitted is subject to the protection specified in the provisions on the protection of classified information.

The President of the Office for Personal Data Protection informed the Complainants 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 party responded to the evidence collected in the case.

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

At the outset, it should be noted that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing at the time of issuing this decision. This position is based on the jurisprudence of the courts. In particular, it is necessary to mention the judgment of the Supreme Administrative Court, file no. act I OSK 761/07, where it was unequivocally stated that "(...) when examining (...) the legality of the processing of personal data, [the Inspector General] is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision and whether it is being processed lawfully (…) ". Additionally, as it has been expressed in the doctrine, “the public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual status of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the binding legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws 00.98) 1071) M. Jaśkowska, A. Wróbel, Lex., El / 2012).

Referring the above to the established facts of the case, it should be emphasized in the first place that the findings proved that the Chief Commandant removed the Complainants' personal data from the KSIP system in the questioned scope.

In this situation, in the above-mentioned scope, the proceedings conducted in the first instance were discontinued pursuant to

Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), hereinafter referred to as: "kpa", as it is irrelevant. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Procedure means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance ". The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliged him to discontinue the proceedings regarding the processing of the Complainants' data in the KSIP system, as there are no grounds for resolving the matter of substance, and continuing the proceedings in such a case would be defective, significantly affecting the outcome of the case.

In turn, referring to the remaining scope of the matter, i.e. the processing of the Complainants 'personal data in the NCIC database, it should be noted that the above-mentioned Act on the Protection of Personal Data of 1997 creates legal grounds for the application of state protection in situations of illegal processing of citizens' personal data by both entities public law 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 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 "Personal Data Protection Act") and depending on the findings in the matter - 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.

The legal basis for the processing of personal data by the Commander in Chief of KCIK is primarily the provisions of the above-mentioned Act on KCIK. Pursuant to Art. 2 clause 1 of the Act, "on the principles set out in the Act, criminal information is processed in order to detect and prosecute perpetrators of crimes and to prevent and combat crime". It follows from the wording of the above-mentioned provision that the processing of criminal information is obligatory, and the obligation in this respect is carried out, pursuant to Art. 5 sec. 1 and art. 6 of the Act on KCIK, Chief Commander. 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 of maintaining such databases; developing analyzes of criminal information; ensuring the security of collected and processed data on the terms specified in the Act on the Protection of Personal Data and in the Act of August 5, 2010 on the protection of classified information (Journal of Laws, item 742). The National Criminal Information Center may collect, process and transmit criminal information only for the purpose of preventing and combating crime (Article 2 (1) of the Act on KCIK). Moreover, these processes take place in accordance with 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: 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 the commission of crimes and 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 it to really care for safety and public order. This, in turn, would make it difficult, and sometimes even prevent the Polish State from properly fulfilling the obligations described in the Constitution of the Republic of Poland towards its citizens (...). Therefore, it would result in subordinating the higher value, which is the good of all citizens, to the lower value, which is the right of the individual to protect her personal data.

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).

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) determine the purpose of their collection; 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 set out in Art. 25 points 1 - 3 or 5 of the Act on KCIK. In the presented explanations, the Commander-in-Chief explained that the responses received by the Complainants to the submitted applications had been provided on the basis of the provisions of law in force at that time. Due to the fact that the Act on KCIK constitutes 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 statutory tasks assigned to the Head of the Center and the purposes of collecting and processing criminal information in KCIK databases - preventing and combating crime. As rightly pointed out by the Police Commander in Chief, as the Head of the Center, he 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 tasks assigned to the Head of the Center. statutory and the purposes of collecting and

processing criminal information in KCIK databases, i.e. preventing and combating crime. In the course of the proceedings in question, the President of the Personal Data Protection Office established that criminal proceedings had been conducted against the Complainants. On the day the complaint was lodged with the Office for Personal Data Protection, the conviction has already been seized. However, it should be emphasized that among the above-mentioned grounds for data deletion, there is no seizure of the conviction that would justify the removal of the complainants' data from the NCIC. This means that the mere seizure of a conviction is not an independent and absolute prerequisite for the removal of criminal information from the KCIK database.

In the case under examination, one should also take into account the regulations of the Regulation of the Minister of the Interior and Administration of 23 August 2018 on the processing of information by the Police (Journal of Laws 2018, item 1636). In § 4 of the above-mentioned The regulation specifies the procedure for collecting information, including personal data, as well as procedures ensuring the collection, collection, obtaining of information and the organization of 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 thus processed by them in the KCIK database. Police authorities assess the usefulness of the collected data, which implies that the complainants' data

remain in the said system. 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. , regarding 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 complainants' complaint in the indicated scope 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.

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