THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.75.2019

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) in connection with joke. 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 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 Art. 57 sec. 1 lit. a) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation) (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) after conducting administrative proceedings regarding the complaint of Mrs. her personal data by OSA, NSA and G. S.A., 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 K. D., hereinafter referred to as "the complainant", represented by the attorney-at-law, A.M. from Kancelaria Radcowska [...], for the processing of its personal data by O. S.A., hereinafter referred to as "O.", N. S.A., hereinafter referred to as "N." and G. S.A., hereinafter referred to as "G.". It follows from the content of the complaint that [...] February 2014 E., hereinafter referred to as "E." brought a lawsuit against K. Do. for payment of receivables purchased on [...] December 2013 from P. Sp. z o.o., hereinafter referred to as "P.". This statement of claim was supplemented by the claimant by identifying the applicant as the defendant. The District Court L. issued [...] in April 2014 a payment order against the applicant - file no. [...], against which the applicant lodged an objection, in which she alleged that the name of the defendant was incorrectly determined - instead of Do. was D. and the applicant's failure to conclude a contract with P. under which the obligation arose.

The District Court for Ł., Recognizing the applicant's objection, called on the plaintiff to specify the defendant's data, as the data indicated by the plaintiff (name, surname and PESEL number of the defendant) were inconsistent with those entered in the PESEL database. As a result of not supplementing the above-mentioned deficiencies within the deadline, by a decision of [...] January 2015, the court dismissed the claim as a non-existent person was sued. Despite the court's rejection of the claim, G. continues to process the complainant's personal data, i.e. name, surname and address, sending her payment notices, despite the fact that the debtor is a completely different person, i.e. Ms K. Do. The complainant quoted, "asked G. in writing to stop sending correspondence, as well as to provide her with the information referred to in Art. 32 sec. 1 points 1-5 u.o.d.o. and remove its data from the G. entities were prepared in a standard way, contained perfunctory information and omitted the essence of the request ". Complementing the complaint, the complainant's attorney indicated that the complaint concerned not only G. but also O., who was the legal successor of P. and E., and therefore demanded that the complainant's personal data be deleted by these entities as well.

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

In explanations of [...] December 2017, G. pointed out that, acting on behalf of E., he had undertaken debt collection activities, and the Complainant's personal data in the form of an address had been obtained from JSA, which, on their behalf, provided the quotation debtors from generally available resources. The company provided the Company with the complainant's address as personal data belonging to Mr. K. Do. In connection with the above, as a result of a mistake caused by the similar names between the applicant and the debtor, the address obtained was added as the address of the debtor ". At the same time, G. confirmed that the complainant asked them to stop processing her personal data and informed that the data quoted by her, in accordance with the sent request, had been removed from the data files immediately after it was clearly confirmed that they belonged to to a person other than the above-mentioned debtor ". G. stated that he was not currently pursuing recovery activities against the applicant.

By explanations of [...] December 2017, acting on behalf of E. - N., indicated that the debt owed him against Ms K. Do. was serviced by G. on the basis of the power of attorney granted to him and the mandate contract that connected them with the management of the entire investment portfolio of E. including securitized receivables. He explained that G. carried out activities aimed at recovering debts from his debtor - K. Do. E. informed that as a result of an error caused by a discrepancy in

surnames, the applicant's address had been mistakenly added as the address of his debtor. At the same time, he stated that the quotation "does not carry out debt collection activities against the complainant" and that the complainant's data quoted "in accordance with the request sent, were removed from the data files immediately after it was clearly confirmed that they belonged to a person other than the above-mentioned debtor ".

In explanations of [...] December 2017, O. stated that the quotation "does not process the complainant's personal data. In the said assignment of claims, the data of another person (Ms K. Do.) were provided (...) The company did not supplement or correct the personal data provided with the claim, causing the claim to be assigned to the personal data of the complainant ".

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

On May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000), the Office of the Inspector General for Personal Data Protection became the Office of Personal Data Protection Personal Data. 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 rules set out in the Code of Administrative Procedure (Journal of Laws of 2017, item 1257, 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) and (2) of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 57 sec. 1 letter f) of the Regulation of the European Parliament and the EU Council 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 (general regulation on the protection of personal data) (OJ L 119 of 4 May 2016, p. 1 and EU Official Journal L 127 of 23 May 2018, p. 2), without prejudice to other tasks specified under this Regulation, each supervisory authority its territory shall deal with complaints lodged by the data subject or by a body, organization or association in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to pursue further proceedings or coordinate actions with another supervisory authority.

At the outset, it should be noted that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing 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).

Moreover, in the judgment of May 7, 2008 in the case with reference number 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 legal manner".

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the present case is the fact that the complainant's personal data are currently not processed by any of the entities indicated in the complaint. Therefore, it should be stated that the proceedings have become redundant and therefore should be discontinued.

In this situation, these proceedings are subject to discontinuation pursuant to Art. 105 § 1 of the Code of Administrative Procedure, as it is irrelevant. In accordance with the above-mentioned a 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. The wording of the above-mentioned regulation leaves no doubt that in the event that the procedure is deemed groundless, the body conducting the procedure will obligatorily discontinue it. 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 Administrative Proceedings means that there is no element of the material legal relationship, and therefore it is not possible to issue a decision settling the matter by deciding on its substance (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 (III SA / Kr 762/2007): "The procedure becomes redundant when one of the elements of the substantive legal relationship is missing, which means that the case cannot be

settled by deciding on the substance ”.

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.

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