

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 06

November

2019

DECISION

ZKE.440.44.2019

Based on Article. 104 § 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 Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) and art. 12 point 2, art. 22, art. 23 sec. 1 point 2, point 5 in connection with joke. 23 sec. 4 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), in connection with Art. 6 sec. 1 lit. c and 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. 3, 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 Mr. AS, for the processing of his personal data by ASA Bank and B. S.A., President of the Personal Data Protection Office refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection) received a complaint from Mr. A. S. (hereinafter: the Complainant) about the processing of his personal data by Bank A. S.A. (hereinafter referred to as: the Bank), including their sharing and processing of the above. personal data by B. S.A. (hereinafter referred to as B.). The complainant requested the cessation of processing and the deletion of his personal data provided to B. by the Bank.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

1. The Complainant's personal data was obtained by the Bank in connection with the conclusion of:

loan agreement No. [...] of [...] .06.2003 with C. S.A. (currently Bank A. S.A.)

cash loan agreement No. [...] of [...] .06.2007 (closed: [...] .10.2006)

loan agreement No. [...] of [...] .01.2005 (closed: [...] .04.2007)

credit card contracts [...] No [...] (in connection with the change of the banking system, granted No [...]) - (closed: [...] .09.2008)

cash loan agreement No. [...] of [...] .08.2007 (closed: [...] .01.2013)

loan agreement No [...]

loan agreement No. [...] of [...] .03.2008

loan agreement No. [...] of [...] .03.2005

loan agreement No. [...] of [...] .07.2005

2. The complainant was informed by the Bank in the termination of the loan agreement of [...] January 2012 that, due to the arrears of more than 60 days in repayment of the liability under the loan agreement No. [...] of [...] August 2007, he has the right to process his data personal data without consent for a period of 5 years after the expiry of the obligation for the purpose of assessing creditworthiness and analyzing credit risk pursuant to art. 105a paragraph. 3 of the Banking Law. Due to the fact that the account of the above-mentioned the loan was closed with the Bank as a result of the total repayment of the loan [...] January 2013, the period specified in Art. 105a paragraph. 3 of the Banking Act expired on [...] January 2018.

4. The complainant asked the Bank by letter of [...] April 2015 to stop processing his personal data in connection with the loan agreement No. [...] of [...] August 2007. In a reply sent to the Complainant's address indicated in the loan agreement, the Bank again informed about the existence of circumstances that entitle the Bank to process the Complainant's personal data without his consent, pursuant to Art. 105a paragraph. 3 of the Banking Law.

5. Currently, the Bank is processing the complainant's personal data pursuant to Art. 23 section 1 point 5 in connection with joke. 23 sec. 4 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), hereinafter: "the Act" for the purpose of pursuing claims arising in connection with the performance of banking activities. After May 25, 2018, the basis for processing was Art. 6 sec. 1 lit. f of the Regulation of the European Parliament and of the Council (EU) 2016/679. The processing of the Complainant's personal data by the Bank is necessary to fulfill the legal obligation resulting from the law, i.e. pursuant to art. 23 section 1 point 2 of the Act in connection with Art. 74 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 351, as amended), hereinafter: "u.o.r."

for archiving (currently Article 6 (1) (c) of Regulation 2016/679).

6. The Bank provided B. with the complainant's personal data pursuant to Art. 105 paragraph. 4 of the Banking Law and on the basis of an agreement between him and B. Currently B. processes the complainant's personal data in the scope of contracts:

loan No. [...] of [...] August 2007 (transferred [...] September 2007)

credit no [...] of [...] March 2008 (transferred [...] September 2008)

credit card No. [...] of [...] September 2005 (handed over [...] November 2006)

loan No. [...] of [...] June 2007 (transferred [...] August 2007)

The above-mentioned accounts currently have the status of closed accounts and are processed in order to use internal methods and other methods and models for a period of 12 years from the expiry of the obligation pursuant to Art. 105a paragraph. 4 and 5 in connection with joke. 105 paragraph. 4 of the Banking Law.

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 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 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), 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 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 "a 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 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).

In the judgment of May 7, 2008 in the case file ref. Act I OSK 761/07 The Supreme Administrative Court 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 on the date of issuing the decision on the matter and whether it is done in a lawful manner" .

In the light of the provisions of Regulation 2016/679, the processing of personal data is authorized when any of the conditions listed in art. 6 sec. 1 of the Regulation 2016/679 (previously Article 23 (1) of the Act). These conditions apply to all forms of data processing listed in art. 7 sec. 2 of the Act (currently Article 4 (2) of Regulation 2016/679), including in particular to make them available. 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.

The legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Banking Law. The assessment of the legality of the processing of the Complainant's personal data by the Bank and also by B. must therefore be carried out in conjunction with the provisions of the Banking Law.

Referring to the legality of the processing of the Complainant's personal data by the Bank and B. it should be noted that the Complainant's personal data was transferred to B. in accordance with art. 105 paragraph. 4 of the Act of August 29, 1997 Banking Law (Journal of Laws 2018, item 2187 as amended). In the light of this provision, "banks may, together with banking chambers of commerce, establish institutions authorized to collect, process and make available to: banks information constituting banking secrecy to the extent that this information is needed in connection with the performance of banking activities and in connection with the application of internal methods and other methods and models referred to in Part Three of Regulation No 575/2013, to other institutions statutorily authorized to provide loans with information constituting banking

secrecy to the extent that such information is necessary in connection with granting loans, cash loans, bank guarantees and sureties (point 2), to credit institutions of information constituting banking secrecy to the extent necessary to assess the consumer's creditworthiness, as referred to in Art. 9 of the Act of 12 May 2011 on consumer credit (point 3), loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit on the basis of reciprocity, information constituting respectively banking secrets and information provided by loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, to the extent necessary to assess the consumer's creditworthiness, as referred to in art. 9 of this Act and the credit risk analysis (point 4) ”.

However, according to Art. 105a paragraph. 3 of the Banking Law - "banks, institutions and entities referred to in sec. 1, may process information constituting banking secrecy and information provided by loan institutions and entities referred to in Art. 59d of the Act of 12 May 2011 on consumer credit, concerning natural persons after the expiry of the obligation resulting from the contract concluded with a bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, without the consent of the person to whom the information relates, when the person has not fulfilled the obligation or has been in delay of more than 60 days in fulfilling the service under the contract concluded with the bank, another institution legally authorized to provide loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, and after these circumstances at least 30 days have elapsed since the person was informed by the bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, on the intention to process this information without its consent ”.

In response to the Complainant's request to cease processing his personal data by the Bank under the loan agreement No. [...] of [...] August 2007, it should be stated that the Bank had a basis for processing the Complainant's personal data pursuant to Art. 23 section 1 point 5 in connection with joke. 23 sec. 4 point 2 of the Act after the expiry of the obligation by [...] January 2018. From May 25, 2018, the legal basis for data processing in this regard is provided for in Art. 6 paragraph 1 lit. f of Regulation 2016/679, which states that processing is necessary for the purposes of the legitimate interests pursued by the administrator. However, with regard to the Complainant's request to delete his personal data from B., it should be noted that B. is entitled to process the Complainant's personal data pursuant to Art. 6 (1) (a) c of Regulation 2016/679, i.e. processing is necessary to fulfill the legal obligation incumbent on the administrator. This obligation results from Art. 105a paragraph. 4 and 5 of the Banking Law. The Complainant's personal data constituting banking secrecy will therefore be processed for a period of

12 years after the expiry of the obligations arising from contracts concluded with the Bank for the purposes of using internal methods and other methods and models referred to in Part Three of Regulation No 575/2013.

In view of the above, it should be concluded that there is no reason for the President of the Personal Data Protection Office to issue a decision ordering the restoration of the lawful state, so it is reasonable to issue a decision refusing to accept the application.

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 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 (address: ul. Stawki 2, 00-193 Warsaw). The entry 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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