

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

October

2019

DECISION

ZKE.440.21.2019

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. 160 sec. 1 and 2 of the Act of 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with joke. 12 point 2, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) after conducting administrative proceedings regarding the complaint of Mr. MB about irregularities in the process of personal data processing by N., President Personal Data Protection Office, discontinues the proceedings.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection) received a complaint from Mr. M. B. (hereinafter referred to as the Complainant) about the processing of his personal data by N. (hereinafter: the administrator).

In his complaint, the complainant indicated that [...] in June 2014, the administrator sent unsolicited commercial information to his private e-mail address [...]. In response, the Complainant objected to the processing of his personal data for marketing purposes and for the purpose of transferring his data to other administrators by sending a letter to the administrator's e-mail address: [...] and [...]. On [...] July 2014, the controller sent the unsolicited commercial information again to the same e-mail address: [...]. In the Complainant's opinion, the controller violated his rights as regards the refusal to recognize the objection to the processing of his personal data. In this situation, he asked the Office for Personal Data Protection to investigate whether the law was violated and to issue a decision aimed at restoring the lawful state.

In the course of the proceedings initiated by the complaint, the President of the Personal Data Protection Office made the following arrangements:

Until [...] November 2016, the administrator ran a website with the address [...]. On the website, in the contact section, the

contact details of N. were provided. Correspondence sent to the above-mentioned the address was returned because there was no such house number and the addressee is unknown.

The above-mentioned domain is registered in E., the domain's IP address is [...]. In the domain description there is only information about the subscriber (administrator) of the domain www, who is a natural person. Servers on which the above-mentioned is located the domain [...] are located in Lithuania. The location address of the servers is: [...].

The administrator is not listed in the National Court Register, CEIDG or GUS (printouts in the case files). He has never been entered in any register of entrepreneurs operating in the territory of the Republic of Poland. From [...] November 2016, it is also not possible to connect to the website [...]. After entering the entity's name in the internet search engine, the page [...] appears in the results. The website contains the following information about the entity: N., [...] company code - [...], head - [...], mobile phone - [...], fax - [...], website - [...], insurer code - [...], - debt [...] (2016-11- [...]).

In these facts, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Act, proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before the date of entry into force of this Act, are conducted by the President of the Personal Data Protection Office on the basis of the Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), in accordance with the principles set out in the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "kpa ". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on

From May 25, 2018, also Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95 / 46 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the

legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed before the date of entry into force of the new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which "the public administration body assesses the actual state of the case according to the moment 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 "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012).

Referring the above considerations to the established facts, it should be stated that since the administrator, whose activity in the processing of personal data was the subject of the analyzed complaint, does not operate in the course of business in the territory of the Republic of Poland, it is impossible to continue the proceedings due to the non-existence of the entity. In this state of affairs, it should be stated that the administrator does not process and has never processed the complainant's personal data as part of business activities conducted in the territory of the Republic of Poland, and conducting proceedings against this entity is pointless.

The irrelevance of the proceedings means that there is no element of the material legal relationship, and therefore a decision to settle the matter cannot be issued by resolving it on its merits (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, file ref. no. III SA / Kr 762/2007): "The procedure becomes pointless when any of the elements of the material-legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because then there are no grounds for resolving the matter of substance, and continuing the proceedings in such a case would be defective, significantly affecting the result of the case. 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 Civil Procedure, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision 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 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.

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