THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 27

November

2019

DECISION

ZKE.440.33.2019

Based on Article. 138 § 1 point 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2019, item 2096, as amended) in connection with joke. 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) and art. 12 point 2, art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922 and of 2018, item 138), after conducting administrative proceedings regarding the request of Ms MK, for reconsideration a case concluded with the decision of the Inspector General for Personal Data Protection of February 7, 2017 (reference number DOLiS / DEC-130/17) regarding the complaint of Ms MK about the processing of her personal data by the LSA, President of the Office for Personal Data Protection

upholds the contested decision.

Justification

The Inspector General for Personal Data Protection (currently the President of the Personal Data Protection Office) received a complaint from Ms M. K. (hereinafter: the Complainant) about the processing of her personal data by L. S.A. (hereinafter referred to as: the Company).

The complainant applied to the Inspector General for Personal Data, hereinafter also referred to as "GIODO", with the quotation: "(...) I am asking for an inspection by the Inspector General for Personal Data Protection (...) whether the above-mentioned company is in possession of my personal data, if so, on what the basis "and the quotation" (...) I call for the removal of the deficiencies by ceasing telephone and SMS contacts (...) and e-mail contacts (...) that the company makes with me. "

In her complaint, the complainant indicated that "she did not disclose her personal data to anyone and did not consent to their processing".

In the course of the administrative procedure, GIODO found that the Company obtained the complainant's personal data from

M. Sp. z o. o The complainant provided her personal data to the above-mentioned the entity for marketing purposes to third parties and consented to disclose its personal data to third parties, including the Company. The company processed the complainant's personal data from [...] September 2014 pursuant to art. 23 sec. 1 point 1 and 5 of the Act, and from August 29, 2015 pursuant to Art. 23 (1) (3) of the above-mentioned of the Act, i.e. to conclude a contract. Due to the complainant's objection, on [...] November 2016, the Company removed all her personal data from its marketing database.

The Inspector General for Personal Data Protection, by an administrative decision of [...] February 2017 (number [...]), discontinued the proceedings. The decision was delivered to the Complainant on […] February 2017 and to the Company on […] February 2017 (return acknowledgments of receipt in the case file).

The complainant filed an application for reconsideration of the case concluded in the above-mentioned by decision within the time limit provided for in the Act. In the justification of her request, the complainant did not present any new circumstances, i.e. other than those she had reported in the case so far, affecting the decision contained in the above-mentioned decision issued by GIODO.

After re-examining the evidence collected in the case, the President of the Personal Data Protection Office stated the following.

Pursuant to Art. 160 sec. 1-3 of the 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, in accordance with the principles set out in the Act of June 14, 1960. Administrative Procedure Code (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., El / 2012).

The main reason for the discontinuation of the proceedings in this case is the fact that the Company does not process the complainant's personal data. The company removed the complainant's personal data from its marketing database in connection with the objection it submitted. Therefore, the proceedings conducted in the first instance were discontinued pursuant to Art. 105 § 1 of the Code of Administrative Procedure as 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 provision of the regulation leaves no doubt that in the event that the proceeding is found to be groundless, the authority conducting the proceeding 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 specific material element of the 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. Commentary", 7th edition, Wydawnictwo CH Beck, Warsaw 2005, p. 485). This view is confirmed by the Provincial Administrative Court in Kraków in the judgment of February 27, 2008, file ref. no. III SA / Kr 762/2007): "The procedure becomes pointless when any of the elements of the material-legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

The determination by the public authority of the existence of the condition referred to in Art. 105 § 1 of the Code of Administrative Procedure obliged him to discontinue the proceedings, then there are no grounds for resolving the substance of the case, and further conduct of the proceedings in such a case would make it defective, significantly affecting the outcome of the case.

In the opinion of the President of the Personal Data Protection Office, the Inspector General for Personal Data Protection explained the facts to the extent required by the resolution of the case. As a consequence of the correct determination of the

facts of the case, it issued the correct decision contained in the appealed decision of February 7, 2017.

Considering the above, the President of the Personal Data Protection Office finds no grounds for changing the decision adopted in this case.

In the factual and legal state of affairs, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. The party 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, via the President of the Office for Personal Data Protection (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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