THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

July

2019

DECISION

ZSOŚS.440.71.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 - Code of Administrative Procedure (Journal of Laws of 2018, item 2096) and art. 5 sec. 1 point 6 and art. 12 in connection with Art. 13, 14 sec. 2 and 16 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 2018, item 125), as well as art. 21nb in connection with Art. 20 paragraph 1, la, ld, 2b and 2c of the Act of April 6, 1990 on the Police (Journal of Laws of 2019, item 161, as amended), after conducting administrative proceedings regarding the complaint of Mr. AW, . in K., on irregularities in the processing of his personal data by the Police Commander in Chief (address: Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw), consisting in the processing of the complainant's personal data in the National Police Information System (KSIP),

I refuse to accept the application

Justification

On [...] May 2019, the Personal Data Protection Office received a complaint from Mr. A. W., residing in in K. (hereinafter: the Complainant), for the unlawful collection and processing of his personal data by the Commander in Chief of the Police in Warsaw (hereinafter referred to as the "Commander"), consisting in the processing of the complainant's personal data in the National Police Information System (hereinafter: KSIP ). In the complaint, the complainant included a request to order the Commander to stop collecting and processing his personal data at the KSIP and to delete all the complainant's personal data from the KSIP.

In justifying his request, the Complainant indicated that in 2018, during a roadside inspection, he learned that the KSIP collected and processed his personal data by the Police related to an act prior to 2004, which, according to the Complainant, had never been convicted. . In the Complainant's opinion, although the data collection by the Administrator is aimed at protecting the public interest, its individual interest should be taken into account before the public interest. Moreover, the

Complainant indicated that he had been serving as a professional soldier for several years, which additionally meant that he had to demonstrate an impeccable character. According to the complainant, leaving his data in the KSIP may in the future make it difficult or even impossible to achieve professional promotion or change the type of service performed in other uniformed services, or these data may be taken into account in the recruitment process. The complainant also pointed out that he considers it extremely unfair and unlawful to collect and process his personal data for a period of 15 years in the KSIP, in a situation where there are no grounds (no purpose justifying their collection and processing), as his behavior has been for several years in accordance with the applicable legal order.

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 letter of [...] December 2018, the complainant asked the Commander of the Police Headquarters in K. to remove his personal data from all law enforcement registries, including the National Police Information System due to the expiry of the period necessary to achieve the purpose of processing. The complainant argued that the practice of indefinite data storage was inconsistent with the Constitution of the Republic of Poland, inter alia from arl. 7 of the Polish Constitution and the relevant provisions of the applicable Penal Code. The applicant, referring to the jurisprudence of the Supreme Court, indicated that the Commandant had no right to disclose information about persons against whom any proceedings were pending, if, under the Act, the convictions for the acts in question had been blurred. He also indicated Art. 26 point 4 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 joke. 175 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended, hereinafter: the Act of May 10, 2018) and Art. 5 sec. 1 lit. e Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals and on the free movement of such data and repealing Directive 95/46 / EC (Journal of Laws EU L 119 of 04.05. 2016, p. 1, with the amendment announced in the Journal of Laws UE L 127 of 23/05/2018, sir. 2, hereinafter: General Data Protection Regulation).

By letters of [...] May 2019, the President of the Office for Personal Data Protection informed the Complainant and the Commander of the initiation of explanatory proceedings and asked the Commander to comment on the content of the complaint and submit written explanations. On [...] June, the Office for Personal Data Protection received a letter from the Commander (reference number [...]), in which he explained that the Complainant, in a letter dated [...] December, which was

received [...] On March 2019, the Police Headquarters, through the Provincial Police Headquarters in Ł., requested the removal of his personal data from all law enforcement registries, including the National Police Information System. As the legal basis, indicating, inter alia, the provisions of the Act of May 10, 2018 and the provisions of the General Data Protection Regulation. Along with the explanations, the Commander attached a copy of the letter of [...] March 2019 - ([...] (a copy of the letter in the case file) of the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, in which he gave replies to the Complainant, indicating that the administrator of personal data in relation to personal data processed in the KSIP is the Police Commander in Chief. In addition, he indicated that the Police processes information and personal data in the National Police Information System, constituting a set of data sets, in connection with the implementation of statutory tasks, pursuant to art. 21 nb in connection with Art. 20 paragraph 1-1d and sec. 2ad-2c of the Act of April 6, 1990 on the Police (Journal of Laws of 2019, item 161, as amended, hereinafter referred to as the Police Act) for the purpose referred to in Art. 1 point 1 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 2018, item 125, hereinafter: the Act of December 14, 2018). When justifying the refusal to delete the complainant's personal data from the KSIP, the Commandant also referred to the content of Art. 16 sec. 1 of the Act of 14 December 2018 on data verification to determine whether there are data whose further storage is unnecessary and informed the Complainant that he was not entitled to access verified personal data, i.e. to the content of verified data, including receive a copy or an extract of this data due to the fact that the processing of information, including personal data, by the Police in order to perform its statutory tasks specified in art. 1 (2) of the Police Act takes place without the consent and knowledge of the data subject and in accordance with the conditions met and existing in the context of the implementation of the statutory tasks of the Police and the grounds for refusing access to personal data listed in art. 26 of the Act of December 14, 2018.

In the explanations addressed to the President of the Personal Data Protection Office, the Commandant pointed out that the data collected in the KSIP are processed by the Police for the performance of its statutory tasks in accordance with the provisions of Art. 21 nb in connection with Art. 20 paragraph 1-ld, sec. 2b-2c and art. 20 paragraph 2ad and paragraph 2ba of the Police Act, in accordance with the principle of legality set out in Art. 7 of the Constitution of the Republic of Poland and within the limits of the principle of proportionality resulting from Art. 31 sec. 3 in conjunction joke. 51 sec. 2 of the Constitution of the Republic of Poland, and are subject to verification and removal in accordance with the principles set out in Art. 16 of the

Act of December 14, 2018 and such verification, the Complainant's data was subjected to. Moreover, it showed that by the court's judgment the applicant had been found guilty of the alleged offenses.

The President of the Data Protection Office informed the Complainant and the Commandant in letters of [...] June 2019 about the conduct of administrative proceedings, as a result of which evidence was collected sufficient to issue an administrative decision and about the possibility of expressing his opinion on the collected evidence and materials as well as requests submitted in accordance with art. 10 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), within 7 days from the date of receipt of the above-mentioned writings.

In such a factual state, the President of the Personal Data Protection Office considered the following.

First of all, it should be noted that the provisions 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 2018, item 125) will apply to the resolution of this case. The aforementioned act creates legal grounds for the application of state protection in situations of unlawful processing of citizens' personal data, by defining the principles and conditions for the protection of data processed by competent authorities that process personal data for the purpose specified in art. 1 section 1 of the Act of December 14, 2018, i.e. 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, order penalties and coercive measures resulting in deprivation of liberty. Pursuant to Art. 21nb paragraph 1 of the Police Act, the Police Commander in Chief runs the National Police Information System, which is a set of data sets in which information, including personal data, is processed in connection with the performance of statutory tasks. For the statutory tasks of the police, pursuant to Art. 1 clause 2 should be i.a. detecting crimes and offenses and prosecuting their perpetrators. In view of the above, it should be noted that running the KSIP by the Commander is an obligation performed as part of the implementation of the statutory tasks of the Police, which falls within the scope of the application of the Act of December 14, 2018, and for these reasons the Act of December 14, 2018 is competent to consider of the case in question.

Pursuant to Art. 24 sec. 1 point 2 of the Act of December 14, 2018, the data subject may request the administrator to immediately delete personal data if the data has been collected or is processed in violation of the provisions of the Act. Therefore, in view of the above, when applying the provisions of this Act, it should be determined each time whether the processing of data is in violation of the provisions of this Act. The personal data protection authority, in order to implement the

state protection of citizens in situations of unlawful processing of personal data, 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 making a subsume, 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. 13 of the Act of December 14, 2018, according to which the competent authorities process personal data only to the extent necessary to exercise the right or fulfill an obligation resulting from a legal provision and in the case of processing sensitive data on the grounds legalizing the processing specified in art. 14 sec. 2 of the Act of December 14, 2018. Depending on the findings in the case, the data protection authority either issues an order or prohibition, refuses to accept the request, 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. On the other hand, the occurrence of the above-mentioned premises legalizing the processing determines the recognition of the questioned processing activities as lawful. For these reasons, in the present case, it should be determined whether the police authorities have an appropriate legal basis legalizing the processing of the Complainant's personal data, fulfilling the provisions of Art. 13 and 14 of the Act of December 14, 2018.

The legal basis for the processing of personal data of persons against whom the proceedings were conducted by the Police authorities is art. 20 of the Police Act, according to which the Police, in order to perform statutory tasks, with the limitations resulting from art. 19 is authorized to process information, including personal data (Article 20 (1) of the Police Act). The processing and exchange of information, including personal data, may also apply to personal data referred to in art. 14 sec. 1 of the Act of December 14, 2018, i.e. sensitive data revealing racial, ethnic origin, political views, religious and philosophical beliefs, trade union membership, genetic data, biometric data to uniquely identify a natural person, health data, data concerning an individual's sexuality and sexual orientation. The data on the results of the analysis of deoxyribonucleic acid (DNA) include information only about the non-coding part of DNA (Article 20 (1a) of the Police Act). In the light of Art. 20 paragraph 2b of the Police Act, the collected information may include: personal data referred to in art. 14 sec. 1 of the Act of December 14, 2018, with the exception that the data on the genetic code includes only information about the non-coding part of DNA, may include fingerprints, photos, sketches and descriptions of the image, features and special characters pseudonyms, as well as information about: 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 way the perpetrator acts, his environment and contacts, the way the perpetrators behave towards the aggrieved parties. The aforementioned information, referred to in Art. 14 sec. 1 of the Act of December 14, 2018, pursuant to art. 20 paragraph 2 c of the Police Act, shall not be charged in the event that they are of no detection, evidence or identification usefulness in the conducted proceedings. Moreover, pursuant to Art. 20 (1) d of the Police Act, the Police, within the scope of their competence, process information, including personal data, obtained from data files kept by other services, state institutions and public authorities. The processing of information, including personal data, by the Police may be classified, without the consent and knowledge of the data subject, and with the use of technical means.

As already indicated above, in accordance with Art. 20 of the Police Act, the Police may process personal data for the purpose of carrying out statutory tasks. The basic tasks entrusted to the Police in Art. 1 clause 2 of the Police Act include: protection of human life and health and property against unlawful attacks violating these goods, protection of public safety and order, initiating and organizing activities aimed at preventing crimes and offenses and criminogenic phenomena, detecting crimes and offenses and prosecuting perpetrators, processing of criminal information, including personal data. Moreover, pursuant to Art. 14 sec. 1 and 4 of the aforementioned Act, within the limits of its tasks, the Police performs the following activities: . Also in order to perform statutory tasks, the police may use data about a person, including in the form of an electronic record, obtained by other state authorities, services and institutions as a result of operational and reconnaissance activities and process them within the meaning of the Act of 14 December 2018. without the knowledge and consent of the data subject (Article 14 (4) of the Police Act).

At this point, referring to the content of the request for the complaint regarding the deletion of the Complainant's data from the KSIP, special attention should be paid to the issues of the period of data storage and the possibility of their deletion; in accordance with Art. 16 sec. 1 of the Act of December 14, 2018, the administrator verifies personal data within the time limits specified by special provisions governing the activities of the competent authority, and if these provisions do not specify the deadline - at least every 10 years from the date of collecting, obtaining, downloading or updating the data. The verification is carried out in order to determine whether there are data, the further storage of which is unnecessary (Article 16 (2) of the Act of December 14). On the other hand, personal data deemed unnecessary are deleted or can be transformed in a way that prevents the assignment of individual personal or material information to a specific or identifiable natural person, or in such a

way that such assignment would require disproportionate costs, time or activities. In the context of the above, it should be noted that the Police authorities carried out an appropriate verification of the Complainant's data in 2004 after the case was closed, and then in connection with the submitted request to remove the data from the KSIP, as well as in connection with the complaint submitted to the President of the Personal Data Protection Office on deletion of data from the KSIP. As follows from the wording of § 29 para. 1 of the Regulation of the Minister of Interior and Administration of 23 August 2018 on the processing of information by the Police (Journal of Laws of 2018, item 1636, as amended, hereinafter: the Regulation of 23 August 2018), with verification of personal data in terms of their usefulness in the conducted proceedings, the following factors are taken into account: the type and nature of the committed crime; the type and nature of the infringed good protected by law, the forms of the perpetration, the form of the intention, the time that will elapse from the moment of entering the data into the filing system, the validity of the conditions of legality and the necessity of further data processing to perform statutory tasks. As it results from the explanations of the Commander, the verification was made, in particular in terms of the premises under Art. 51 sec. 4 of the Constitution of the Republic of Poland and in terms of legality, including the premises of Art. 16 of the Act of 18 December 2018. The verification carried out did not show that there were any statutory grounds for removing the Complainant's data from the KSIP. Moreover, the Commandant demonstrated that criminal proceedings were pending against the Complainant in the case of an offense under Art. 159 of the Act of 1997, the Code of Kama (Journal of Laws of 2018, item 1600, as amended), as a result of which the complainant was found guilty of committing the alleged acts (copy of the judgment in the case files), which in particular - as indicated by the Commander and with what one should agree with - taking into account the circumstances of the committed act, the possibility of making criminological forecasts, analytical activities, preventing the re-committing of such an act as well as the possibility of carrying out the statutory tasks of the Police, constitute the legitimacy of the processing of the complainant's personal data by the Police. .

In view of the above, it should be emphasized that pursuant to Art. 21 rib paragraph. 1 of the Police Act, the Police Commander in Chief runs the National Police Information System, which is a set of data sets in which information, including personal data, is processed in connection with the implementation of statutory tasks. As already indicated above, in the course of the proceedings, the President of the Personal Data Protection Office established that in 2004 criminal proceedings were pending against the Complainant in a case for an offense under Art. 159 of the Act of June 6, 1997, Code of Kama (Journal of Laws of 2018, item 1600, as amended). On the terms set out in Art. 20 paragraph 2a of the Police Act, in connection with the

allegations made to the complainant, the competent Police authorities entered the complainant's personal data into the KSIP data file as a person suspected of committing an offense prosecuted by public indictment. Thus, the Police authorities collected and entered the complainant's data into the KSIP system as part of the performance of statutory tasks. In addition, the processing of the complainant's data takes place in connection with the Police's right to process information, including personal data, with regard to persons for whom proceedings were conducted by the Police authorities under Art. 20 paragraph 1 of the Police Act. On the other hand, the question of the suitability of the Complainant's data processed for the purposes of carrying out the statutory tasks of the Police is determined in accordance with the principles set out in Art. 16 sec. 1 and 2 of the Act of December 14, 2018 and as determined by the President of the Personal Data Protection Office in the course of the investigation, the Police authorities verified the complainant's data accordingly. Thus, the legal basis for the processing of the Complainant's data by the Commander is Art. 21 nb and art. 20 paragraph 1, la, ld, 2b and 2c of the Police Act in connection with Art. 16 of the Act of December 14, 2018 in connection with the Regulation of August 23, 2018, which provisions fulfill the disposition of Art. 13 and 14 of the Act of December 14, 2018, regarding the processing of the Complainant's data to the extent necessary to meet the statutory obligations and exercise statutory rights by the Administrator. In view of the above, these provisions determine the legality of the processing of the Complainant's personal data in the KSIP by the Commandant, which he performs as part of the statutory tasks referred to in Art. 1 clause 2 and art. 14 sec. 1 and 4 of the Police Act.

On the other hand, responding to the complainant's claims, in which I indicate that: "leaving his data in the KSIP may in the future make it difficult or even impossible to achieve professional promotion or change the type of service performed in other uniformed services", "the data may be taken into account when the recruitment process "and that it is" extremely unfair and inconsistent with the law to process personal data for over 15 years "of his personal data in the KSIP, it should be emphasized that the information at the disposal of the National Police Information System is not a source of publicly available knowledge, as it is only used implementation of the Police tasks referred to in art. 1 clause 2 of the Police Act. While the access to information on the criminal record of a person from the National Criminal Register is universal and, as the Complainant showed - he does not appear in the files of this register - the information obtained and produced by the Police authorities in the KSIP is a closed, generally inaccessible set of information and data used for only to the Police authorities for the performance of their statutory tasks related to ensuring public safety and order. For these reasons, one should agree with the position of the Commander, who, responding to the content of the complaint, indicated that "KSIP does not constitute a register (personal

data collection) of convicted or punished persons - because such a function is performed by the National Criminal Register and thus the fact of possible data processing. personal data in the KSIP does not stigmatize the Complainant or other persons, because in the light of the law the Complainant remains an unpunished person - in the event of an expulsion of the conviction ", moreover," KSIP is "discretionary" and the disclosure of personal data from this data set takes place only when such an obligation results from other specific provisions, which also define the scope and purpose of the disclosure. " By citing the above arguments, it is difficult to agree with the Complainant that the processing of his data in the KSIP is extremely unfair and that his individual interest should be taken into account before the public interest, especially in the context of the act committed by the Complainant, his profession, the secret nature of the KSIP and determining the usefulness of the data in an appropriate manner. The applicant to perform the statutory tasks of the police.

The above argumentation is also justified in the judgment of the Supreme Administrative Court of April 21, 2017 (1 OSK 2426/15) and in the judgment of the Constitutional Tribunal of December 12, 2005, file ref. K 32/04 (publ. OTK-A 2005/11/132), which stated that the provision of the then 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.

Moreover, the Constitutional Tribunal indicates that 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 limited to the necessary extent. 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 1, item 5).

At this point, it should be noted that the assessment made by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of referring to a specific subject of the warrant, corresponding to the disposition of art. 8 sec. 2 of the Act of December 14, 2018, aimed at restoring a legal state in the process of data processing - it is therefore justified and necessary only insofar as there are irregularities in the processing of personal data. In the opinion of the President

of the Personal Data Protection Office, there is nothing to conclude that the Complainant's personal data are processed by the Administrator in a manner inconsistent with the Act of December 14, 2018. The processing of the Complainant's personal data is based on the premise specified in Art. 13 of the Act of December 14, 2019 in the field of the so-called ordinary data and worth. 14 sec. 2 of the Act of 14 December 2019 regarding the Complainant's sensitive data. On the other hand, as regards the complainant's request for the removal of his data by the Administrator from the KSIP, it should be stated that the manner of the Police's conduct in the discussed scope does not raise any doubts. The complainant's personal data were, in accordance with the provisions, subjected to appropriate verification and assessment as to their usefulness.

Bearing in mind the above, in this factual and legal state, the President of the 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), the party has the right to lodge a complaint with the Provincial Administrative Court against this decision, 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.

2019-08-06