

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 14

April

2021

DECISION

DKE.523.9.2021

Based on Article. 105 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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) and in connection with joke. 12 points 2 and 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. 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 (general regulation on data protection) (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. DZ, regarding the processing of her personal data by F., the 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 DZ, hereinafter referred to as the "Complainant", about the unauthorized acquisition and use of her personal data by F., hereinafter referred to as the "Foundation" made available to the Foundation by C. General partnership, hereinafter referred to as the "Company".

In the content of the complaint, the complainant requested the removal of her personal data by both the Foundation and the Company.

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

The Foundation obtained personal data of Ms D. Z. on the basis of an agreement of [...] July 2017 concluded between a

database broker, that is: S. Sp. z o.o. The original administrator of this data was the Company.

The Foundation obtained the complainant's personal data in order to use them once in a marketing campaign consisting in (quoted): "shipping [...] - to obtain donations".

According to the agreement of [...] July 2017 (quoted): "if the data subject fails to provide financial support within 6 months from the date of database delivery, the Foundation is not entitled to contact this person again, and also deletes personal data such person and any copies of such data. " This means that the Foundation was entitled to process the complainant's personal data until [...] January 2018.

The Foundation - in accordance with the explanations of the Foundation's representative submitted in these proceedings [...] on June 2020, indicated that it is not currently processing the complainant's personal data.

The company, on the other hand, obtained the data of Ms D. Z. during the telemarketing campaign conducted [...] on November 2007. During the campaign, the telemarketer noted the complainant's consent to (quoted): "sending the company's catalog [...] and receiving additional information materials in the future".

The company processed the complainant's personal data in the period from [...] November 2007 to [...] November 2017. These data were made available to the Foundation on [...] September 2017 by the Company through a broker, i.e. S. Sp. z o.o.

The company, in a letter of [...] November 2017, indicated that the data of Ms D. Z. on [...] November 2017, it permanently deleted C.

In these facts, 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 2019, item 1781), hereinafter referred to as "the Act on the Protection of Personal Data of 2018" entered into force. . Pursuant to Art. 160 sec. 1-3 of the Act on the Protection of Personal Data of 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 the "Personal Data Protection Act of 1997, in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure. (Journal of Laws of 2020, item 256, as amended), hereinafter referred to as "Kpa". At the same time, the activities performed in the proceedings initiated and not completed before the date of entry into force of the provisions of the Act on the Protection of Personal Data of 2018 remain

effective.

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 / EC (general regulation on data protection) (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), 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 Personal Data Protection Act of 1997 (with regard to the provisions governing the administrative procedure) and on the basis of Regulation 2016/679 (to the extent decisive about the legality of the processing of personal data).

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks set out under this Regulation, each supervisory authority on its territory monitors and enforces the application of this Regulation (point a) and considers complaints submitted by the data subject or by an entity, 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 results of these proceedings within a reasonable time, in particular if it is necessary to continue investigations or coordinate actions with another supervisory authority (point f).

At this point, it should be noted that the President of the Office, when issuing an administrative decision, is obliged to decide on the basis of the actual state of affairs at the time of issuing the decision. As the doctrine quotes: "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 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., EI / 2012). Also in the judgment of May 7, 2008 in the case no. 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 and

whether it is done in a manner consistent with law ”.

Referring the above to the established facts, it should be emphasized that the decisive factor for the decision that must be issued in the case in question is the fact that both the Foundation and the Company do not currently process the complainant's personal data. The findings of the President of the Personal Data Protection Office showed that the complainant's personal data had been removed from the databases - which took place, respectively: on [...] January 2018 - by the Foundation; on [...] November 2017 - by the Company.

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 resolving its essence (B. Adamiak, J. Borkowski "Code of Administrative Procedure. Comment" 7th edition Publisher CH Beck, Warsaw 2005, p. 485). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 30 January 2019 (I SA / Kr 1289/18, LEX No. 2622023): “The definition of Art. 105 § 1 of the Code of Civil Procedure << proceeding for any reason has become redundant >> because it covers situations where a party's request is out of date or has expired by operation of law. The proceeding in the case is groundless when there is no party to it or there is no object, i.e. there is no legal and factual basis for considering and settling the case ”

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 file an application for reconsideration of the case within 14 days from the date of its delivery to the party. The party has the right to waive the right to request a retrial. The waiver of the right to submit an application for reconsideration makes the decision final and binding. 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 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.

2021-05-13