THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 11

September

2019

DECISION

ZSOŚS.440.76.2019

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), Art. 5 sec. 1 point 6 in connection with joke. 12 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), (hereinafter: the Act of December 14, 2018 on the Protection of Personal Data) after conducting administrative proceedings regarding the complaint of Mr. RW (residing at ul. [...]) against the processing of his personal data by the Police Commander in Chief in Warsaw in the National Police Information System (KSIP) and in the National Criminal Information Center (KCIK) (Police Headquarters, ul. Puławska 148/150, 02-624 Warsaw),

I discontinue the proceedings

Justification

The Office for Personal Data Protection received a complaint from Mr RW (hereinafter: "Complainant"), about the processing of his personal data in the National Police Information System (KSIP) and in the National Criminal Information Center (KCIK) by the Police Commander in Chief (hereinafter referred to as: Main ") In the content of the above-mentioned of the complaint. The complainant asked the supervisory authority to order the Police Commander in Chief to remove his data from the above-mentioned data sets.

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 [...] June 2019, 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 Chief Commandant informed that the Complainant, with a request of [...] April 2019, asked for the

removal of his personal data processed at the KSIP and KCIK. In a letter of [...] May 2019 ([...]) the Deputy Director of the Intelligence and Criminal Information Bureau of the National Police Headquarters provided the Complainant with information on the processing of personal data in KCIK, the tasks of the Commander-in-Chief as the Head of KCIK, and informed that the Commander-in-Chief as The head of the KCIK is not obliged to inform the data subject about the fact of processing such data as well as about the scope of their processing or sharing. In a letter of [...] June 2019 ([...]), the Deputy Head of the Information Service Department of the Intelligence and Criminal Information Bureau of the National Police Headquarters, informed the Complainant about the method of examining his request, verifying his data and about removing them from the KSIP system. The President of the Office for Personal Data Protection informed the Complainant and the Commander-in-Chief in letters of [...] July 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 submitted 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.

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

At the outset, it should be noted that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing at the time of issuing this decision. This position is based on the jurisprudence of the courts. In particular, it is necessary to mention the judgment of the Supreme Administrative Court, file no. act I OSK 761/07, where it was unequivocally stated that "(...) when examining (...) the legality of the processing of personal data, the [Inspector General] is obliged to determine whether the data of a specific entity are processed on the date of issuing the decision and whether it is being processed lawfully (…) ". Additionally, as expressed in the doctrine, “the public administration body assesses the facts of the case according to the date of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual status of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the binding legal norm in the field of administrative and legal relations, when such relations require it "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws 00.98) 1071) M. Jaśkowska, A. Wróbel, Lex., El / 2012).

The facts of the case established in the case at hand show that the Commander-in-Chief removed the complainant's personal data from the KSIP system in the questioned scope.

Regarding the processing of the complainant's personal data in the NCIC database, it should be noted that the legal basis for the processing of personal data by the Commander-in-Chief of the NCIC is primarily the provisions of the Act on the NCIC. Pursuant to Art. 2 clause 1 of the Act on KCIK, "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". In addition, these processes take place on the principles set out in the Act on the KCIK without the knowledge and consent of the data subject, and in accordance with the principles of their protection specified in the provisions on the protection of classified information (Article 2 (2) of the Act on the KCIK). 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 tasks of the Commander-in-Chief include the processing and transmission of criminal information, keeping databases and determining the organizational conditions and technical methods of conducting, developing analyzes of criminal information, ensuring the security of the data processed at the Criminal Information Center, in accordance with the provisions of the Act of December 14, 2018 on data protection. personal data processed in connection with the prevention and combating of crime and the provisions of the Act of 5 August 2010 on the protection of classified information (Journal of Laws of 2018, items 412, 650, 1000, 1083 and 1669).

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 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. Additionally, art. 2 clause 1 of the Act on KCIK emphasizes that this information may only be processed for the purpose of detecting and prosecuting perpetrators of crimes as well as preventing and combating 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.

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 time limits for data storage in KCIK are counted from the date of registration of criminal information in databases (Article 14 (4) of the Act on KCIK). 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.

As the Commandant in Chief rightly pointed out, he is not obliged to inform the person whose personal data he may collect and process about the fact of processing such data, as well as about the scope of processing or making this data available. In addition, the Chief Commandant is not obliged to inform about the content of the information, about the recipients of the data, about the deletion of information and about the scope of data deleted from the data set (Article 2 (2) and Article 6 (4) of the Act on KCIK).

In the course of the proceedings in question, the President of the Personal Data Protection Office established that criminal proceedings had been conducted against the Complainant. On the day the complaint was lodged with the Office for Personal Data Protection, the conviction has already been seized. However, it should be emphasized that among the above-mentioned grounds for data deletion, there is no seizure of the conviction that would justify the removal of the Complainant's data from the NCIC. This means that the mere seizure of a conviction is not an independent and absolute prerequisite for the removal of criminal information from the KCIK database.

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 above 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 carry out the statutory tasks of the Police. Considering the above, it should be stated that the Complainant's personal data was obtained by the Police authorities in a legal manner and is thus processed by them 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.

As indicated above, the provisions of the Act of December 14, 2018 on the protection of personal data were not infringed in this case, which renders the proceedings redundant.

In this situation, the proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096), hereinafter referred to as: "kpa", as it is irrelevant. In accordance with the above-mentioned a provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, respectively, in whole or in part. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body conducting the procedure will obligatorily discontinue it. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Administrative Procedure means that there is no element of a material legal relationship, and therefore it is not possible to issue a decision settling the matter by resolving its substance (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Wydawnictwo CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be settled by deciding on the substance ". The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliged him to discontinue the proceedings regarding the processing of the Complainant's data in the KSIP system, as there are no grounds for resolving the matter of substance, and continuing the proceedings in such a case would be defective,

significantly affecting the outcome of the case.

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.

2019-10-04