

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.34.2019

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 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) 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 European Union L 119 of May 4, 2016, p. 1 and of the Journal of Laws of the European Union L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Ms HC, for the processing of its personal data by the entity W., represented in the Republic of Poland by a representative: T. Sp. z o.o., President of the 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 Ms HC, hereinafter referred to as the Complainant, about the processing of her personal data by entity W. (incorrectly marked by the Complainant as G.), hereinafter also referred to as the Company, represented in Of the Republic of Poland by a representative of: T. Sp. z o.o.

The applicant complained of the above-mentioned the entity that illegally obtained its personal data and processed them for the purpose of extorting funds. At the same time, the complainant indicated that she had never disclosed her personal data to W. or to the representative of the Company in the territory of the Republic of Poland. Therefore, the Complainant requested the supervisory authority to investigate how the above-mentioned entities came into possession of personal data concerning them and the determination of whether the collection in which these data are processed has been submitted for registration in

accordance with art. 24 and 25 of the Act of August 29, 1997 on the protection of personal data. Moreover, the applicant requested that the legal status be restored by deleting all her personal data from the W.

In the course of the investigation conducted in this case, the President of the Personal Data Protection Office established the following facts:

According to an extract from the Commercial Register [...], W. is a commercial company [...] (identification number: [...]). The subject of the Company's activities is, inter alia, purchase, sale, distribution and trade of goods, in particular direct sale of consumer goods to the Company's customers on the basis of subscriptions made.

The company conducts sales in the territory of the Republic of Poland using means of distance communication. As it results from the "Sales Regulations" (copy in the file), the Company may also offer the sale of goods through entities acting on its behalf and on its behalf. In the territory of the Republic of Poland, such activities are undertaken in particular through the Customer Service Office run by T. Sp. z o.o. The administrator of clients' personal data - provided to the Company or the Customer Service Office as part of the process of concluding sales contracts - is the Company. The representative of the Company in the Republic of Poland in the field of personal data processing is T. Sp. z o.o.

As it results from the written explanations of the Company of [...] June 2015, the Complainant's personal data in the scope of: telephone number, first name, last name and place of residence (city) was obtained by the Company from a public database of numbers available on the Internet.

Moreover, on [...] March 2014, an employee of T. Sp. z o.o., Ms W. R., contacted the Complainant by telephone at the telephone number [...]. The telemarketer informed the Complainant about the terms of the offer related to the possibility of purchasing a free set of razors [...], with the sole cost of its shipment. The complainant agreed to purchase and subscribe to [...] brand products, and then - in order to fulfill the contract - provided the Company's representative by phone with her exact address and date of birth. At the same time, the complainant was instructed to read the terms and conditions (regulations) of sale attached to the first shipment, including information on the processing of her personal data - which is confirmed by a copy of the telephone conversation in question, recorded on a CD attached to the Company's written explanations of [...] June 2015. In June 2014, the complainant received a written "Reminder" in which the Company indicated the necessity to pay the VAT invoice No. the amount of [...], as a reminder fee.

Due to the fact that the Company failed to comply with the concluded contract and did not deliver the goods ordered by the

Complainant, the Complainant went to the Customer Service Office on [...] June 2014 to cancel the subscription. As confirmation of the acceptance of her instruction, the Customer Service Office issued a written confirmation of resignation from the W subscription for an indefinite period. Thus, on [...] June 2014, further shipments of products [...] to the Complainant were suspended, invoice number [...] was canceled and the processing of the Complainant's personal data ceased.

Currently, the complainant's personal data are not processed by W. or the representative of the above-mentioned entity in the territory of the Republic of Poland, ie T. Sp. o.o.

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

At the outset, it should be noted that 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), 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 (EU Official Journal L 119 of 04.05.2016, p. 1 and EU Official Journal L 127 of 23.05.2018 p. 2.), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and considers complaints submitted by the data subject or by - 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).

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., EI / 2012).

Referring the above to the established facts, it should be emphasized 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 W. or the Company's representative in the Republic of Poland, ie T. Sp. z o.o. Both of the above Although the entities processed the complainant's personal data in the scope of her first name, surname, telephone number and place of residence - for which it was found that these data were obtained from a public database of numbers from the Internet - and also in the scope of the address of residence and date of birth, made available to the representative of the Company voluntarily by the complainant herself, in connection with the conclusion of the contract for the purchase of products [...]. However, as it was shown at the beginning, in the part of the justification of this decision describing the factual findings made, in connection with the complainant's resignation from subscription W. for an indefinite period, the Company and its representative ceased processing her personal data on [...] June 2014. ., and therefore permanently deleted the data in question from their databases.

For the above reasons, it should be stated that the proceedings conducted in the present case became redundant, which resulted in its discontinuation 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, respectively, in whole or in part. As it results from the aforementioned regulation, the finding that the procedure is groundless is an obligatory condition for its discontinuation by the body conducting the procedure. 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 condition for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings [as was the case in the present case], and it may also arise during 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 had not existed since the initiation of the proceedings, was the processing of the complainant's personal data by the entities concerned by the complaint. The determination of the existence of such processing 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 (including the compliance by the data controller with its obligations listed in Articles 25-25 and 36-39a of the Act of August 29, 1997 on the protection of personal data, which the complainant requested to investigate).

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 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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