THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 06

September

2019

DECISION

ZSOŚS.440.37.2018

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) 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. 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), following administrative proceedings regarding the complaint of Mr. RK (residing at ul. [...]) irregularities in the processing of his personal data by the Police Commander in Chief at the National Criminal Information Center (KCIK) (Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw),

I refuse to accept the application

Justification

The Office for Personal Data Protection received a complaint from Mr. R. K. (hereinafter: "the Complainant") about the processing of his personal data in the National Criminal Information Center (KCIK) by the Police Commander in Chief (hereinafter referred to as the "Commander in Chief").

In the content of the above-mentioned of the complaint. The complainant asked the supervisory body to order the Police Commander in Chief to remove their data from KCIK.

At the outset, it should be noted 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 Inspector General for Personal Data Protection became the President of the Personal Data Protection Office (hereinafter the "President of the Personal Data Protection Office"). In accordance 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), proceedings conducted by the President of the Personal Data Protection Office, initiated and not completed before the date of entry of this Act in life, are carried out on the basis of the existing provisions, ie the

provisions of the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended).

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.

By letters of [...] October 2018, the President of the Personal Data Protection Office informed the Complainant and the Commander-in-Chief about the initiation of the investigation procedure and asked that authority to respond to the complaint and submit written explanations.

For explanations, the Commander-in-Chief informed that the Complainant, with a request of [...] September 2017, asked for the removal of his data, inter alia, from KCIK databases. In a letter of [...] October 2017 ([...]) the Head of the National Criminal Information Center replied to the Complainant, at the same time indicating to the Complainant the legal grounds for the processing of personal data by the Police in this system, namely the provisions 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, hereinafter: "the Act on KCIK").

Additionally, in the response, attention was drawn to the content of Art. 2, art. 14 sec. 1, art. 16 sec. 1, art. 19 and art. 25 of the above-cited act.

The President of the Office for Personal Data Protection informed the Complainant and the Police Commander in Chief in letters of [...] April 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.

Until the date of this decision, neither party responded to the evidence collected in the case.

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

The legal basis for the processing of personal data by the Commander in Chief of KCIK is primarily the provisions of the above-mentioned 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". 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, Chief Commander. The National Criminal

Information Center was established within the structure of the General Police Headquarters in order to collect, process and transmit criminal information; keeping databases and determining the organizational and technical conditions of maintaining such databases; developing analyzes of criminal information; ensuring the security of collected and processed data on the terms specified in the Act on the Protection of Personal Data and in the Act of 5 August 2010 on the Protection of Classified Information (Journal of Laws of 2019, item 742). The National Criminal Information Center may collect, process and transmit criminal information only for the purpose of preventing and combating crime (Article 2 (1) of the Act on KCIK). Moreover, these processes take place in accordance with the principles set out in the Act on the KCIK and without the knowledge of the persons to whom the information relates (Article 2 (2) of the Act on the KCIK).

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 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 only be processed for the purpose of combating and preventing 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.

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).

Moreover, it was explained that 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 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 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. In the presented explanations, the Commandant in Chief explained that the reply received by the complainant to the submitted request was provided on the basis of the provisions of law in force at that time. Due to the fact that the Act on KCIK is a lex specialis in relation to the norms specified in Art. 25, art. 32, art. 33 and art. 35 of the Act on the Protection of Personal Data, the Police Commander in Chief, as the Head of the National Criminal Information Center, is not obliged to inform the person whose personal data may be collected and processed about the fact of processing such data, as well as about the scope of processing or making this data available, because it is justified by the statutory tasks assigned to the Head of the National Criminal Information Center and the purposes of collecting and processing criminal information in KCIK databases - preventing and combating crime. As rightly pointed out by the Police Commander in Chief, as the Head of the National Criminal Information Center, he is not obliged to inform the person whose personal data may be collected and processed about the fact of processing such data, as well as about the scope of processing or making this data available, because it is justified by the assigned The head of the National Criminal Information Center for statutory tasks and for the purposes of collecting and processing criminal information in KCIK databases, i.e. preventing and combating crime.

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.

The above argumentation is justified in the judgment of the Supreme Administrative Court of April 21, 2017 (file reference number I OSK 2426/15) and in the judgment of the Constitutional Tribunal of December 12, 2005, file reference number K 32/04 (publ. OTK-A 2005/11/132), in which it was stated that the provision of Art. 20 paragraph 17 of the Police Act does not provide for the removal from the data files of persons suspected of committing crimes prosecuted by public prosecution, who have been legally acquitted or against whom the criminal proceedings have been legally and unconditionally discontinued, immediately after the relevant judgment becomes final. Final acquittal of a specific person or unconditional discontinuation of criminal proceedings against a specific person does not prejudge whether the collected data may contain information useful for the performance of statutory tasks of the Police towards other persons. Considering the above, it should be stated that the complainant's personal data are processed legally by the Police authorities 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.

In view of the above, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts, and the complainant's complaint in the indicated scope does not deserve to be taken into account.

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

The party has the right to appeal against the decision to 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.

2019-09-06