THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

April

2019

DECISION

ZSOŚS.440.13.2019

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), 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. T. R., residing in ul. [...], irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw (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 [...] January 2019, the Office for Personal Data Protection received a complaint from Mr TR (hereinafter: "the Complainant") about irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw (hereinafter: the "Commander") , consisting in the processing of his personal data in the National Police Information System (hereinafter: "KSIP"). The complainant included in the complaint a request to order the Commander to remove his personal data from the KSIP, which, in the complainant's opinion, were not used for the purpose of carrying out the statutory tasks of the Police.

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, despite the fact that he was an unpunished person. The complainant pointed out that the entries in the KSIP come from 2002, 2011 and 2015 and concern cases that are time-barred, obliterated or canceled. The applicant also explained that he was not entered in the National Criminal Register (hereinafter: KRK). In the opinion of the Complainant, the information about him was unlawfully disclosed to a doctor conducting tests for a sports

firearms license, a psychologist conducting tests for a sports firearms license, a medical examiner conducting an appeal examination, a psychologist conducting an appeal examination, a psychiatrist conducting an appeal examination and persons working in administration of the Provincial Center of Occupational Medicine in K. (ul. [...]). The complainant explained at the same time that he had requested the Police Commander in Chief to remove his personal data from the KSIP, however, in a letter of [...] January 219, the complainant had been informed about the refusal to take into account the above-mentioned the request.

Considering the above, in the content of the complaint, the Complainant demanded that the President of the Personal Data Protection Office take actions aimed at protecting his personal data by removing his personal data from the KSIP collection.

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 [...] February 2019, the President of the Personal Data Protection Office 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 [...] February 2019, the Office for Personal Data Protection received a letter from the Commander ([...]), in which he explained that the Complainant with the application of [...] December 2018 (copy of the application in the case files) addressed to the Poviat Police Commander in L., and then transferred to the Intelligence and Criminal Information Bureau of the Police Headquarters, asked for his personal data to be removed from the KSIP. In this letter, the complainant indicated that he was requesting the removal of all data relating to him from the National Police Information System, pursuant to Art. 26 (1) (4) of the Act on the Protection of Personal Data, as he is not punished or pending against him and that his presence in the KSIP database may adversely affect the possibility of potential employment in uniformed services.

In a letter of [...] December 2018, the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the Police Headquarters, acting under the authority of the Police Commander in Chief, replied to the complainant, indicating that the Police processed personal data in accordance with Art. 20 of the Act of 6 April 1990 on the Police (Journal of Laws of 2019, item 161), hereinafter referred to as: "the Act on the Police". In the justification of the position, the Complainant was indicated the legal grounds for the processing of personal data by the Police, in particular art. 20 paragraph 2a, section 2ac, paragraph. 2b, section 17 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. The content of Art. 20a paragraph 1 of the Police Act, according to which, in connection with the performance of statutory tasks, the Police ensure the protection of forms and methods of performing tasks and information, it was emphasized that pursuant to Art. 20 paragraph 17 of the Police Act, personal data collected in order to detect a crime is kept 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. It was also indicated that the nature of the KSIP, in which information is collected in order to perform statutory tasks of the Police, differs from the official files, and that it does not constitute a register of convicted or punished persons, therefore the fact of possible processing of personal data in the KSIP does not affect whether a given person is considered unpunished by law. It was also indicated that the Police process personal data only to the extent indicated in the said letter and in accordance with the provisions of the Police Act.

In a letter of [...] December 2019, addressed to the Intelligence and Criminal Information Bureau of the Police Headquarters, the complainant repeated his request regarding the removal of his personal data from the KSIP (copy of the letter in the case files). As the basis for the request to delete personal data, he indicated art. 20 paragraph 17c and 17d of the Police Act.

By letter of [...] January 2019, Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of KGP, acting under the authority of the Police Commander in Chief, - L.dz. [...] (a copy of the letter in the case file) upheld the arguments contained in the letter of [...] December 2018. In justifying his position, the Commandant indicated that on the basis of the premises resulting from Art. 20 paragraph 17 and 17b of the Police Act and the methods of assessing data in terms of their usefulness in the conducted proceedings indicated in § 29 of the Regulation of the Minister of Internal Affairs of July 21, 2016 in the scope of information processing by the Police, as a result of a re-verification of information processed in the KSIP factual state and legal regulations have not changed with regard to the processed data since the submission of the previous request by the Complainant. At the same time, the Complainant was informed about the right to lodge a complaint with the President of the Personal Data Protection Office. At the same time, the Commandant informed that after [...] January 2019, no further correspondence from the Complainant regarding the removal of information concerning him from the KSIP or disclosure of information from these data files was received.

The President of the Office for Personal Data Protection informed the Complainant and the Police Commander in Chief in

letters of [...] March 2019 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 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.

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

The above-mentioned Act on the Protection of Personal Data of August 29, 1997 provides legal grounds for applying state protection in situations of illegal processing of citizens' personal data by both public law entities and private law entities. In order to implement it, the personal data protection authority 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 subsuming, 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. 23 sec. 1 above of the Act on the Protection of Personal Data and depending on the findings in the case - either issues an order or prohibition, or 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.

Pursuant to Art. 1 of the aforementioned Act, everyone has the right to the protection of personal data concerning him, and the processing of such data, in the sense referred to in Art. 7 point 2 of this Act, it is allowed only for specific goods, i.e. the public good, the good of the data subject or the good of a third party, and only to the extent and in the manner specified by the act. Bearing the above in mind, therefore, when applying the provisions of this Act, it is necessary to weigh the underlying goods each time.

At this point, attention should also be paid to the tasks entrusted to the Police, including the 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 committing crimes and petty offenses as well as detecting crimes and petty 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. 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 its real concern for safety and

public order. This, in turn, would make it difficult, and sometimes even prevent the Polish State from correctly fulfilling the obligations described in the Constitution of the Republic of Poland towards its citizens (...). It would, therefore, result in subordinating the higher value, which is the good of all citizens, to a lower value, which is the individual's right to protection. her personal data ".

In the course of the proceedings, the President of the Office for Personal Data Protection established that in 2000 the Complainant was subject to criminal proceedings concerning an offense under Art. 279 § 1 of the Act of June 6, 1997 Penal Code (Journal of Laws of 2018, item 1600, as amended), hereinafter referred to as: "Penal Code", in 2002 for an act specified in Art. 268 § 1 - 3 of the Criminal Code, and in 2011 and 2016 for acts under Art. 158 § 1 of the Criminal Code. 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. In the context of the above, it should be added that the appropriate verification of the Complainant's collected data in the field of crimes under Art. 279 § 1, art. 268 § 1-3 and article. 158 § 1 of the Criminal Code, the Police authorities performed after the completion of the cases, i.e. in 2000, 2002, 2011 and 2016, and in connection with the complainant's complaint to the President of the Personal Data Protection Office regarding the removal of personal data from the KSIP. According to Art. 20 paragraph 17 of the Police Act, this authority is required to verify the data after the end of the case under which these data were entered into the collection, and moreover not less frequently than by 10 years from the date of obtaining or downloading the information, deleting redundant data. Bearing in mind the above, the Commandant explained that the verifications required by the Act were carried out, i.e. in 2006 and 2008, after the completion of the cases, and additionally each time in connection with requests for the deletion of personal data from the KSIP and a complaint regarding the deletion of data from the KSIP, with which in the case of requests for the removal of personal data from the KSIP, the verification was made in terms of the premises under Art. 51 sec. 4 of the Polish Constitution and Art. 20 section 17b and 18 of the Police Act. When assessing the data in terms of their usefulness, the Police did not have any information indicating the existence of the premises under Art. 20 (17) of the Police Act. The commandant also explained that the indicated in Art. 20 (17) of the Police Act, the ten-year period of compulsory verification of the collected personal data has expired, but there are no statutory grounds for deleting the Complainant's personal data from the KSIP, because the type of crimes committed under Art. 279 § 1, art. 268 § 1-3 and article. 158 § 1 of the Criminal Code.

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).

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).

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.

Bearing in mind the above, 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, subject to an assessment of their usefulness.

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 June 14, 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 against this decision, within 30 days from the date of delivery to her 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.

2019-04-26