THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 05

September

2019

DECISION

ZSOŚS.440.40.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 5 sec. 1 point 6 in connection with joke. 12 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime (Journal of Laws of 2019, item 125), (hereinafter: the Act of December 14, 2018 on the Protection of Personal Data ) after conducting administrative proceedings regarding the complaint of Mr. JB (residing at ul. [...]) represented by attorney-at-law P. S. (Law Firm [...]) for the processing of his personal data by the Police Commander in Chief in Warsaw at the National Criminal Information Center (Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw),

I discontinue the proceedings

Justification

The Personal Data Protection Office received a complaint from Mr. J. B. (hereinafter referred to as: "the Complainant"), represented by attorney-at-law. P. S. on irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw (hereinafter: "Police Commander in Chief"), consisting in the processing of his personal data at the National Criminal Information Center (hereinafter: "KCIK"). The applicant included in the complaint a request to order the Police Commander in Chief to remove his personal data from KCIK, which had been found there in connection with the applicant's commission of a crime.

In justifying his request, the complainant argued that in his opinion there were no grounds for storing the complainant's personal data, therefore it should be considered that the purpose of their collection had ceased to exist. He also argued that the further storage of the data is contrary to the provisions of criminal law, causing negative consequences of the conviction unknown to the criminal law. He stressed that the judgment of the District Court in R. was seized in July 2013, and he has been operating in public space for years, fully respecting the legal order.

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.

In a letter of [...] April 2019, the Police Commander in Chief explained that the Complainant with the application of [...] December 2019 (a copy of the application from the case files) addressed to the Police Commander in Chief, and then forwarded to the Intelligence and Information Bureau Of the Criminal Police Headquarters, asked for his personal data to be removed from the KSIP. By letter of [...] January 2019, no. [...] (a copy of the letter in the case file), the Director of the Intelligence and Criminal Information Office of the Police Headquarters, acting under the authority of the Head of KCIK - Police Commander in Chief, presented the applicant with information regarding the processing of personal data at KCIK in accordance with the applicable legal order. At the same time, he indicated that the premises for deleting personal data were expressed in art. 25 of the Act on KCIK, and among them there is no premise that a conviction has been seized. This means that the mere seizure of a conviction is not an independent and absolute condition for removing criminal information from the KCIK database.

In a letter of [...] June 2019, the Office for Personal Data Protection turned again to the Police Commander in Chief in order to provide additional explanations.

In a letter of [...] July 2019, the Police Commander in Chief explained that the legal grounds for the processing of personal data by the Police in the KCIK system are determined by the provisions of the Act of 6 July 2001 on the processing of criminal information (Journal of Laws of 2019, item 44 and 125), hereinafter referred to as: "the Act on KCIK"). In particular, the content of Art. 2, art. 4 point 1, art. 5, art. 6, art. 13 sec. 2, art. 14 sec. 1, art. 16 sec. 1, art. 19 and art. 25 of the above-cited act. In addition, criminal information is processed without the knowledge and consent of the data subject and in compliance with the principles of their protection specified in the provisions on the protection of classified information. have access to its information resources.

The President of the Personal Data Protection Office informed the Complainant and the Police Commander in Chief in letters of [...] July 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 these facts, the President of the Personal Data Protection Office considered the following.

The legal basis for the processing of personal data by the Police Commander in Chief of the Police in KCIK is primarily the provisions of the 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". In addition, these processes take place on the principles set out in the Act on the KCIK without the knowledge and consent of the data subject, and in accordance with the principles of their protection specified in the provisions on the protection of classified information (Article 2 (2) of the Act on the KCIK). 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, the Police Commander in Chief. The tasks of the Police Commander in Chief include the processing and transmission of criminal information, keeping databases and determining the organizational conditions and technical methods of conducting, developing analyzes of criminal information, ensuring the security of the processed information at the Criminal Information Center, in accordance with the provisions of the Act of 14 December 2018 on the protection of personal data processed in connection with the prevention and combating of crime and the provisions of the Act of August 5, 2010 on the protection of classified information (Journal of Laws of 2018, items 412, 650, 1000, 1083 and 1669).

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 be processed only for the purpose of detecting and prosecuting perpetrators of crimes as well as preventing and combating 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.

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 time limits for data storage in KCIK are counted from the date of registration of criminal information in databases (Article 14 (4) of the Act on KCIK). 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.

As rightly pointed out by the Police Commander in Chief, he is not obliged to inform the person whose personal data he may collect and process about the fact of processing such data, as well as about the scope of processing or making such data available. In addition, the Police Commander in Chief is not obliged to inform about the content of the information, about the recipients of the data, about the deletion of information and about the scope of data deleted from the data set (Article 2 (2) and Article 6 (4) of the KCIK Act).

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 Complainant. 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 Complainant's data from the NCIC. This means that the mere seizure of a conviction is not an independent and absolute premise 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.

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 complainant's 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.

Pursuant to Art. 105 § 1 of the Code of Civil Procedure when the proceedings for any reason have become redundant, in whole or in part, the public administration authority shall issue a decision to discontinue the proceedings, respectively, in whole or in part.

The doctrine indicates that "the objectivity of the administrative procedure" referred to in Art. 105 §1 of the Code of Civil Procedure, means the lack of any of the elements of the material-legal relationship resulting in the fact that it is impossible to settle the matter by deciding on its substance. The discontinuation of administrative proceedings is a formal ruling that ends the proceedings, without a substantive decision (judgment of the Supreme Administrative Court in Warsaw of September 21, 2010, II OSK 1393/09). The determination by the public authority of the existence of the condition referred to in Art. 105 §1 of the Code of Administrative Procedure, obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter as to the substance, and continuing the proceedings in such a situation would make it defective, having a significant impact on the result of the case. .

As indicated above, the provisions of the Act of December 14, 2018 on the protection of personal data were not infringed in this case, which makes the entire procedure redundant.

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), the party has the right to lodge a

complaint with the Provincial Administrative Court against this decision, within 30 days from the date of its delivery to the party.

The complaint is lodged through the President of the Personal Data Protection Office. The fee for the complaint is PLN 200.

The party has the right to apply for the right to assistance, including exemption from court costs.

2019-09-06