THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 15

November

2018

DECISION

ZSOŚS.440.58.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096), art. 22, art. 23 sec. 1 point 2, art. 12 point 2, art. 27 sec. 1 and 2 point 2, of the Act of August 29, 1997 on the Protection of Personal Data (i.e. 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), after administrative proceedings regarding the complaint of Mr. M. B., residing in in M., represented by an attorney, Mr. P. F. (Law Firm [...]), for the processing of his personal data by the Police Commander in Chief in the National Police Information System, President of the Office for Personal Data Protection

refuses to accept the request

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. M. B. in M., hereinafter referred to as "the Complainant", represented by attorney Mr. P. F. (Law Firm [...]), for the processing of his personal data by the Police Commander in Chief, hereinafter referred to as "KGP".

In the content of the complaint, the Complainant's attorney stated that he was requesting the General Inspector for Personal Data Protection to order the Police Commander in Chief to remove personal data concerning M. B. from the National Police Information System (hereinafter "KSIP"), in the scope of information indicated in Art. 20 paragraph 2b points 2-5 of the Police Act (Journal of Laws of 1990, No. 30, item 179, as amended), introduced to the KSIP as part of criminal proceedings against M. B. in a case for an act under Art. 222 § 1 of the Act of 6 June 1997, Code of Kama (i.e. Journal of Laws of 1997, No. 80, item 553, as amended) hereinafter referred to as the CC.

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

In 2008, criminal proceedings were pending against the Complainant in a case for an act pursuant to Art. 222 § 1 of the Act of June 6, 1997, Code of Kama. On the terms set out in Art. 20 paragraph 2a of the Act of 6 April 1990 on the Police, in connection with the presentation of the above-mentioned allegation, the competent Police authority made the so-called trial registration, i.e. entered the complainant's personal data into the KSIP data set as a person suspected of committing an offense prosecuted by public indictment.

By letter of [...] September 2017, the attorney acting on behalf of the Complainant (his) requested KGP to remove his personal data from the KSIP in the scope of data indicated in Art. 20 paragraph 2b points 2-5 of the Police Act.

In a letter of [...] October 2017, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of KGP, Kom. J. J., 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 perpetrator's way of acting, 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 such a position also correlates with the content of Art. 20a paragraph 1 of the Police Act, according to which, in connection with the performance of statutory tasks, the Police ensures protection of the forms and methods of carrying out tasks and information. Considering the above, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the General Police Headquarters, Kom. J. J., stated to the Complainant that the Police processed personal data only in the above-mentioned scope - in accordance with the above-mentioned provisions.

As further emphasized by the Deputy Head, 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 Regulation of the Minister of Internal Affairs and Administration of July 21, 2016 on the processing of information by the Police (Journal of Laws of 2016, item 1091). 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 Deputy Chief, indicate 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 - emphasized the Deputy Chief - 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 Deputy Head.

Authorized by KGP, the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, explained that the complainant did not again (after [...] October 2017) requested the deletion of data from the KSIP and no further correspondence regarding the disclosure of his data was received. personal data.

In connection with the implementation of the standards set out in the Police Act, the Police authorities verified personal data after the end of the case in 2008 and in connection with the request submitted by MB for the deletion of personal data, as well as in connection with the complaint filed by the Complainant with the Inspector General on processing of his personal data in the KSIP. Authorized by KGP, the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, explained that, as follows from the norms specified in Art. 20 paragraph 17 - The police are obliged to verify the data after the end of the case under which the data was entered into the file (here: KSIP), and also at least every 10 years from the date of obtaining or downloading the information, deleting redundant data. At the same time, in the case of a request to delete personal data from the KSIP, verification was made, 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 17 b and 18 of the Police Act.

When carrying out the above data verifications (assessments in terms of their usefulness), the Police did not have any information indicating the existence of the premises under Art. 20 paragraph 17b and 18 of the Police Act. Within the period of

the conducted verification indicated in art. 20 paragraph 17 of the Police Act, the 10-year period of compulsory verification of the collected data has not expired yet, so there were no statutory grounds for removing the complainant's data from the KSIP. In addition, it was explained that the subject of verification of personal data by the Police in the light of Art. 20 paragraph 17 of the Police Act is not a question of guilt in terms of the committed crime, but the necessity of data on the committed crime (recognized perpetration) for the performance of Police tasks, in particular in the field of detection of crimes, prosecution of crimes, protection of public safety and order.

Authorized by KGP, the above-mentioned The head added that the type of crime under Art. 222 § 1 of the Criminal Code, including the features of the committed crime or the type of goods infringed by the act, as well as the type of goods at risk. In addition, in the opinion of the Head of the Office, the methods and forms of the perpetrator's action should be taken into account, as well as other information collected by the Police in connection with the case concerning the abovementioned a crime or in connection with the implementation of statutory rights of the Police, as well as the fact that the Police authority as at the date of the verification was not in the possession of information indicating the existence of the premises under Art. 20 paragraph 17b and 18 of the Police Act justifying the removal of information. For this reason, in the opinion of the Governor, it is absolutely justified to process the complainant's personal data by the Police. As the Chief indicates, the tasks of the Police legitimize, in accordance with constitutional norms, restrictions on the exercise of the freedom of individual rights, including the right to informational autonomy. The type and scope of data processed by the Police about the Complainant, legally collected, is proportional to the purposes, in the opinion of the Chief, for which the data are processed and for the performance of the Police tasks, and therefore ensuring public safety and order, the good of the state, protection of the rights and freedoms of other persons. On the other hand, the necessity to ensure the protection of these values and goods by the Police in accordance with the statutory powers establishes the necessity to process the complainant's data and, in accordance with the constitutional principle of the hierarchy of goods, justifies the interference with the complainant's right to informational autonomy.

Summarizing the above-mentioned The Chief declared that, in accordance with the current factual and legal status of the case, in the light of the verification criteria carried out in accordance with Art. 20 (17) of the Police Act, as well as §29 and 30 of the Regulation of the Minister of the Interior and Administration of July 21, 2016. on the processing of information by the Police, it was established that currently the Police are processing the complainant's personal data necessary for the performance of its

statutory tasks on the basis, to the extent and for the purpose specified in the above-mentioned the provisions of the Act on the Police and the Police does not process unnecessary personal data for which the Complainant would have the right to access data and the right to request deletion of such data. Above The head also added that the case provided for in Art. 20 paragraph 17 of the Police Act, the period of verification of the collected personal data (every 10 years), at the same time the verification of the collected personal data in the context of this case, taking into account the purposes of information processing by the Police, supports the processing of these data in accordance with the above-mentioned art. 20 paragraph 17 of the Police Act.

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 (i.e. Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Personal Data Protection Act", personal data may be processed if it serves public interest, the interest of the data subject or the interest 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). 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 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.

In the course of the proceedings conducted by the Inspector General for Personal Data Protection, initiated by the complaint of Mr. M. B., the Regulation of the Minister of the Interior of July 21, 2016 on the processing of information by the Police was in force (Journal of Laws, item 1091). This regulation sets out detailed rules for the processing of personal data, including persons suspected of committing an offense prosecuted by public prosecution, while on August 27, 2018, the Regulation of the Minister of the Interior and Administration of August 23, 2018 on the processing of information by the Police entered into force (Journal of Laws of 2018 , item 1636).

Pursuant to § 10 of the above-mentioned regulation to perform activities in the field of downloading, obtaining, collecting, checking, processing and using 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 (KSIP) is maintained in the Police, which is a set of data files processed in ICT systems (section 1). The KSIP may also process information, including personal data, 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 crime and the prevention and combating of crime, and the protection of 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 National Police Headquarters authorized by the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the General Police Headquarters, presented for the purposes of this proceeding, in which he argues that "The police data set, such as the KSIP, is a generating register (used for collecting and processing) information about the proceedings initiated and conducted by the Police (mainly criminal), regardless of the way in which they are completed, so as such it cannot constitute the basis for

inferring the manner 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 data set 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. Pursuant to § 29 sec. 1 above the regulation, when verifying personal data in terms of their usefulness in the conducted proceedings, the following shall be taken into account: 1) the type and nature of the committed act that exhausts the features of a crime; 2) the type and nature of the property protected by law, infringed by the committed crime, 3) the forms of the perpetration and intention to commit it, 4) the form of the intention and the effects of the act, including the type and size of the damage done or threatened, 5) the threat of a penalty for the crime committed, 6) the number of crimes committed, 7) the time that has elapsed from the moment the information was entered into the data set until the assessment was made, 8) other information collected about the person, 9) the grounds for obtaining, downloading or collecting the data and their accuracy, 10) validity of the conditions of legality and necessity further processing of data for the performance of statutory tasks of the Police, 11) 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. However, according to § 29 sec. 2 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 the operation of the principle of proportionality requires that the implementation of these tasks be carried out in accordance with the general constitutional principles, i.e. the principle of a legal state of good luck. 2 of the Polish Constitution) and the principle of legalism, 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 ”.

In the course of administrative proceedings, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the General Police Headquarters, authorized by KGP, stated that in connection with the implementation of the standards specified in the Police Act, the Police authorities verified the collected personal data after the

case was completed in 2008. The complainant, with regard to the act under Art. 222 § 1 of the Criminal Code. Police authorities also carried out the above-mentioned verification in connection with the Complainant's request for data deletion and the subsequent complaint to the Inspector General regarding the processing of his data at the KSIP. Authorized by KGP, the Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the General Police Headquarters, explained that, as follows from the norms specified in Art. 20 paragraph 17 of the Police Act - the Police is obliged to verify the data after the end of the case under which the data was entered into the file (hereinafter referred to as KSIP), and at least every 10 years from the date of obtaining or downloading the information, deleting the data. Above The head stated that in 2008 the verification required by the act had been carried out in relation to the act under Art. 222 § 1 of the Code of Kama, then in connection with the request for deletion of data submitted by M. B., as well as in connection with the request to the Inspector General for the processing of data, verification was made in particular in terms of the premises of Art. 51 sec. 4 of the Polish Constitution and in terms of legality, including the premises of Art. 20 paragraph 17 b 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. Indicated in art. 20 paragraph 17 above of the Act, a ten-year period of compulsory subsequent verification of the collected data in relation to the above-mentioned offenses have not yet expired on the date of verification, therefore, in the opinion of KGP, there are no statutory grounds for removing the complainant's data from the KSIP. With regard to the offense under Art. 222 § 1 of the Code of Criminal Procedure, the Police authority, as a result of verification, concluded that these data are still necessary for the implementation of the statutory tasks of the Police.

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 Regulation of the Minister of the Interior and Administration of July 21, 2016 on the processing of information by the Police, it was established that the Police were currently processing the complainant's personal data necessary for the performance of its statutory tasks on the basis of , 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. Above The head also added that in the case the 10-year deadline to conduct another verification of the collected data in relation to the previously conducted verifications in 2008, then in connection with the submitted request for deletion of MB data from the KSIP

and in connection with the submitted data to GIODO a complaint about the processing of his personal data, and the Complainant had previously committed an offense before the expiry of the 10-year period for verification, which was registered in 2008.

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 Inspector General for Personal Data Protection 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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