THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.17.2019

Based on Article. 104 § 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 May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with Art. 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) in connection with Art. 6 sec. 1 lit. f of the Regulation of the European Parliament and of the Council (EU) 2016/679 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 UE L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 4 and 5 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2018, item 2187, as amended), after conducting administrative proceedings regarding the complaint of Ms AS, represented by Ms AG from K. Sp. z o.o., for the activities of Bank P. S.A. in connection with the processing of the complainant's personal data and their transfer to B. S.A., the President of the Office for Personal Data Protection

refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly: Inspector General for Personal Data Protection) received a complaint from Ms A. S., (hereinafter referred to as: the Complainant), represented by Ms A. G. z K. Sp. z o.o., for the activities of Bank P. S.A. (hereinafter: the Bank), in connection with the processing of the complainant's personal data and their transfer to B. S.A. (hereinafter referred to as: B.).

In the content of the complaint, the complainant indicated that she demanded the Bank's obligation to stop processing her personal data under the loan agreement No. [...] for the purposes of creditworthiness assessment and credit risk analysis in B. paid off. As indicated by the Complainant, the Bank unlawfully processes and discloses her personal data to B., as evidenced

by the fact that she has not fulfilled the obligation under Art. 105a paragraph. 3 of the Banking Law. The Bank did not inform the Complainant about its intention to process her personal data after the expiry of the obligation, due to the delay in paying the arrears resulting from the loan agreement binding her with the Bank. At the same time, the complainant argued that the Bank - despite directly sending it a request to stop processing her personal data in B. - reacted negatively to the request formulated in this way.

In order to establish the factual circumstances relevant to the resolution of this case, the President of the Office for Personal Data Protection initiated administrative proceedings. On the basis of the evidence collected in the case, he established the following facts:

The Bank obtained the complainant's personal data in connection with the conclusion of the loan agreement No. […] of […] November 2008 (the surname of W. at the date of its preparation, the complainant).

At the time of signing the loan agreement, the complainant made a declaration of consent to the processing by the Bank and institutions established pursuant to Art. 105 paragraph. 4 of the Act of August 29, 1997 - Banking Law (hereinafter: the Banking Law) concerning its information, constituting banking secrecy, for the purpose of assessing creditworthiness and analyzing credit risk for a period of 5 years after the expiry of the contractual obligation.

While the parties were bound by the contract, the Bank processed the complainant's personal data pursuant to Art. 105a paragraph. 1 of the Act of August 29, 1997 of the Banking Law, in order to assess creditworthiness and analyze credit risk. At the same time, at the end of November 2008, acting pursuant to Art. 105a paragraph. 4 of the Banking Law in connection with Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data and on the basis of the agreement of [...] June 2004 on the collection and disclosure of information constituting banking secrecy, the Bank provided B. with the personal data of the complainant in the scope of: name, surname, PESEL number, ID card number, address of residence and data regarding the concluded contract.

Due to the delay in repayment of the obligation under the loan agreement No. [...] (amounting to - as explained by the Bank - more than 180 days), by letter of [...] October 2010, sent by registered mail to the address indicated in the loan application correspondence of the complainant, the Bank called on the complainant to pay the due debt under the pain of termination of the contract by notice. At the same time, the Bank announced its intention to use, pursuant to Art. 105a paragraph. 3 of the Banking Law (due to the delay in payment of the liability exceeding 60 days), the right to process information constituting

banking secrecy also after the expiry of the liability, without the consent of the complainant, including processing it in the B system. This letter, after double notification, was returned to the sender as unclaimed by the addressee on time and considered by the Bank to be properly delivered pursuant to Art. 61 sentence 1 of the Act of 23 April 1964 Civil Code. As the outstanding amounts were not paid, the Bank, by letter of […] November 2010, terminated the loan agreement with the complainant.

The debt was finally repaid in full by the complainant on […] December 2011. Thus, the obligation under the agreement between the complainant and the Bank expired, and the Bank and B. continued processing information about the complainant under agreement no. […] For the purposes of assessing creditworthiness and credit risk analysis - initially on the basis of its consent expressed in the loan application, and from [...] September 2013 (ie from the date on which the complainant sent the first declaration of withdrawal of consent to the Bank) pursuant to Art. 105a paragraph. 3 of the Banking Law - without its consensus on such actions of the Bank.

Currently, the Bank is processing the complainant's personal data resulting from the above-mentioned contracts in the scope of: name, surname, date of birth, parents' names, PESEL number, series and number of the identity document, address and telephone number. The basis for the processing of the complainant's personal data by the Bank is currently Art. 6 sec. 1 lit. f) 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 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) in connection with Art. 118 of the Act, Art. 4421 and art. 731 of April 23, 1964 of the Civil Code, and the purpose of the processing is to pursue claims and defend against any claims related to the performance of the contract concluded by the complainant with the Bank.

By letters of [...] September 2013 and [...] January 2014, the complainant asked the Bank to stop processing her personal data resulting from the above-mentioned of the loan agreement for the purposes of assessing creditworthiness and analyzing credit risk in B. The complainant justified her request with the fact that the Bank did not meet one of the conditions legalizing such data processing, referred to in 105a sec. 3 of the Banking Law - the obligation to inform her about the intention to process banking secrecy information relating to her, without her consent, for a period of 5 years from the expiry of the obligation. The Bank did not accept the complainant's request, of which it informed her in letters of: [...] October 2013 and [...] January 2014.

Due to the lapse of 5 years from the expiry of the obligation, the Bank made an adjustment in B on [...] December 2016, in which the information on loan agreement No. [...] is no longer presented in the reports assessing credit risk in relation to the applicant.

At present, B. processes the personal data of the complainant provided to him by the Bank in the scope related to the loan agreement No. [...] pursuant to Art. 105a paragraph. 4 and 5 in connection with Art. 105 paragraph. 4 of the Banking Law. The contract account in B. has the status of a recovered closed account and is processed solely for the purpose of applying internal methods and other methods and models. In this factual state, 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 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection 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), hereinafter also referred to as the "1997 Act", 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). 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 manner of conducting proceedings in cases initiated and pending 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 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 ”(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071), M. Jaśkowska, A. Wróbel, Lex., El / 2012).

In the light of the provisions of Regulation 2016/679, the processing of personal data is lawful when any of the conditions listed in art. 6 sec. 1 of the Regulation 2016/679 (equivalent to Article 23 (1) of the 1997 Act in force until 25 May 2018), i.e. when:

a) the data subject has consented to the processing of his personal data for one or more specific purposes (similarly in Article 23 (1) (1) of the Act 1997);

b) processing is necessary for the performance of a contract to which the data subject is party, or to take action at the request of the data subject prior to entering into a contract (analogous to Article 23 (1) (3) of the Act 1997);

c) processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Art. 23 (1) (2) of the Act 1997);

d) processing is necessary to protect the vital interests of the data subject or of another natural person;

e) processing is necessary for the performance of a task carried out in the public interest or as part of the exercise of public authority vested in the controller (by analogy in Art. 23 (1) (4) of the Act 1997) or finally;

f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular, when the data subject is a child (by analogy in Article 23 (1) (5) of the Act 1997).

These conditions apply to all forms of data processing, including their disclosure. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

Referring to the subject matter of this case, it should be clarified that the legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Act of August 29, 1997 - Banking Law (Journal of Laws of 2019, item 2357) .

When examining the legality of the disclosure of the complainant's personal data by the Bank to B., in connection with the debt resulting from the loan agreement No. [...] of [...] November 2008, the President of the Personal Data Protection Office indicates that B. is an institution established by pursuant to Art. 105 paragraph. 4 of the Banking Law, according to which

banks may, together with banking chambers of commerce, establish institutions to collect, process and make available, among others to: banks - information constituting banking secrecy to the extent that this information is needed in connection with the performance of banking activities and, moreover, other institutions legally authorized to grant loans - information on receivables and on the turnover and balances of bank accounts to the extent that this information is necessary in connection with granting loans, cash loans, bank guarantees and sureties.

Pursuant to Art. 105a paragraph. 1 of the Banking Law, processing by banks, other institutions legally authorized to grant loans and institutions established pursuant to art. 105 paragraph. 4 (eg B.), information constituting banking secrecy with regard to natural persons may be performed (…) for the purpose of assessing creditworthiness and analyzing credit risk. The information contained in B. is to be used by banks, as institutions of public trust, to fulfill their statutory obligations related to the need to exercise special care to ensure the security of stored funds, as well as the need to properly examine creditworthiness, from which - in accordance with Art. 70 paragraph. 1 of the Banking Law - the bank makes granting a loan conditional.

Creditworthiness testing, which includes the ability to repay obligations and creditworthiness, is an extremely important element of the bank's operations. The Credit Information Bureau was established precisely in order to reduce the risk of granting difficult loans, accelerate and simplify loan procedures and support bank decisions regarding granting loans.

As established by the President of the Office for Personal Data Protection, the transfer of the complainant's personal data by the Bank to B. took place at the end of November 2008, i.e. still during the period of the previous legal regulation on the protection of personal data. The disclosure of the complainant's data to B. was based on the premise mentioned in Art. 23 sec. 1 point 2 of the 1997 Act, because it was necessary to fulfill the legal obligation incumbent on the administrator. Importantly, for the legality of this disclosure, pursuant to Art. 105 paragraph. 4 of the Banking Law, the consent of the complainant was not required.

It should also be clarified that it was perfectly legal for the Bank in B. to process the applicant's personal data for the purpose of assessing creditworthiness and analyzing credit risk for a period of 5 years after the expiry of the obligation under the loan agreement No. [...] of [...] November 2008. On the basis of the evidence gathered in this case, in particular the Bank's explanations and the documentation presented in support of them in the form of a copy of the correspondence addressed to the applicant, it should be considered that the above-mentioned duly notified the Complainant of its intention to process her personal data, constituting banking secrecy, for the purposes of creditworthiness assessment and credit risk analysis also after

the date of full repayment of the cash loan. This obligation was imposed on the Bank as the personal data administrator, pursuant to Art. 105a paragraph. 3 of the Banking Law, according to which banks may process information that constitutes banking secrecy regarding natural persons after the expiry of the obligation resulting from the agreement concluded with the bank, without the consent of the person to whom the information relates, when the person has not fulfilled the obligation or has been delayed for more than 60 days in the performance of the service resulting from the contract concluded with the bank - and after these circumstances, at least 30 days have elapsed since the bank informed the person about the intention to process information concerning him, without his consent. In the reality of the present case, there is no doubt that the applicant was in default with the repayment of the debt under the loan agreement no. […] - she did not deny that fact at any stage of the proceedings. At the same time, the Bank correctly informed the Complainant about the intention to further process her data, as evidenced by the evidence presented by the Bank in the form of: a copy of a letter dated [...] October 2010, containing a request for payment of the outstanding debt and an information clause referring to the content of Art. 105a paragraph. 3 of the Banking Law and a copy of the envelope, clearly confirming the fact that the letter was sent at the office of the Polish postal operator and notified twice at the address indicated by the complainant as the correspondence address. It is irrelevant for the assessment by the President of the Personal Data Protection Office that the Bank complies with the objective under Art. 105a paragraph. 3 of the Banking Law, the circumstance raised by the complainant that she did not stay at her place of residence during the indicated period. Indeed, if the complainant did not inform the Bank about the above obstacle and did not indicate another address at which it would be possible to receive the letter - and there is no evidence to suggest it in the case - the service by the Bank should be considered, pursuant to Art. 61 of the Civil Code, to be fully correct and effective.

Thus, in the opinion of the President of the Personal Data Protection Office, the processing of the complainant's personal data after the expiry of the above-mentioned financial obligation, ie from […] December 2011 to […] December 2016, was based on the applicable legal regulations.

As is apparent from the factual findings, B. is currently processing the applicant's personal data under loan agreement No […] of […] November 2008 solely for the purpose of applying internal statistical methods, to which he is entitled under Art. 105a paragraph. 4 of the Banking Law, pursuant to which the Banks and institutions referred to in Art. 105 paragraph. 4, may process information constituting banking secrecy regarding natural persons after the expiry of the obligation resulting from the agreement concluded with the bank or other institution authorized by law to grant loans, without the consent of the person to

whom the information relates, for the purposes of using the statistical methods referred to in Art. 128 sec. 3. At the same time, as it results from the wording of Art. 105a paragraph. 5 of the Banking Law, such processing may be performed for a period not longer than 12 years from the expiry of the liability - in the case of B. and not longer than 5 years from the expiry of the liability - in the case of the Bank.

As for the Bank, it processes the complainant's personal data only for evidence purposes, resulting from the limitation period for claims. Thus, the basis for the processing of the complainant's personal data by the Bank is currently Art. 6 sec. 1 letter f) of Regulation 2016/679 in connection with art. 118 of the Act of 23 April 1964 Civil Code.

In connection with the findings, it should be noted that the continuation of administrative proceedings by the President of Personal Data Protection, initiated by a complaint about irregularities in the processing of the complainant's personal data by the Bank, aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act is unfounded.

According to the wording of the above-mentioned of the provision, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, in particular: removal of deficiencies (1), supplementing, updating, rectification, disclosure or non-disclosure of personal data (2), application of additional security measures for the collected personal data (3), suspension of the transfer of personal data to a third country (4), data protection or transfer to other entities (5) or deletion of personal data (6) . From the wording of Art. 18 sec. 1 of the Act of 1997, and at the same time from the definition of an administrative decision - as an act decisive in a ruling manner about the rights and obligations of the parties to the proceedings in the factual and legal status established and valid at the time of its issuance - it follows that the personal data protection authority does not assess past events, no continued at the time of adjudication. The decision of the President of the Personal Data Protection Office (UODO) is an instrument to restore lawfulness in the data processing process carried out at the time of issuing the decision.

Considering the above, it should be stated that there are currently no grounds for formulating an order referred to in Art. 18 sec. 1 of the Act, because the complainant's personal data are no longer processed in B. for the purposes of creditworthiness assessment and credit risk analysis, but only for the purposes of using statistical methods, which is in line with the applicable provisions of law and does not require the complainant's consent. Due to the above, the administrative proceedings in the present case should have been concluded with a decision refusing to grant the applicant's request. In this factual and legal

state, the President of the Personal Data Protection Office resolved as at the beginning.

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.

2021-03-23