THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 22

November

2018

DECISION

ZSOŚS.440.140.2018

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (uniform text: Journal of Laws of 2018, item 2096) 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 joke. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), after conducting administrative proceedings regarding the complaint of Mr. M. P., residing in in D., irregularities in the processing of his personal data by the Police Commander in Chief, consisting in the processing of the complainant's personal data in the National Police Information System (KSIP) in a situation where a conviction for a crime has been seized,

I refuse to accept the application

JUSTIFICATION

On [...] May 2013, the Office of the Inspector General for Personal Data Protection (currently the Office for Personal Data Protection) received a complaint from Mr. MP (hereinafter referred to as the "Complainant") about irregularities in the processing of his personal data by the Police Commander in Chief in Warsaw, (hereinafter referred to as the "Commandant"), consisting in the processing of the complainant's personal data in the National Police Information System (KSIP) in a situation where the conviction for a committed crime has been seized.

In the content of the complaint, the Complainant stated that he is seeking the initiation of administrative proceedings and issuing a decision on the compliance of the processing of personal data with the provisions on the protection of personal data contained in the police database of the KSIP - with regard to the data indicated in Art. 20 paragraph 2b points 2-5 of the Police Act entered into the collection as part of the preparatory proceedings conducted by KP II in S. regarding the committed act fulfilling the criteria of the offense specified in art. 270 of the Penal Code of the Act of June 6, 1997 Penal Code (consolidated text: Journal of Laws of 2018, item 1600, 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 arrangements:

by letters of [...] March 2014, the Inspector General for Personal Data Protection informed the Complainant and the Commander of the initiation of explanatory proceedings and asked the Commander to indicate whether the Complainant's personal data are still processed in the KSIP, indicating the legal basis, purpose and scope processing;

on [...] April 2014, a letter from the Head of the Information Service Department of the Criminal Service Office of the Police Headquarters was received ([...]), in which he explained that on [...] August 2012, the complainant requested the Commander to delete his personal data from the KSIP in the scope of data indicated in art. 20 paragraph 2b points 2-5 of the Police Act, entered into the collection as part of the preparatory proceedings conducted by KP II in S. At the same time, the Head of the Office informed that in 2004 there had been criminal proceedings against the complainant in a case for an offense under Art. 270 of the Act of June 6, 1997 Penal Code. In addition, on the terms set out in Art. 20 paragraph 2a of the Act of 6 June 1990 on the Police, in connection with the presentation of the above-mentioned allegation, the competent Police authority made the so-called trial registration, i.e. he entered the complainant's personal data into the KSIP data set as a person suspected of committing an offense prosecuted by public indictment. In a letter of [...] September 2012 ([...]) the Director of the Intelligence Bureau replied to the Complainant that the Police were processing personal data in accordance with Art. 20 of the Police Act. In the justification of the letter, he indicated in detail the legal grounds for the processing of personal data by the Police, 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. He also informed the complainant about a different procedure and rules for processing information in the KSIP;

The Inspector General for Personal Data, in letters of [...] December 2016, informed the Complainant and the Head of the Information Service Department of the Criminal Service Office of the General Police Headquarters about conducting 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 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.

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 Office of the Inspector General for Personal Data Protection became 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:

Pursuant to Art. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the "Personal Data Protection Act", personal data may be processed if it serves is in the public interest, the interest of the data subject or the interest of third parties. Pursuant to Art. 7 point 2 of this Act, data processing shall mean any operations performed on personal data, such as collecting, recording, storing, developing, changing, sharing and deleting, especially those performed in IT systems. Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data, allows the processing of personal data if it is necessary to exercise the right or fulfill an obligation resulting from a legal provision.

The legal basis for the processing of personal data of persons against whom the Police proceedings were conducted is Art. 20 paragraph 1 of the Act of April 6, 1990 on the Police (consolidated text: Journal of Laws of 2017, item 2067, as amended), referred to as the "Police Act". According to this provision, the Police, subject to the limitations resulting from Art. 19 of the Police Act, may obtain information, including secretly, collect, check and process it. Pursuant to Art. 20 paragraph 2a, the Police may download, obtain, collect, process and use, in order to perform statutory tasks, information, including personal data, e.g. about persons suspected of committing crimes prosecuted by public prosecution, also without their knowledge and consent. Art. 20 sec. 2b above of the Act indicates that the information in question, concerning, inter alia, persons suspected of committing an offense prosecuted by public indictment, may include: 1) personal data referred to in art. 27 sec. 1 of the Act of August 29, 1997 on the protection of personal data, however, the data on the genetic code includes information only about the non-coding part of DNA; 2) fingerprints; 3) photos, sketches and descriptions of the image; 4) features and special characters, nicknames; 5) information about: a) place of residence or stay, b) education, profession, place and position of work as well as material situation and the condition of property, c) documents and objects used by the perpetrator, d) the way of acting of the

perpetrator, his environment and contacts , e) the manner in which the perpetrator behaves towards the aggrieved parties. Pursuant to Art. 20 paragraph 2c above. of the Act, the above information is not collected if it is not useful for detection, evidence or identification in the conducted proceedings.

As rightly pointed out by the Provincial Administrative Court in Warsaw, in its judgments of March 10, 2011, file ref. no.II SA / Wa 1885/10, of November 28, 2011, file ref. no.II SA / Wa 978/11, of August 7, 2013, file ref. no.II SA / Wa 2328/12, of October 2, 2013, file ref. no. II SA / Wa 627/13 and the Supreme Administrative Court in judgments of 19 December 2011, file ref. no. I OSK 1100/11 and of March 22, 2013, file ref. act I OSK 786/12, the quoted norm art. 20 paragraph 2a of the Police Act is a lex specialis in relation to the norms specified in Art. 51 of the Polish Constitution and Art. 32 and 33 of the Act of August 29, 1997 on the Protection of Personal Data, which is understandable and reasonable in all respects, in relation to the statutory tasks assigned to the Police (including preventing and combating crime). It should be added that specific norms take precedence over general norms (lex speciali derogat legi generali). Moreover, as indicated by the Court, a period of several years from the date of the prohibited act (shorter than ten years) is left to the Police by virtue of Art. 20 paragraph 17 of the Police Act to make an appropriate verification of the purposefulness of personal data processing and the police cannot be accused of that - firstly, they failed to properly verify the sentencing being the subject of registration (at the time of presenting the charges to the convicted perpetrator), and secondly the fact that the sentencing was blurred in it cannot in any way affect the processing of data by the Police. The information at the disposal of the KSIP does not constitute a source of generally available knowledge, as it is used only for the performance of the Police tasks referred to in Art. 1 clause 2 of the Police Act. One should agree with the argumentation of the Head of the Information Service Department of the Criminal Service Office of the National Police Headquarters presented for the purposes of these proceedings, in which he indicates that in the light of the verification criteria carried out in accordance with Art. 20 paragraph 17 of the Police Act and § 32 and § 33 of the Regulation of the Minister of the Interior of December 31, 2012 on the processing of information by the Police, it was established that the processed personal data are necessary for the performance of statutory tasks of the Police. In the present case, the time provided for in Art. 20 paragraph 17 of the Police Act, the period of verification of the collected personal data (every 10 years), at the same time verification of the collected personal data in the context of this case, taking into account other verification criteria and the purposes of information processing by the Police, supports the processing of these data in accordance with Art. 20 paragraph 17 of the Police Act. Moreover, as indicated by the Head of the Information Service Department of the Criminal

Service Office of the Police Headquarters, KSIP does not constitute a register (personal data collection) of convicted or punished persons, as such functions are performed by the National Criminal Register. The police data set (and such is the KSIP) is a register that generates (used to collect and process) information about the initiated and conducted by the Police (mainly criminal) proceedings, regardless of the way in which they are ended, so as such it cannot constitute the basis for inferring the method of termination these proceedings. Moreover, none of the authorities competent to legally terminate these proceedings (mainly common courts and prosecutor's offices) is obliged to inform the Police about the way of terminating the proceedings. The effect of this nature of the police dataset is, inter alia, the fact that the possible conditional discontinuation of the proceedings (after the expiry of the relevant probation period), the discontinuation of the proceedings (except for the discontinuation due to the occurrence of the premises specified in Article 20 (17b) points 1 and 2 of the Police Act) or expungement of the conviction (recognition as void) are not affects the fact that data is processed by the Police, because this file is not a register of convicts (see: Art. 106 of the Penal Code - when a conviction is seized, it is considered void; an entry about a conviction is removed from the register of convicts, not from other data files). In light of the verification criteria carried out in accordance with Art. 20 paragraph 17 of the Police Act and § 32 and § 33 of the Regulation of the Minister of the Interior of December 31, 2012 on the processing of information by the Police (Journal of Laws, item 8, as amended), it has been established that the processed personal data is necessary for implementation of statutory tasks of the Police. In the present case, the time provided for in Art. 20 paragraph 17 of the Police Act, the period of verification of the collected personal data (every 10 years), at the same time verification of the collected personal data in the context of this case, taking into account other verification criteria and the purposes of information processing by the Police, supports the processing of these data in accordance with Art. 20 paragraph 17 of the Police Act.

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.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file an application for reconsideration of the case within 14 days from the date of its delivery to the party. If a party does not want to exercise the right to submit an application for reconsideration of the case, he has the right to lodge a complaint against the decision with 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.

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