THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

January

2019

DECISION

ZSOŚS.440.144.2018

Based on Article. 104 § 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. 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, as amended), after administrative proceedings regarding the application of Mr. M. R., residing in in T., to issue a decision ordering the Police Commander in Chief to remove the Complainant's personal data from the National Police Information System (KSIP) in a situation where there has been a conditional discontinuation of the proceedings,

I refuse to accept the application

JUSTIFICATION

On [...] August 2015, the Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr MR (hereinafter referred to as "the Complainant") about the processing of his personal data by the Police Commander in Chief in Warsaw (hereinafter referred to as " Commander "), consisting in the processing of the complainant's personal data in the National Police Information System (KSIP) in a situation where the conditional discontinuation of the case has been seized. In the complaint, the complainant also included a request to order the Commander to remove his personal data from the KSIP in the scope of information obtained in the course of the conducted criminal proceedings. As the basis for his application, he indicated Art. 26 sec. 1 point 4 of the Act of August 29, 1997 on the Protection of Personal Data, according to which the data controller should exercise special care to protect the interests of data subjects, and in particular is obliged to ensure that these data are stored in in a form enabling the identification of persons to whom they relate, no longer than it is necessary to achieve the purpose of processing.

In justifying his request, the complainant argued that in his opinion there were no grounds for which the Police authorities still

store and process his personal data in the KSIP system, in a situation where the proceedings were conditional discontinued and thus seized after the end of the probation period. In the opinion of the Complainant, it is the court, when applying the judiciary directives of the punishment, that assesses the act from the point of view of the perpetrator's reprehensible behavior and his mental relationship to the act committed. Moreover, by evaluating the above, the court analyzes not only the degree of social harmfulness of the act, but also the directive of individual prevention, taking into account the lifestyle of the perpetrator to date, the manner in which the act was committed and the behavior of the act. As the complainant further argued, the court, issuing a decision in this form, made a de facto criminological assessment of his person, stating that his guilt and the social harmfulness of the act were not significant, and his attitude as the perpetrator not punished for an intentional crime, his personal characteristics and conditions, and his current way of life. justify the assumption that despite the discontinuation of the proceedings, he will respect the legal order, and in particular he will not commit a crime. Therefore, in the Complainant's opinion, the further processing of his personal data at the KSIP seems to question the position of the court which, as the competent authority for this, had previously made such an assessment by conditionally discontinuing the criminal proceedings.
In response to the above letter, the Inspector General for Personal Data Protection, in a letter of [...] October 2016, summoned the Complainant to pay stamp duty, which the Complainant did within the legal deadline.
By letters of [...] October 2018, the President of the Office for Personal Data Protection informed the Complainant and the Commander of the initiation of explanatory proceedings in the case and asked the Commander to comment on the content of the complaint and provide written explanations. In response, the Office for Personal Data Protection received a letter from the Commander of [...] November 2018 [...], in which he explained that the complainant did not ask the Commander in Chief of the Police to remove his personal data from the KSIP. The Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the KGP, acting under the authority of the Police Commander in Chief, replied that the Police processed personal data in accordance with Art. 20 of the Act of April 6, 1990 on the Police (Journal of Laws of 2017, item 2067, as amended), hereinafter referred to as the "Police Act". As he further pointed out, in connection with the presentation of the charges, the competent Police authority made a trial registration, i.e. entered personal data into the KSIP data file as a person suspected of committing an offense prosecuted by public prosecution. In the justification of the position, the legal grounds for the processing of personal data by the Police were indicated, in particular art. 20 paragraph 1, sec. 2a, section 2ac, paragraph 2b, section 2ba, sec. 17, section 17b of the Police Act, their scope and purpose of processing, paying attention

to the particularity of these standards (lex specialis) in relation to general provisions, such as the provisions of the Act on the Protection of Personal Data and Art. 51 sec. 5 of the Constitution of the Republic of Poland, which refers to specific regulations in terms of the principles and procedure for collecting and disclosing information about a person. In addition, the letter in question clearly indicated that the legal act specifying the rules and procedure for collecting and sharing information, including personal data, is the Police Act, in particular Art. 20 paragraph 2a.

The President of the Office for Personal Data Protection informed the Complainant and the Police Commander in Chief in letters of [...] December 2018 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 as well as on the reported requests 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.

It should be noted here 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 Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. Pursuant to Art. 160 of this Act, the proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office pursuant to the Act of August 29, 1997 on the Protection of Personal Data in accordance with the principles set out in the Code of Civil Procedure. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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

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). In the light of Art. 20 paragraph 2b of the Police Act, the collected information may include: personal data referred to in art. 27 sec. 1 of the Act on the Protection

of Personal Data of August 29, 1997, except that the data on the genetic code includes only information about the non-coding part of DNA, and may include fingerprints, photos, sketches and descriptions of the image, features and special characters, pseudonyms, as well as information about: place of residence or stay, education, profession, place and position of work as well as the material situation and the condition of property, documents and objects they use, the method of the perpetrator's activities, his environment and contacts, the behavior of the perpetrators towards the aggrieved parties. The aforementioned information is not collected when it is not useful for detection, evidence or identification in the conducted proceedings. The period of data storage is specified 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 Art. 20 paragraph 17b, the personal data referred to in para. 17, shall be deleted if the Police authority has obtained credible information that: the act constituting the basis for entering the information into the file was not committed or there is no data sufficient to justify the suspicion of its commission; the event or circumstance in relation to which the information was entered into the collection does not bear the characteristics of a prohibited act; the data subject has been acquitted by a final court judgment. On the other hand, particularly sensitive personal data, e.g. revealing racial or ethnic origin, religious beliefs and data on the health, addictions or sexual life of persons suspected of committing crimes prosecuted by public prosecution, who have not been convicted of these crimes, are subject to commission and protocol destruction immediately after the relevant decision becomes final (section 18). Thus, it should be noted that the acquisition and further processing of the complainant's personal data in the KSIP database was carried out on the basis of the above-mentioned provisions of the Police Act, and therefore in accordance with Art. 23 sec. 1 point 2 of the Personal Data Protection Act. As already indicated above, the complainant's data was obtained in connection with the criminal proceedings concerning the commission of an act under Art. 284 § 1 of the CC and verified after the end of the case, ie in […].

As for the request to delete the data that the Complainant included in his application, it should be noted that KGP, as indicated in the content of his explanations, performed the verification required by law within 10 years from the date of obtaining or downloading the information, in connection with the provision of the content to him. complaints by the President of the Personal Data Protection Office, indicating § 29 para. 1 of the Regulation of the Minister of Internal Affairs and Administration

of 23 August 2018 on information processing by the Police (Journal of Laws, item 1636) as the source of the criteria which he followed when making the assessment and considering further processing of the information as justified. The content of the explanations emphasized in particular the type of the committed crime and its features. Bearing in mind the above, it should be noted that, as indicated in the jurisprudence, e.g. in the judgment of the Provincial Administrative Court in Warsaw of October 10, 2017, "it is the Police authorities that assess the usefulness of the information collected, verifying it after the end of the case, under which the data these were entered into the collection, and moreover, at least every 10 years from the date of obtaining or downloading the information. After all, the above provisions comprehensively regulate the legal grounds for the processing of personal data by the Police, their scope, as well as the method of assessing the usefulness of these data for the performance of the Police tasks referred to in art. 1 of the Police Act. Therefore, they constitute a lex specialis standard in relation to the standards contained in the Personal Data Protection Act. " (see file reference number II SA / Wa 314/17). Thus, the President of the Personal Data Protection Office may not interfere with the substantive assessment made by the Police Commander in Chief.

In connection with the above, the request to delete the Complainant's data should be considered in the light of the already cited Art. 20 paragraph 17b and 18 of the Police Act, which define the conditions for the mandatory deletion of such data. In this case, however, it should be noted that, as pointed out by KGP, the fact of conditional redemption was not indicated in Art. 20 paragraph 17b of the Police Act. In the case of the said data, para. 18 of the above provision. This means that in the case at hand, KGP was not obliged to delete the data in question under the aforementioned procedure.

Therefore, taking into account the entirety of the evidence, the fact of carrying out the verification required by law and failure to meet the conditions for the mandatory deletion of data, it should be considered that they are processed in accordance with the law and remain necessary for the implementation of the statutory tasks of the Police.

In this factual and legal state, the President of the Personal Data Protection Office 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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