THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 05

June

2020

DECISION

ZKE.440.38.2019

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256) in connection with Art. 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), art. 18 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 6 sec. 1 lit. f) 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 UE 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. JG, represented by the attorney - HU lawyer, to order BSA providing him with the personal data of attorneys and third parties who, in the period from [...] January 2012 until now, performed on behalf of Ms AZ transactions, operations and withdrawals on her bank accounts, banking and financial products, together with the dates of the activities and the amount of the regulation, the President of the Personal Data Protection Office:
orders B. S.A. providing the Complainant with personal data regarding the name and surname, address and PESEL number of the attorney appointed by Ms A. Z. to administer her bank account number PL [...],
refuses to accept the application as to the remainder.

Justification

The Office of the Inspector General for Personal Data Protection (now: the Office for Personal Data Protection) received a complaint from Mr. J. G. (hereinafter referred to as the "Complainant"), represented by H. U. (hereinafter referred to as the "Bank") documents and information relating to banking products belonging to the deceased Mrs. A. Z., of whom the applicant is the sole heir. Specifying and limiting at the same time the scope of the requests, the attorney of the Complainant finally requested the Complainant to be provided with the following personal data:
names and surnames, PESEL numbers, ID card numbers and place of residence of proxies appointed by the deceased Ms A.

Z. to perform activities on the accounts belonging to the deceased under [...], including:

on the following accounts: securities, bank accounts for securities accounts, bank accounts for foreign financial instruments accounts, technical accounts kept within the Department [...],

on the internet account number [...],

on the personal account number [...],

on a foreign currency account in EURO No. [...],

on the USD account number [...],

on the savings account No. [...],

on registers of foreign financial instruments,

on payment card and credit card accounts,

names and surnames, PESEL numbers, ID card numbers and place of residence of proxies appointed by Ms A. Z. to perform activities:

as part of the Bank Securities product [...] and [...], possibly other banking products owned by Ms A. Z.,

as part of the Multi-currency Investment Program product [...], [...], [...], possibly other banking products owned by Ms A. Z.,

names and surnames, PESEL numbers, numbers of identity cards and places of residence of third parties who, in the period from [...] January 2012 until, on behalf of Ms AZ, continued to make transactions, operations and withdrawals on the above-mentioned bank accounts, banking and financial products as well as the date of the action and the amount of the regulation.

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

The applicant is the sole heir of Ms A. Z., his sister who died on [...] January 2015, which was confirmed by notary B. W. running the Notary's Office by an inheritance certificate of [...] January 2015.

Ms AZ was a client of the Bank in the period from [...] July 2000 until her death, that is until [...] January 2015. During this period, the Bank provided Ms AZ with a number of banking services, including a current bank account number PL […], Current internet account number PL […] and other savings and investment accounts. The bank account number PL [...] was authorized to dispose of the funds on the bank account number PL [...] by the payment card issued by the Bank, issued by Ms A. Z.,

number [...].

To use the current internet account number PL […], Ms A. Z. appointed […] on August 2011 an attorney with full (the same as the account holder) scope of rights, hereinafter referred to as the "Proxy". As explained by the Bank, the Plenipotentiary was "a person who assisted Ms A. Z. in everyday matters, including bringing her to the Bank's outlet". On [...] January 2015, the Bank accepted the revocation of the power of attorney based on the death certificate of Ms A. Z.

Ms A. Z. did not appoint any other proxies authorized to manage her accounts kept by the Bank.

Personal data of Mrs. A. Z. and the Representative - in accordance with the Bank's statement submitted in these proceedings - were processed "pursuant to Art. 23 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, in the scope and for the purpose of implementing the provisions of concluded contracts and for the fulfillment of legally justified purposes carried out by data administrators ".

The bank account with the number PL […], to which the Proxy was authorized, was not used at the time of Ms. A. Z.'s death. The last transactions on it (payment from the current account of Ms A. Z. No. PL [...] and payment to the Plenipotentiary's bank account of PLN 4,000) took place on [...] July 2012.

During the last three years before the death of Ms A. Z. (from [...] January 2012 to [...] January 2015), Ms A. Z. had continuously used the bank account number PL [...]. In addition to non-cash transactions reflecting the current financial management of Ms AZ (e.g. receipts from ZUS benefits, payment of current liabilities) and the management of Ms AZ's banking products (bank deposits, investment products), this account recorded (from January 2013) regular and frequent cash withdrawals from the account via ATMs using a payment card with the number […]. In the period immediately preceding the death of Ms A. Z., from [...] December 2014 to [...] January 2015 inclusive, these were 32 withdrawals of funds of PLN 2,000 (in total: PLN 64,000). After the date of Ms. A. Z.'s death (on [...] and [...] January 2015), three more transactions of withdrawals of amounts in the amount of PLN 2,000 took place from the account.

Due to the suspicion of unlawful collection and disposition by third parties of the funds deposited by Ms AZ at the Bank, the Complainant's attorney - in a letter of [...] March 2015 - requested the Bank to disclose the history of operations on all accounts of Ms AZ's banking products for the period from [...] January 2012 to the date of providing this information, copies of contracts between Ms AZ and the Bank, copies of the powers of attorney she granted, personal data of "persons who in the period from [...] January 2012 to AZ of transactions, operations and withdrawals […] ”and information about credit cards or other similar

banking products held by Ms AZ.

In response to the request of the Complainant's attorney of [...] March 2015, by letter delivered to the Complainant's attorney on [...] April 2015, the Bank refused to provide the requested data from before the date of Ms AZ's death, because - as it was indicated - “in accordance with the opinion of the arbitrator banking heirs do not have the right to information about how the account holder had his funds during his lifetime ”. The bank only allowed the possibility of issuing a certificate of the balance of funds in the accounts of the deceased as of the day of her death and a list of transactions taking place there from the date of her death.

As a result of the complaint about the failure by the Bank to provide the documents and information requested by the Complainant, submitted by the Complainant's attorney to the Polish Financial Supervision Authority, in a letter of [...] June 2015, the Bank provided the Complainant's attorney with statements containing the history of transactions on all bank and investment fund accounts of Mrs. AZ for the period […] January 2012 to […] June 2015.

The Bank did not disclose to the Complainant the personal data of the attorney of the deceased AZ. In the explanations submitted in these proceedings, the Bank indicated that it did not find any legal grounds to provide the Complainant with the Proxy's data and that "it was of the opinion that under the acquired rights [the Complainant] did not acquire the right to dispose of the data personal data of the attorney. Providing the Complainant with the data of the attorney is also not necessary to exercise his rights. "

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

On May 25, 2018, the provisions of the Regulation of the European Parliament and the EU Council 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the protection of personal data began to apply in the Member States of the European Union. on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, with the amendment announced in the Journal of Laws UE L 127 of on 23/05/2018, p. 2), hereinafter referred to as "Regulation 2016/679". Also on May 25, 2018, 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 on the territory of the Republic of Poland. 2018 ", implementing Regulation 2016/679 on the territory of the Republic of Poland and supplementing the regulations provided for in this legal act.

Pursuant to Art. 160 sec. 1 and 2 u.o.d.o. 2018, 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 of Laws of 2016, item 922, as amended), hereinafter referred to as "uodo 1997 ", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), hereinafter referred to as" the Code of Administrative Procedure ". At the same time, pursuant to Art. 160 sec. 3 u.o.d.o. 2018, activities performed in proceedings initiated and not completed before the date of entry into force of its provisions, remain effective.

Taking into account the above legal regulations, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted - in the scope covering the provisions governing the procedure - based on the provisions of the Act on 1997 and K.p.a. In particular, these provisions define measures to restore compliance with the law, which - by way of an administrative decision - may be applied by the President of the Personal Data Protection Office in the event of a breach of the provisions on the protection of personal data. Pursuant to Art. 18 sec. 1 u.o.d.o. 1997 The President of the Personal Data Protection Office may order: 1) the removal of deficiencies, 2) supplementing, updating, rectifying, disclosing or not providing personal data, 3) applying additional security measures for the collected personal data, 4) suspending the transfer of personal data to a third country, 5 ) securing data or transferring them to other entities, 6) deleting personal data.

In accordance with the above legal regulations, the substantive legal assessment of the legality and lawfulness of the processing of personal data in this case should be based on the provisions of Regulation 2016/679. The above statement is consistent with the well-established position of the doctrine, according to which “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 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). As stated by the Supreme Administrative Court in its judgment of May 7, 2008 in the case with reference number Act I OSK 761/07 quoted: "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 the decision on the matter and whether it is done in a legal manner". The declaration of non-compliance of personal data processing with the provisions of Regulation 2016/679 in this case will result in the need for

the President of the Personal Data Protection Office to apply one or more corrective measures indicated in art. 18 sec. 1 u.o.d.o. 1997.

In the present case, the main issue that needs to be resolved is the answer to the question whether the processing of the personal data requested by the Complainant, consisting in their disclosure by the administrator (the Bank) to a third party (the Complainant), is permissible - whether it finds a legal basis in one of the conditions indicated in the provisions on data protection personal. At this point, it should be emphasized that - in the light of the definition of personal data processing contained in both u.o.d.o. 1997 (Article 7 point 2) and in Regulation 2016/679 (Article 4 point 2) - sharing personal data (including making it available to third parties - who are not subjects of this data) is one of the operations performed on personal data in as part of their processing. As indicated in the doctrine, in Regulation 2016/679 "... the issue of the admissibility of sharing personal data has not been explicitly (separately) regulated - and thus one of the key issues in the data processing process. [...] Failure to include separate rules for disclosing data in the regulation does not mean that the disclosure of data is inadmissible, and results in the necessity to apply to the disclosure of personal data general grounds for the admissibility of data processing (regulated in the commented article [Article 6]) or specific grounds for the admissibility of data processing referred to in art. 9 and 10 of the Regulation). The basis for disclosure may therefore be the consent of the data subject; the need to perform the contract; the need to fulfill the legal obligation incumbent on the administrator; the necessity to protect the vital interests of the data subject or another person; the necessity to perform a task carried out in the public interest or in the exercise of public authority, as well as the implementation of the legitimate interest of the administrator or a third party [...] "(Fajgielski Paweł in: Commentary to Article 6 of Regulation No. 2016/679 on the protection of natural persons in relation to with the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation), [in:] General Data Protection Regulation. Personal Data Protection Act. Comment [online]. Wolters Kluwer Poland, 2020-04-10 10:15. Available on the Internet: https://sip.lex.pl/#/commentary/587773150/570590).

Pursuant to the wording of Art. 23 sec. 1 u.o.d.o. 1997, in force at the time when the Complainant submitted an application for disclosure of personal data by the Bank, and in which the Complainant lodged a complaint with the Inspector General for Personal Data Protection in this case, the processing of personal data was permissible if: the data subject expresses it consent, unless it concerns the deletion of data relating to him (point 1), it is necessary to exercise the right or fulfill an obligation resulting from a legal provision (point 2), it is necessary for the performance of the contract when the data subject is

a party to it or when it is necessary to take action before the conclusion of the contract at the request of the data subject (point 3), it is necessary to perform tasks specified by law for the public good (point 4), it is necessary to fulfill legally justified purposes pursued by the administrators data or data recipients, and the processing does not violate the rights and freedoms of the data subject (point 5 ).

Pursuant to the currently applicable regulation (Article 6 (1) of Regulation 2016/679), data processing (each activity falling within this concept) is lawful only in cases where - and to the extent that - what at least one of the following conditions: a) the data subject has consented to the processing of his personal data for one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular when the data subject is a child.

Relating the above-mentioned provisions to the facts of the present case, it should be stated that both in the legal state in force until May 24, 2018 (regulated by the provisions of the Personal Data Protection Act 1997) and in the legal state in force (from May 25, 2018, i.e. from the date of the application of the provisions of Regulation 2016/679), one of the several independent grounds for the processing of personal data is the necessity of this processing for the implementation of legally justified purposes (interests) of the administrator or - as is the case here - the recipient of the data (third party).

In the opinion of the President of the Personal Data Protection Office, the Complainant's request for disclosure of personal data in the field of names and surnames, PESEL numbers, identity card numbers and places of residence of attorneys and other third parties, which in the period after [...] January 2012 were made on behalf of Ms AZ transactions, operations and withdrawals on its bank accounts, banking and financial products, found legal grounds in art. 23 sec. 1 point 5 u.o.d.o. 1997, and currently has the basis of Art. 6 sec. 1 lit. f) Regulation 2016/679. The applicant convincingly justified his application with the intention to protect his own - the heirs of the deceased A. Z. - legally justified financial interests. The need to protect these interests (also through civil law in court proceedings) was justified by the circumstances of the case indicating that after AZ's

death and before the applicant took over the estate, from AZ's bank account number PL [...] clearly there was neither dead nor any other person authorized to dispose of them. The applicant was entitled to reasonably consider these transactions as harming directly his - heirs, Ms A. Z. - his property interests.

Also the high value and frequency of payments made before AZ's death from her bank account using the payment card number [...] (32 withdrawals for a total amount of PLN 64,000 only in the last 36 days of Ms AZ's life), combined with the fact that for health reasons these payments were probably not made personally by Ms AZ, justifies the need to check whether these operations were performed with the knowledge and will of Ms AZ and - if they were made by her attorney - within the limits of her authorization; whether or not they were acts detrimental to her. If it was found that these transactions were made to the detriment of Ms A. Z., property claims would arise on her side against the person or persons making them. Without prejudging the specific legal basis of the liability of the perpetrator or perpetrators of the damage - tort under Art. 415 et seq. The Act of April 23, 1964, the Civil Code (Journal of Laws of 2019, item 1145, as amended), hereinafter referred to as "the Civil Code", contractual with Art. 471 et seq. of the Civil Code (possibly related to the contractual relationship underlying the power of attorney granted by Ms A. Z.), due to unjust enrichment under Art. 405 of the Civil Code - there is no doubt that these claims would pass as property rights, in accordance with Art. 922 § 1 of the Civil Code, against the applicant as the heir of Ms AZ. Thus, also in the case of operations of payments made before Ms AZ's death, the Complainant has a legitimate (financial) interest in establishing persons acting to the detriment of Ms AZ (and indirectly - to his detriment) and obtaining their personal data necessary in court proceedings.

Individualizing damage perpetrators is a necessary condition for pursuing civil law claims against them. The provisions governing the civil procedure require that the first pleading in a civil case (including a statement of claim) should contain, inter alia, first and last names and addresses of the parties to the proceedings who are natural persons, which results from Art. 126 § 1 and 2 of the Act of November 17, 1964, the Code of Civil Procedure (Journal of Laws of 2019, item 1460, as amended), hereinafter referred to as the "CCP". It should also be considered necessary for the purpose of obtaining the protection of legal interests in the course of civil proceedings to have the number of the Universal Electronic System for Registration of the Population (PESEL) of the person against whom the claims are to be brought. It is required to file a claim in electronic writ proceedings (Civil Procedure Code Art.50528-50539), in which civil law claims may be pursued. This identifier also uniquely identifies the person against whom the claims are to be brought, which is extremely important, especially when you do not

have a certain and current address of this person.

As unjustified in the light of the principle of data minimization formulated in Art. 5 sec. 1 point c) of Regulation 2016/679, however, the complainant's request to disclose the identity card numbers of proxies and other third parties who, in the period after [...] January 2012, performed on behalf of Ms AZ transactions, operations and withdrawals on her bank accounts, products banking and financial. The provisions governing civil proceedings do not require the possession and presentation of such data in the proceedings. On the other hand, for unambiguous identification of a natural person, it is sufficient to have a PESEL number. The principle of data minimization referred to in Art. 5 sec. 1 point c) of Regulation 2016/679 requires limiting the scope of processed (in this case made available) data to data "necessary" for the purposes for which they are processed. Recognizing, in principle, the legitimate interest of the Complainant ("third party" referred to in Article 6 (1) (f) of Regulation 2016/679) in obtaining personal data of attorneys and other third parties who carried out transactions on behalf of Ms AZ on its accounts kept by the Bank, it is necessary - as in each case of data processing based on art. 6 sec. 1 lit. f) Regulation 2016/679 - in this specific case, "balance the interests" of the Complainant and the data subjects being the subject of the Complainant's request. As it follows from this provision, the processing of personal data is unacceptable "in situations where these interests [legitimate interests pursued by a third party] are overridden by the interests or fundamental rights and freedoms of the data subject." The premise of "legitimate interest" is therefore not absolute - it is constructed on the basis of weighing interests. "It requires the legitimate interest of the data controller (or a third party) to be placed on one scale, and the fundamental rights and freedoms of the data subject, which require protection, on the other. If the result of this weighing of interests indicates that the data subject's rights that require protection should be considered prevailing, then the controller should not base data processing on the legal basis discussed here "(Fajgielski Paweł in: Commentary to Article 6 of Regulation 2016/679 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), [in:] General Data Protection Regulation. Personal Data Protection Act. Comment [online ]. Wolters Kluwer Polska, 2020-04-10 10:15. Available on the Internet: https://sip.lex.pl/#/ commentary / 587773150/570590).

In the opinion of the President of the Personal Data Protection Office, the interests, rights and freedoms of persons whose personal data is requested by the Complainant cannot be considered to outweigh the financial interests of the Complainant. Reasonable expectations of people who made withdrawals from Ms AZ's accounts at the Bank (on the basis and within the

limits of the formal power of attorney submitted to the Bank, or exceeding the authorization specified in this power of attorney, or without any authorization of Ms AZ) should indicate the need to submit some kind of reports on these activities and, as a consequence, assuming responsibility for them to the owner of bank accounts or to her legal successors who, on the basis of the inheritance regulations, entered her legal position in the field of property relations. It should be noted that holding persons who have funds from her bank accounts on behalf of Ms AZ to civil (or possibly criminal) liability, as a result of verifying the correctness of their actions, falls within the competence of independent and impartial judicial authorities, and may only be carried out in strictly defined legal provisions in proceedings guaranteeing the implementation of their fundamental rights and ensuring an objective consideration of the case. The guarantees provided by the judiciary make it possible to state that there is no violation of the interests, rights and freedoms of these persons within its framework, if they acted with due diligence, in accordance with the law and in accordance with the will, instructions and interests of Ms AZ and - then - her legal successors. If, on the other hand, there were violations of a tort or contractual nature, the rights and interests of the perpetrators do not deserve protection to the extent that would ensure their anonymity and unjustifiably exempt them from liability for their own actions causing harm to other people.

Summarizing the above considerations, it should be stated that the Bank groundlessly refused to disclose the requested data to the Complainant. At this point, it should be stated that the Bank did not indicate - neither in response to the Complainant's request, nor in the explanations submitted to the President of the Personal Data Protection Office - the legal basis for refusing to disclose the data requested by the Complainant.

In its letter in response to the Complainant's request of [...] March 2015, the Bank indicated: "With regard to obtaining data from before the date of death of the deceased, we would like to inform you that, according to the opinion of the banking arbitrator, the heirs do not have the right to be informed about how the account holder had their funds for life". It can only be presumed that the Bank based its position on the provisions of the Banking Law of August 29, 1997 (Journal of Laws of 2019, item 2357, as amended), hereinafter referred to as the "Banking Law", on the obligation to maintain the so-called "Banking secrecy". This obligation is specified in Art. 104 sec. 1 of the Banking Law, which stipulates that "the bank, its employees and persons through which the bank performs banking activities, are required to maintain banking secrecy, which includes all information regarding banking activities obtained during negotiations, during the conclusion and performance of the contract, on the basis of which the bank performs this activity. " However, the Bank's position does not take into account the derogation

from this principle, as set out in Art. 104 (3) of the Banking Law, which stipulates that a bank is not bound to maintain banking secrecy towards the person to whom the information covered by the secrecy pertains, subject to certain restrictions set out in detail in this article. In the opinion of the President of the Personal Data Protection Office, the heir of the deceased bank account holder is "the person to whom the information covered by confidentiality relates" within the meaning of this provision, as upon opening the inheritance he becomes a party to the bank account agreement in place of the deceased account holder. This position is well-established in the jurisprudence of common courts. By way of example, it is worth quoting the considerations contained in the justification of the judgment of the District Court in Nowy Sącz of April 28, 2016 in case no. act III Ca 132/16. In it, the court states as follows: “[…] the legal relationship between the bank and the counterparty with a bank account is in legal terms an obligation which has its source in the contract. […] During the term of the contract, personal changes may occur […]. The change on the part of the account holder may take place as a legal act between the living, e.g. in the case of an assignment of receivables (Art. 509 et seq. Of the Civil Code), but also in the event of legal succession in the event of death [...]. When the inheritance is opened, the legal successors of the account holder become a party to the bank account agreement, assuming the rights of the deceased account holder. [...] The heirs, by entering into the rights and obligations of the parties to the contract with the bank, acquire both the right to claims from the testator's bank accounts that existed on the testator's death (decision of the Supreme Court of April 15, 1997, I CKU 30/97, OSNC 1997, No. 10, item 149), and in the opinion of the District Court, also to undertake all activities and give instructions to the bank, to which the account holder is entitled. One such disposition is also the right to view the account history for the entire duration of the contract, which was demanded by the claimant. This is because it is closely related to the ability to control the correctness of the bank's implementation of the account holder's instructions. The claimant cannot be denied such control. The provision of art. 104 of the banking law is the obligation of bank employees to observe banking secrecy consisting in limiting the possibility of transferring information obtained as part of participation in banking activities in relation to third parties, with the exemptions resulting from Art. 105 of the above-mentioned act. However, the wording of Art. 104 (3) of the Banking Law, it follows that the bank does not apply, subject to para. 4, keeping the confidentiality of the person to whom the information covered by the secrecy relates. The right to such information is vested in the heirs of the bank account holder, because it is him, as the current party to the contract, that all information resulting from the bank's keeping the account applies. An attempt by the bank to restrict access to such information constitutes, in the opinion of the District Court, an unacceptable abuse of powers [...]. " The

President of the Personal Data Protection Office fully accepts the above position. It seems that the Bank also - after the intervention of the Polish Financial Supervision Authority taken at the request of the Complainant's attorney - considered the above position to be correct, as it presented the Complainant - in a letter of [...] June 2015 - with the reports requested by him, containing the history of transactions in all bank accounts and accounts of Ms AZ's investment funds for the period from [...] January 2012 to [...] June 2015 (he did not provide only personal data of proxies and other third parties who carried out transactions on behalf of Ms AZ on her accounts at the Bank).

In the explanations submitted in these proceedings in a letter of [...] October 2016, the Bank - without indicating the specific legal provisions on which it relied on refusing to disclose the data of these persons - indicated that "it is of the opinion that, under the acquired rights, [the Complainant] does not acquired the right to dispose of the attorney's personal data. Providing the Complainant with the data of the attorney is also not necessary to exercise his rights. " This position, as has been shown above, is inaccurate. Firstly, the Complainant, by inheritance becoming a party to all bank and investment agreements concluded with the Bank by Ms A. Z., acquired all property rights resulting from these agreements and the right to request information from the Bank regarding these rights. Secondly, the personal data of proxies and other third parties carrying out transactions on her accounts with the Bank on behalf of Ms AZ are necessary in order to identify a person who could have disposed of Ms AZ's funds both before and immediately after her death, and then to check their authorization to making such instructions, and then possibly holding them responsible for the violations found. Without the basic personal data of these persons, neither of these steps would have been possible. Determining them from sources other than the Bank would be impossible or at least difficult to the extent that would in practice necessitate the Complainant refraining from trying to assert his rights.

Summing up, it should be stated that the Bank unjustifiably refused to disclose the personal data requested by the Complainant in the scope of name, surname, address and PESEL number of the representative appointed by Ms A. Z. to administer her bank account number PL [...]. As it was established in the present proceedings, Ms A. Z. did not appoint any other proxies authorized to dispose of the bank and investment accounts held by her with the Bank on her behalf. Moreover, the Bank does not have the personal data of other - apart from the above-mentioned proxy - third parties who would make transactions on its behalf in its accounts at the Bank. The above shows the scope of the adjudicated order - pursuant to Art. 18 sec. 1 point 2 u.o.d.o. 1997 - in point 1 of the operative part of this decision.

The remaining rejection of the Complainant's request, ruled in point 2 of the operative part of this decision, concerns the Complainant's request to provide the identity card number of the attorney appointed by Ms AZ to administer her bank account number PL [...] (as shown above, this data is not necessary for the implementation of legitimate interest indicated by the Complainant) and a request to indicate the dates and amounts of transactions made by third parties on behalf of AZ on its accounts with the Bank (in the course of the proceedings, the Bank presented to the Complainant's attorney the transaction history on all bank accounts and investment fund accounts of Ms AZ for the period from [...] January 2012 to [...] June 2015; this list exhausted the complainant's request in this regard).

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 Civil Procedure of the decision, the party has the right to submit 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 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.

2021-02-05