

# THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 17

October

2019

## DECISION

ZKE.440.43.2019

Based on Article. 104 § 1 of the Act of 14 June 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. 1 lit. c, f of 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 EU L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), in connection with Art. 105 paragraph. 4 and art. 105a section 1, 3, 4 of the Banking Law of August 29, 1997 (Journal of Laws of 2018, item 2187, as amended) and Art. 74 sec. 2 point 8 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 351, as amended), following administrative proceedings regarding the complaint of Mr. A. S. against the processing of his personal data by A. S.A. (formerly: Bank A. S.A.) and B. S.A., President of the Personal Data Protection Office 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. A. S., hereinafter referred to as: "the Complainant", about the processing of his personal data by A. S.A. (formerly: Bank A. S.A., hereinafter referred to as: "the Bank", including the disclosure and processing of the above-mentioned personal data by B. S.A. The complainant requested the removal of his personal data provided to B. by the Bank. In order to establish the circumstances of the case, the President of the Personal Data Protection Office initiated explanatory proceedings. On the basis of the evidence collected in the case, the following facts were established:

1. The Bank processed the complainant's personal data on the basis of the loan agreement of [...] November 2008 no. [...]

And the loan agreement of [...] January 2009 no. [...]. The bank has not identified the loan agreement number [...].

2. The complainant was in default in the repayment of the liabilities resulting from the loan agreements, which resulted in their termination by the Bank in a letter of [...] March 2010 (concerning the contract [...]) and a letter of [...] April 2010 (concerning the contract [...]), in which he has also performed the obligation, as specified in Art. 105a paragraph. 3 of the Banking Law.

The Bank does not currently process the complainant's personal data pursuant to art. 105a paragraph. 3 of the Banking Law.

3. As of [...] May 2010 (for contract [...]) and as of [...] April 2010 (for contract [...]), reclassified loans to loss situation.

Pursuant to the agreement for the sale of receivables of [...] October 2011, the Bank made to B. S.A. sale of receivables resulting from the above-mentioned concluded by the Complainant loan agreements.

4. The Bank transferred the complainant's personal data to B. pursuant to Art. 105 paragraph. 4 and art. 105a paragraph. 1 of the Banking Law Act in connection with obligations resulting from loan agreements: of [...] .01.2009 (No. [...]) on [...] March 2009 and the loan agreement concluded on [...] .11.2008 (No. [...]) On [...] December 2008 for the purposes of credit risk analysis and creditworthiness assessment. The scope of the disclosed data included the following data: name, surname, PESEL number, series and number of proof, address, date of birth, gender, liability data, information on the consent to art. 105 a of the Banking Law.

5. Currently, the Bank and B. do not process the Complainant's personal data in the scope of the above-mentioned. contracts for the purpose of assessing creditworthiness and analyzing credit risk pursuant to Art. 105a paragraph. 3 of the Banking Law. The bank also does not process the complainant's personal data pursuant to art. 105a paragraph. 4 of the Banking Law, i.e. for the purposes of applying internal methods and other models referred to in Part Three of Regulation No 575/2013. The Bank's explanations show that the accounts: [...], [...] were removed from database B. on [...] May 2016.

6. In the explanations, the Bank indicated that 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 of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended, and of 2018, item 138), hereinafter: "the Act" - for a justified purpose 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."

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 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 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 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 file ref. 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. The legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Banking Law. The assessment of the legality of the processing of the Complainant's personal data by the Bank and also by B. must therefore be carried out in conjunction with the provisions of the Banking Law, and in this case also based on the provisions of the Accounting Act.

Referring to the legality of the processing of the Complainant's personal data by the Bank and B. it should be noted that the Complainant's personal data was transferred to B. in accordance with art. 105 paragraph. 4 of the Act of August 29, 1997 Banking Law (Journal of Laws 2018, item 2187 as amended). In the light of this provision, "banks may, together with banking chambers of commerce, establish institutions authorized to collect, process and make available to: banks information constituting banking secrecy to the extent that this information is needed in connection with the performance of banking activities and in connection with the application of internal methods and other methods and models referred to in Part Three of Regulation No 575/2013, to other institutions statutorily authorized to provide loans with information constituting banking secrecy to the extent that such information is necessary in connection with granting loans, cash loans, bank guarantees and sureties (point 2), to credit institutions of information constituting banking secrecy to the extent necessary to assess the consumer's creditworthiness, as referred to in Art. 9 of the Act of 12 May 2011 on consumer credit (point 3), loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit on the basis of reciprocity, information constituting respectively banking secrets and information provided by loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, to the extent necessary to assess the consumer's creditworthiness, as referred to in art. 9 of this Act and the credit risk analysis (point 4). "However, pursuant to Art. 105a paragraph. 3 of the Banking Law - "banks, institutions and entities referred to in sec. 1, may process information constituting banking secrecy and information provided by loan institutions and entities referred to in Art. 59d of the Act of 12 May 2011 on consumer credit, concerning natural persons after the expiry of the obligation resulting from the contract concluded with a bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, without the consent of the person to whom the information relates, when the person has not fulfilled the obligation or has been in delay

of more than 60 days in fulfilling the service under the contract concluded with the bank, another institution legally authorized to provide loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, and after these circumstances at least 30 days have elapsed since the person was informed by the bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, on the intention to process this information without its consent ". The Bank's explanations show that the Complainant committed long delays in repayment and that all the conditions of Art. 105a (3) of the Banking Law, and the Bank informed the Complainant about the intention to process his personal data. The occurrence of these circumstances meant that his personal data was processed for a period of 5 years after the payment of arrears. At present, the Bank does not process the Complainant's personal data pursuant to Art. 105 a sec. 3 of the Banking Law and 105a sec. 4 of the Banking Law (for statistical purposes). The processing of the complainant's personal data is currently carried out for archival purposes, pursuant to art. 6 lit. f of Regulation 2016/679 (previously art. 23 section 1 point 5 of the Act) "processing is necessary for the purposes of the legitimate interests pursued by the administrator" and art. 6 letter c in connection with Art. 74 sec. 2 point 8 u.o.r (previously 23 section 2 of the Act in connection with art.74 section 2 point 8 u.o.r.) "processing is necessary to fulfill the legal obligation incumbent on the administrator". The Bank's legitimate interest is to secure any claims in connection with its business. On the other hand, the provision of Art. 74 sec. 2 point 8 u.o.r. entitles them to store personal data of customers related to their banking products (judgment of the Provincial Administrative Court in Warsaw of February 5, 2014 II SA / Wa 1150/13).

With regard to the request to erase the Complainant's personal data with regard to the loan agreements of [...] March 2010 (regarding the contract [...]) and the contract of [...] April 2010 (regarding the contract [...]), it should be stated that that B. processed the complainant's personal data until [...] May 2016 pursuant to Art. 105 paragraph. 4, and then art. 105a paragraph. 4 and 5 (in the Banking Act (for statistical purposes) and agreements with the Bank. Currently, it does not process the complainant's personal data.

On the basis of the above-mentioned legal provisions, it should be concluded that there is no reason for the President of the Personal Data Protection Office to issue a decision ordering the restoration of the lawful state, therefore it is reasonable to issue a decision refusing to accept the application.

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 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.

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