

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 21

October

2019

DECISION

ZKE.440.68.2019

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 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. 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 EU L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. LK about the processing of his personal data by ASA Bank, President of the Office of Protection Personal Data

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. L. K., hereinafter referred to as "the Complainant", about the processing of his personal data by Bank A. S.A., hereinafter referred to as: "the Bank". The complainant requested that his personal data processed by the Bank be deleted.

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

1. The Bank obtained the complainant's personal data in connection with his application for a Credit Card [...] of [...] November 2004. The Bank explained that it had not obtained the Complainant's personal data during a telephone conversation between the Complainant and the Bank's consultant. The Complainant's personal data was collected in order to conclude the Credit

Card Agreement [...] to the extent necessary to issue and service the credit card. The legal basis for obtaining the complainant's personal data was art. 23 sec. 3 (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), hereinafter: "the Act" (after May 25, 2018, Article 6 (b) of the Regulation 2016/679). The credit card account was closed on [...] September 2006.

2. In the explanations, the Bank indicated that after closing the account assigned to the credit card [...], it processed the Complainant's personal data in connection with the banking products it had in the past:

based on Article. 23 sec. 1 point 5 of the Act - for the justified purpose of pursuing claims for business activity, based on Article. 23 sec. 1 point 2 of the Act in connection with Art. 74 sec. 2 point 8 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 351, as amended), hereinafter referred to as: "u.o.r."

3. The Bank explained that, after receiving the Complainant's objection on [...] March 2017, it decided to delete the personal data obtained in connection with the credit card agreement concluded on [...] November 2004 [...] Currently, the Bank does not process personal data The complainant in the above-mentioned scope (including the photocopy of the identity document was destroyed).

4. The Bank processes the Complainant's personal data to the extent resulting from the content of the submitted complaint, ie name and surname, signature specimen, correspondence address pursuant to Art. 6 (1) (a) f of Regulation 2016/679 (formerly Article 23 (1) (5) of the Act), in order to document the correspondence with the Complainant.

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 2019, item 1781), hereinafter referred to as "u.o.d.o.", entered into force.

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 Office for Personal Data Protection on the basis of the Act of August 29, 1997 on the Protection of Personal Data, in accordance with principles set out in the Act of 14 June 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 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 as at the date of issuing the decision in the case 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 Regulation 2016/679 (previously Article 23 (1) of the Act). These conditions apply to all forms of data processing listed in art. 4 point 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. Referring to the Complainant's request regarding the legality of the currently conducted data processing by the Bank, it should be indicated that the legal basis for the processing of the Complainant's personal data in the above-mentioned the scope is Art. 6 (1) (a) f of Regulation 2016/679 (previously art. 23 section 1 point 5 of the Act), according to which "processing is necessary for the purposes of the legitimate interests pursued by the administrator". Therefore, there was no necessary premise for the President of the Personal Data Protection Office to issue a decision ordering the restoration to legal status, therefore it is justified to issue a decision refusing to meet the data subject's request.

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 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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