THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

July

2021

DECISION

DKE.523.30.2021

Based on Article. 105 § 1 of the Act of 14 June 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 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and with Art. 57 sec. 1 points a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 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 / EC (Journal of Laws of the EU L 119 of May 4, 2016, p. 1 and Journal of Laws of the EU L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Mrs. HP about irregularities in the process processing of her personal data by L. Sp. z o.o., the President of the Personal Data Protection Office

discontinues the proceedings.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms H. P., hereinafter referred to as "the Complainant", about the processing of her personal data by L. Sp. z o.o., hereinafter referred to as the "Company".

It follows from the content of the complaint that the complainant received via the Company, from the e-mail address [...], e-mails of a marketing nature, concerning the possibility of using the bets [...]. Despite the objection to the processing of her data for these purposes, the same messages were still sent from a different e-mail address: [...].

In connection with the presented situation, the Complainant requested that her data be removed from the Company's databases and that it was no longer processed.

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office established the

following facts.

The complainant [...] on August 2015 received from the Company e-mails of a marketing nature. The sender of the message was Mr. RR from L. The message was sent from an e-mail address [...] and contained marketing information regarding the possibility of using a 50% discount on 10 plants [...] at the price of 5. The complainant submitted to the Company, which is the administrator of the website [...], objection to the processing of their personal data for marketing purposes. Despite the objection, the complainant again received, on [...] August 2015, a marketing message about the possibility of using [...] betting, which was sent by Mr. RR from L., however, the message was sent from a different e-mail address, ie [...].

According to § 9 point 4 of Chapter 2 of the regulations of using the Legal Website of [...] May 2018, it follows that the Company being the operator of the above-mentioned website (quoted): ,, may terminate the contract for the provision of electronic services if the User has not shown activity on the Website, in particular has not placed an order or logged in to the User's Account within 2 years from the last activity (proof: Annex 7 to explanations [...] November 2019, link to the current regulations: [...].

In the explanations of [...] November 2019 submitted as part of these proceedings, the Company informed that so far it had processed the complainant's personal data in a file named "U." (Application number [...], book number [...]) in order to provide services provided by the Company on the website [...], for which the complainant consented by accepting the terms and conditions of the service and website regulations and expressing consent to processing of your data in order to fulfill obligations. The complainant also agreed to receive commercial information to the e-mail address provided during registration. The company informed that in August 2015, after receiving the complainant's objection to the further processing of her personal data, it immediately deleted all the collected data and deleted the complainant's e-mail account from the subscribers database. The company explained that it was not able to state whether it had actually sent the complainant the marketing e-mail of Company L., however, it seemed unlikely, because the e-mail did not have a footer informing about the sender of that e-mail, and all advertising mailings sent by the Company always had an appropriate footer with with information about the possibility of removing your e-mail address from the list of subscribers. The company added that if the marketing e-mail was actually sent by it, it was the result of a one-off technical fault related to the synchronization of the shipping base. Apart from the complainant's case, the Company never received any information indicating that any client had received any message after the deletion of his data. The company informed that the complainant's personal data was not transferred to L. The activity of

the portal [...] does not include the transfer of personal data to such entities, while advertisements were transferred to users at the request of the Company's clients. The company presumes that the e-mail from L. could have resulted from the provision of data by the Complainant to another service that organized advertising mailings for this entity. On [...] April 2019, i.e. 9 months after the Complainant's personal data ceased to be processed, the Complainant again used the Company's services, expressing the relevant consent to the processing of her data with the limitation only to the use of the website. Consent was given on 2016-04 - [...] [...] from the IP address: [...], while in April 2018 the Company pursuant to § 9 point 4 of the regulations of using the Legal Website [...] of [...] May 2018, which states that (quoted): "The operator may terminate the contract for the provision of electronic services if the User was not active on the Website, in particular did not place an order or logged in to User account within 2 years from the last activity "- deleted the complainant's personal data and currently does not process them in any scope.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), hereinafter referred to as "u.o.d.o. 2018 ", ie on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection. 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 (Journal of Laws of 2016, ., item 922, as amended), in accordance with the principles set out in the Act of 14 June 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "kpa". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act on Personal Data Protection Act 2018).

Pursuant to Art. 57 sec. 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 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 / EC (general regulation on the protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), hereinafter referred to as "Regulation 2016/679", without prejudice to other tasks determined pursuant to this regulation, each supervisory authority on its territory monitors and enforces the

application of this regulation (point a) and deals with complaints brought by the data subject or by a data subject empowered by him - in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and results of these proceedings within a reasonable time (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing this decision. As the doctrine points out, “the public administration body assesses the facts 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 a public administration authority issues an administrative decision based on 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 state of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the applicable 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, M. Jaśkowska, A . Wróbel, Lex., El / 2012). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Referring the above to the established facts, it should be stated that in the course of the investigation, the President of the Personal Data Protection Office established that currently the complainant's personal data are not processed by the Company. They were permanently removed in April 2018 on the basis of § 9 point 4 of the regulations of using the Legal Website [...] of May 2018 - as a result of the Complainant's inactivity on the website.

For the above reasons, the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Administrative Procedure, as it is irrelevant.

Pursuant to the above-mentioned 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, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the authority conducting the proceedings will obligatorily discontinue them. 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 Civil Procedure means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority (B. Adamiak, J. Borkowski, Code of Administrative Procedure Comment ", 14th edition, CH Beck Publishing House, Warsaw 2016, p. 491). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

In the present case, this element of the substantive law relationship, which ceased to exist during the proceedings, is the fact that the Company processes the complainant's personal data (to the extent limited by the content of the complaint and the demands made therein). The statement of the existence of this fact would only allow to decide on its legality (the existence of a legal basis for processing) and compliance with the provisions on the protection of personal data.

The determination by the public administration body of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on 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 of the decision, the party has the right to submit 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 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.

2021-09-14