

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

February

2019

DECISION

ZSOŚS.440.94.2018

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. 100 sec. 1 of the Act of December 14, 2018, the Act 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. K. U., residing in in O., for failure by the Central Technical Authority of the National IT System of the Police Commander in Chief of the information obligation referred to in Art. 33 in connection with joke. 32 of the Act of August 29, 1997 on the protection of personal data,

I refuse to accept the application

Justification

On [...] December 2016, the Office of the Inspector General for Personal Data Protection (currently: "Office for Personal Data Protection") received a complaint from Mr. Technical Information System of the Police Commander in Chief (hereinafter referred to as: "COT KSI") of the information obligation referred to in Art. 33 in connection with joke. 32 of the Act of August 29, 1997 on the Protection of Personal Data. The complainant's attorney indicated that on [...] September 2016 the complainant sent a request to the Voivodship Commander of the Police in P. for information on the content of the entry in the Schengen Information System. This request was submitted, according to the jurisdiction, to COT KSI, which in a letter of [...] November 2016 refused to provide the complainant with the requested information, citing Art. 34 of the Act of August 29, 1997 on the Protection of Personal Data, without justifying his position. In the opinion of the complainant's attorney, there was a violation of Art. 32 of the Act of August 29, 1997 on the protection of personal data through unjustified violation of the complainant's rights to obtain exhaustive information about his personal data, which are processed in data files by the data controller. He also argued that the purpose of the abovementioned legal norm is to guarantee the effectiveness of the exercise of the right to

control the processing of personal data, which may concern, inter alia, obtain information about the purpose, scope and method of data processing, the source of their acquisition, as well as requests for their supplementation, rectification, suspension of their processing or deletion. Moreover, the attorney of the Complainant pointed out that the entry of an alert in the Schengen Information System caused excessive inconvenience in the everyday life of the Complainant, increased checks at the border when leaving the country, as well as multiple stops, searches and road checks without justified grounds, both factual and legal. This state of affairs also leads to unjustified discrimination against the Complainant.

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.

In a letter of [...] February 2017, the Inspector General for Personal Data Protection asked the Police Commander in Chief to comment on the content of the complaint and to provide written explanations. On [...] February 2017, the Office of the Inspector General for Personal Data Protection received a letter from the Deputy Director of the Intelligence and Criminal Information Bureau of KGP ([...]), in which he explained that on [...] October 2016 r. COT KSI, through the First Deputy Provincial Police Commander in P., received the Complainant's request to explain the reasons for entering his personal data into the Schengen Information System (SIS). Therefore, the applicant's personal data was checked in the system, as a result of which it was found that they were entered pursuant to art. 36 sec. 2 of Council Decision 2007/533 / JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (Journal of Laws UE L 205 of 2007), hereinafter referred to as: Councils ", by the Polish authority - the Police. Moreover, the Deputy Director of the Bureau indicated that in a letter of [...] October 2016 ([...]) a request was made to the Provincial Headquarters in P., at the same time informing about the content of the complainant's application, with a request to verify the validity of the entry and to inform, whether the conditions listed in Art. 34 of the Act of August 29, 1997 on the Protection of Personal Data, giving the data controller the basis to refuse to provide information to the applicant. In response to the above-mentioned the police unit informed that it had verified the entry concerning the complainant in the SIS, confirming that the entry was up-to-date and, at the same time, taking into account the nature of the activities carried out against the complainant, pursuant to Art. 34 of the Act of August 29, 1997 on the Protection of Personal Data, refused to provide information to the applicant. Therefore, COT KSI by letter of [...] November 2016 replied to the Complainant, in line with the above position of the police unit. In addition, the Deputy Director of the Bureau indicated that, given the nature of the entry made pursuant to Art. 36 of the Council Decision and the

actual activities related to it carried out by the services, the content of Art. 58 sec. 4 of the Council Decision, which stipulates that information is not transferred to the data subject if it is necessary for the implementation of authorized activities in connection with an alert or for the protection of the rights and freedoms of third parties.

The President of the Office for Personal Data Protection informed by letters of [...] December 2018 the attorney of the Complainant and the Police Commander in Chief 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 and 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.

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 Inspector General for Personal Data Protection became the President of 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:

The Act of August 29, 1997 on the protection of personal data defines the rules of conduct in the processing of personal data and the rights of natural persons whose personal data is or may be processed in data files (Article 2 (1) of the Act). Pursuant to the wording of art. 7 point 2 of the Act, data processing should be understood as any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Each of the ones indicated in Art. 7 point 2 of the Act, the forms of personal data processing should be based on one of the prerequisites for the legality of the processing of personal data, enumerated in art. 23 sec. 1 of the Personal Data Protection Act. Due to the wording of Art. 7 of the Constitution of the Republic of Poland of April 2, 1997, according to which organs of public authority operate on the basis and within the limits of the law, 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 by the police are, inter alia,

provisions of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161) and implementing acts issued on its basis. The special powers of the police authorities with regard to entering data of persons into the SIS for the purpose of carrying out control or covert supervision related to prosecution of crimes, preventing threats to public security and access to these data are regulated in Art. 3 sec. 6 of the Act of August 24, 2007 on the participation of the Republic of Poland in the Schengen Information System and the Visa Information System (Journal of Laws of 2018, item 2162, as amended). The relevant regulations in this regard are contained in the provision of Art. 36 of the Council Decision.

When referring to obtaining information from data sets, one should point to Art. 33 of the Act of August 29, 1997 on the Protection of Personal Data, which states that, at the request of the data subject, the data controller is obliged to inform about his / her rights within 30 days and to provide information regarding his or her personal data, the information referred to in Art. 32 sec. points 1-5a of the above-mentioned law. However, the exercise of this right may be subject to limitations due to the necessity to fulfill a lawful task of the Police, or to protect overriding values such as: state security, human life and health, or public safety and order. In special cases, the law may also exclude the disclosure of data in writing. This thesis is reflected in Art. 34 of the Act of August 29, 1997 on the Protection of Personal Data, constituting the criteria for refusing to provide information to the data subject. Namely, they include the disclosure of messages containing classified information, a threat to the defense or security of the state, human life and health or public safety and order, a threat to the basic economic or financial interest of the state, a significant violation of the personal rights of data subjects or other persons. Basically, the refusal or restriction of the use of the above-mentioned rights should be justified in writing, unless it is necessary for the fulfillment of a lawful Police task or necessary due to particularly protected values. The reason for refusal may only be waived for the same reasons that justify the refusal or restriction of the right of access. It is important to assess the importance of the data subject's rights in relation to these overriding interests.

In line with the position expressed by the Constitutional Tribunal - the reason why the rights of an individual may be limited is the protection of the common good, and in particular - taking into account the needs of the country's security and defense. Therefore, the protection of state security is a special value against which the rights of the individual, even fundamental rights, may be - to the extent necessary - limited. The admissibility of restrictions dictated by such considerations is generally accepted in democratic countries (the judgment of the Constitutional Tribunal of February 16, 1999 in case SK 11/98, OTK of 1999, part I, item 5).

In the present case, the complainant asked the Voivodship Commander of the Police in P. August 29, 1997 on the protection of personal data). According to its properties, the letter was forwarded to the COT KSI, which, after obtaining explanations from the Provincial Police Commander, refused to provide the requested information pursuant to Art. 34 above of the act, at the same time withdrawing from the justification of its position. Such action should be considered correct, taking into account the content of Art. 34 above of the Act and the specific nature of the activities carried out against the Complainant by the Police authorities, falling within the scope of their statutory tasks. The statutory regulation is also reflected in Art. 58 sec. 1 and 4 of the Council Decision, which indicates that the right of persons to access data concerning them entered into the SIS is exercised in accordance with the law of a Member State, and its limitations result from the necessity to perform authorized activities in connection with the alert or for the protection of rights and freedoms third parties.

In addition, it should be noted that the President of the Office for Personal Data Protection is entitled to examine whether the provisions for making this entry have been retained, whether the processing and use of data does not violate the rights of the data subjects, but cannot control the conditions that determined the placement of data. in the specified set. In the case under consideration, the Complainant's data were entered into the SIS pursuant to Art. 36 of the Council Decision - for the purpose of specific control in order to prevent threats to public security.

Bearing in mind the above, it should be stated that the conduct of the data controller in the discussed scope does not raise any doubts. The refusal to provide the Complainant with information by the data controller was based on the provisions of the law.

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

Regardless of the above resolution, I would like to inform you that as of February 6, 2019, the processing of personal data by competent authorities for the purpose of identifying, preventing, detecting and combating prohibited acts, including threats to public safety and order, as well as performing pre-trial detention, penalties, penalties enforcement measures and coercive measures have been regulated by the Act of 14 December 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 with the Provincial Administrative Court in Warsaw against the decision issued within 30 days from the date of its delivery to the party. The complaint is lodged through the President of the Personal Data Protection 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.

