THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 10

June

2019

DECISION

ZSOŚS. 440.9.2019

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. 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 sec. 1 and 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), after conducting administrative proceedings regarding the complaint of Mr. Ł. M., on irregularities in the processing of his personal data by the Police Commander in Chief in the National Police Information System (KSIP),

I discontinue the proceedings

Justification

The Office for Personal Data Protection received a complaint from Mr. Ł. M., hereinafter referred to as the "Complainant", about irregularities in the processing of personal data by the Police Commander in Chief in Warsaw (hereinafter referred to as the "Commander") in the National Police Information System (KSIP) in a situation where when the conviction was seized for an offense committed by him.

In the content of the complaint, the complainant argued that he had requested the Poviat Police Headquarters in M. to remove his personal data from the abovementioned Database. In response, the above-mentioned Police unit informed the Complainant that his request had been forwarded to the Police Headquarters, which had sole competence to verify the data and remove them from the National Police Information System. Justifying his request, the complainant argued that the crime he had committed had been erased by operation of law, and therefore, in his opinion, further processing of personal data by the Police was unjustified, and at the same time caused complications in the professional sphere. In the conclusion of the complaint, Mr. Ł. M. requested the initiation of administrative proceedings regarding irregularities in the implementation of the provisions on the protection of personal data by the Police authorities.

It should be noted here that on February 6, 2019, 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) entered into force. which in Art. 100 specifies that the proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry into force of this Act, are conducted on the basis of the existing provisions, i.e. the Act of August 29, 1997 on the protection of personal data (Journal of Laws of of 2016, item 922, as amended), hereinafter: "the Act of August 29, 1997". Pursuant to Art. 7 point 2 of the Act of August 29, 1997, 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 .

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office asked the Police Commander in Chief to provide explanations regarding the circumstances of this case.

For explanations, the Police Commander in Chief, in a letter of [...] March 2019 (date of the presentation of the Personal Data Protection Office), specified in detail the legal grounds for the processing of personal data by the Police, their scope and purpose of processing, paying attention to the particularity of these standards (lex specialis ) to general provisions, such as the provisions of the Act on the Protection of Personal Data. He also informed that the Police processed the complainant's data only within the scope of their statutory tasks, and their further disclosure to other public authorities or entities is only possible, if such an obligation results from other specific provisions. Moreover, the letter in question referred to the content of Art. 20 paragraph 1d of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161, as amended), which allows the processing of personal data without the knowledge and consent of the data subject. It follows from the above that the Police are not obliged to inform the person whose personal data they process about the fact and scope of the processing of such data.

At the same time, in the above-mentioned The letter also referred to the provisions 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, item 1636), including in particular the premises for assessing the usefulness of data specified in § 29 para. 1 of this Regulation. Moreover, in that letter it was also pointed out that the Police, taking into account the norm resulting from Art. 16 sec. 1 of the Act of December 14, 2018 on the protection of personal data processed in connection with the prevention and combating of crime, verifies the personal data processed in the KSIP database at least every 10 years from the date of collecting, obtaining,

downloading or updating the data. As emphasized, this verification is carried out in order to determine whether there are data, the further storage of which is unnecessary, and the redundant data is deleted or instead of deleting it, it can be transformed in a way that prevents the assignment of individual personal or material information to a specific or identifiable natural person. .

In connection with the implementation of the standards set out in the Police Act, the authorized Police authority verified the Complainant's collected personal data in the KSIP system in connection with the complaint submitted to the President of the Personal Data Protection Office. As a result of the above (assessments in terms of their usefulness), the Police authority removed from the KSIP system the information concerning the Complainant which was subject to the conditions under Art. 20 paragraph 1-1c and paragraph. 2b-2c 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.

First of all, it should be emphasized that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to settle the case on the basis of the actual state of affairs at the time of issuing this decision. As argued in the doctrine, “a 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 a public administration authority issues an administrative decision based on 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 state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable 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, M. Jaśkowska, A. Wróbel, Lex., El / 2012). At the same time, this authority shares the position expressed by the Supreme Administrative Court in the judgment of 25 November 2013, issued in the case no. act I OPS 6/1, in which the above-mentioned The court indicated the following: "In administrative proceedings governed by the provisions of the Code of Administrative Procedure, the rule is that the public administration body settles the matter by issuing a decision that resolves the matter as to its essence, according to the legal and factual status as at the date of issuing the decision."

Referring the above to the established facts of the case in question, it should be emphasized that in the course of the investigation, the personal data protection authority established that the complainant's personal data had been removed from

the KSIP system, the data administrator of which was the Police Commander in Chief. In connection with the above, it should be considered that the Police Commander in Chief does not process the complainant's personal data to the extent indicated in the complaint.

For the above reasons, the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as: "k.p.a", as it is irrelevant. Pursuant to the aforementioned 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, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. 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 Civil Procedure means that there is no element of the 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 r., p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

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 14 June 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, within 30 days from the date of its delivery 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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