THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 10

April

2019

DECISION

ZSOŚS.440.23.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), 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 the complaint of Mr. R. M., residing in in Ł., for the processing of his personal data by the Police Commander in Chief,

I refuse to accept the application

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint by Mr. R. M., residing in in Ł. (hereinafter the "Complainant"), concerning the processing of the Complainant's personal data by the Police Commander in Chief (hereinafter the "Chief Commander").

In the complaint, the Complainant indicated that the Chief Commandant, without a legal basis, refused to remove the Complainant's personal data from the database of the National Center for Criminal Information (hereinafter "KCiK").

In his complaint, the complainant questioned the right of the Commander-in-Chief to refuse to remove the complainant's personal data from the KCiK database and asked for "ordering the Police Commander-in-Chief, the Head of the National Criminal Information Center based in Warsaw, to remove (...) personal data from the database of the National Criminal Information Center."

In the course of the proceedings initiated as a result of the complaint, the President of the Personal Data Protection Office (hereinafter "the President of the Personal Data Protection Office") obtained explanations regarding the circumstances of the case, read the evidence and made the following findings.

The applicant, in a letter of [...] February 2017, submitted to the Commander-in-Chief a request to remove his personal data from the KCiK databases. In response to the above-mentioned letter, the Chief Commander, in a letter of [...] April 2017, confirmed the processing of the Complainant's personal data in the KCiK database and informed the Complainant that "as a result of consultations with fiscal control authorities, a written reply was obtained that in the case of Of your personal data "no conditions listed in art. 25 of the Act of 6 July 2001 on the collection, processing and transmission of criminal information (Journal of Laws of 2015, item 1930, as amended) ". At the same time, the Chief Commandant refused to delete the complainant's personal data from the KCiK databases.

Subsequently, the applicant, in a letter of [...] April 2017 to the Commander-in-Chief, again requested that his personal data be removed from the KCiK databases. The application was accompanied by, inter alia, a copy of the judgment of the District Court [...] in K. of [...] May 2011 (file reference: [...]), according to which the applicant, referred to as " perpetrator of fiscal offenses (...) ", permission was granted" to voluntarily submit to liability (...) ". Justifying his request, the applicant indicated in a letter of [...] April 2017 that "(...) the statutory conditions for collecting criminal data in the KCiK database (...) in the above scope were fulfilled upon the validation of the District Court's judgment [. ..] in K of [...] May 2011 (...) ". In response to the above letter, the Chief Commander in a letter of [...] June 2017 informed the Complainant that "as a result of repeated consultations with the fiscal control authorities, a written reply was obtained that" in the case in question, the conditions set out in Art. 25 of the Act of 6 July 2001 on the collection, processing and transmission of criminal information (...) ", ie the reasons for deleting criminal data from the KCiK database. It should be clarified that, in accordance with the provision established by the Commander-in-Chief, criminal information shall be removed from databases if: its collection is prohibited, the recorded criminal information has turned out to be untrue, the purpose of its collection has ceased, the periods referred to in Art. 14 sec. 1-3 of the Act of 6 July 2001 on the processing of criminal information, hereinafter referred to as the "Act" (Journal of Laws of 2019, item 44 as amended; previous title of the act: the Act on the collection, processing and transfer of criminal information ) or it is justified with regard to state security or its defense, or may cause the identification of persons providing assistance in the performance of operational and reconnaissance activities carried out by authorized entities.

In view of the above, the Commandant in Chief refused to delete the complainant's personal data from the KCiK databases, on the grounds that the purpose of their collection, specified in Art. 2 clause 1 of the act.

As part of the investigation, the President of the Personal Data Protection Office (UODO) asked the Commander in Chief, in a

letter of [...] July 2017, to comment on the content of the complaint and to clarify the actual and legal status of the case. As explanations addressed to the Inspector General for Personal Data Protection (currently: the President of the Office), the Chief Commander in a letter of [...] July 2017 (No. [...]) indicated that the Complainant's personal data had been transferred to the KCiK database:

- [...] February 2010, by the District Prosecutor's Office in G., in connection with the submission to the complainant of the charges set out in the Criminal Code Act; these data have been registered in this respect in the KCiK databases in accordance with the provisions of the Act of July 6, 2001 on the collection, processing and transmission of criminal information (Journal of Laws of 2015, item 1930, as amended);
- [...] July 2005, by the Tax Control Office in K. in connection with the submission to the complainant of the charges specified in the Fiscal Penal Code; these data were also registered in this regard in the NCC databases in accordance with the provisions of the above-mentioned the law.

The Chief Commander also indicated that in the case in question, as the Head of the Central Committee of the Central Commission, he conducted explanatory activities, asking the District Prosecutor's Office in G. and the Tax Control Office in K. to provide information on the legal grounds for processing criminal information concerning the applicant, taking into account the occurrence of premises joke. 25 of the Act. In response to the above-mentioned of the speech, the prosecutor of the District Prosecutor's Office in G. provided the information in writing, explaining that due to the occurrence of one of the conditions resulting in the removal of criminal information from the KCiK databases, [...] in March 2017, the applicant's personal data processed in connection with the case for file reference number: [...]. On the other hand, in a reply sent by letter of [...] March 2017, [...] the Customs and Tax Office informed that in the scope of the Complainant's personal data registered in the case [...], there were no grounds for deleting criminal information.

Moreover, as a result of the Complainant's resubmission of the application to the Commander-in-Chief to delete the Complainant's personal data from the KCiK databases (letter of [...] April 2017), the Commander-in-Chief requested that the Commander in Chief by letter of [...] April 2017 . to the Head [...] of the Customs and Tax Office in K. with a request to re-examine whether there are statutory grounds for removing the personal data concerning the Complainant from the Central Committee of the Central Committee. In response to the letter of the Commander-in-Chief, [...] the Customs and Tax Office in a letter of [...] June 2017 informed that the purpose of collecting the Complainant's personal data had not ceased and that

there were no legal grounds to remove this data from the database KCiK.

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

The above-mentioned Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as "PDA", creates 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 of the PDA and depending on the findings in the case - either issues an order or prohibition, or refuses to accept the application, 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 Act on Personal Data Protection, everyone has the right to the protection of personal data concerning him, and the processing of such data, as referred to in art. 7 point 2 of the Personal Data Protection 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 in mind the above, therefore, when applying the provisions of the Personal Data Protection Act, it is necessary to weigh the underlying goods each time. In this case, the content of Art. 23 sec. 1 point 2 of the PDPA, which states that data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision.

The legal basis for the processing by the Commander in Chief of personal data of persons who have committed a prohibited act are primarily the provisions of the above-mentioned Act. 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, the Chief Commander.

It should be pointed out that pursuant to Art. 4 point 1 of the Act, criminal information - this is specified in Art. 13 sec. 1 of this Act, data on matters being the subject of operational and exploratory activities, initiated or completed criminal proceedings,

including proceedings in cases of tax offenses, and on other proceedings or activities carried out on the basis of acts by entities specified in art. 19 and 20 of the Act, significant from the point of view of operational and investigative activities or criminal proceedings. Moreover, pursuant to Art. 13 sec. 1 of the Act, the scope of the processed criminal information includes the following data: the date and place of the crime, the type of the crime committed and the legal qualification of the act, the file reference number under which the activities or proceedings were registered, the name of the authority or organizational unit conducting the activities or proceedings, and information on the manner of establishing contact with this body or organizational unit, as well as, inter alia, information about persons against whom criminal proceedings are pending, including proceedings in cases of fiscal offenses, or against whom operational and investigative activities are conducted.

Pursuant to Art. 14 sec. 1 of the Act, criminal information about persons against whom criminal proceedings are conducted, including proceedings in cases of fiscal offenses, or against whom operational and investigative activities are conducted, are stored in databases for a period of 15 years. Moreover, as the Chief Commander rightly noted in his letter of 27 July 2017 to the President of the Personal Data Protection Office, pursuant to Art. 14 sec. 4 and 5 of the Act, "the dates of data storage in KCiK are counted from the date of registration of criminal information in databases, with the proviso that if, after the registration date, criminal information was provided by the Head of the Center, the time limits for data storage shall run from the date of their transfer".

As mentioned above, the conditions for deleting criminal data from the KCiK database are specified in Art. 25 of the Act, according to which they are subject to removal from databases, if: their collection is prohibited, the recorded criminal information turned out to be untrue, the purpose of their collection has ceased, the periods referred to in Art. 14 sec. 1-3 of the Act or it is justified in terms of state security or its defense, or may cause the identification of persons providing assistance in the performance of operational and reconnaissance activities carried out by authorized entities.

As stated in his letter of [...] July 2017, the Chief Commandant, “the facts on which the applicant refers, ie voluntary submission to punishment and obliteration, do not constitute, pursuant to Art. 25 reasons for the removal of criminal information from the KCiK databases. Moreover, the period of 15 years from the registration of information in databases has not expired, ie since 2005, obliging the removal of information from the KCiK databases (…) ”. The above position of the Commander-in-Chief should be shared. One cannot agree with the applicant's argument that the fact of voluntary submission to criminal liability, confirmed by the judgment of the District Court [...] in K. of [...] May 2011 (file reference: [...]) and termination of the

proceedings in the case, exhausted the legal authorization of the Commander-in-Chief to process the Complainant's personal data pursuant to the provisions of the Act. It should be stated that, in accordance with the definition of criminal information sanctioned by the provision of Art. 4 point 1 of the Act, the information is “(...) specified in Art. 13 sec. 1 data on cases being the subject of operational and exploratory activities, initiated or completed criminal proceedings, including proceedings in cases of tax offenses (...) ”. Moreover, it should be noted that the conclusion of the proceedings in the above-mentioned the case does not mean that the applicant was not found guilty of the alleged offenses by a final court judgment. Thus, the fact of voluntary submission to liability cannot be equated in legal consequences with acquittal, and even less with the dismissal of a case, due to which the question of the end of the purpose of processing criminal data could be hypothetically considered. Therefore, one should agree with the view of the Commander-in-Chief, expressed in a letter of [...] July 2017, that in the case in question "the purpose of gathering criminal information in the KCiK databases, ie preventing and combating crime has not ceased (...)". Thus, it should be concluded that none of the conditions set out in Art. 25 of the Act, obliging the Commander-in-Chief to remove criminal data concerning the Complainant from the KCiK databases.

Bearing in mind the above, it should be stated that the Commandant in Chief has a legal basis for the processing of the Complainant's personal data in the KCiK databases, and the request for a complaint is unfounded.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

Pursuant to Art. 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 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.

2019-04-25