

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

January

2020

DECISION

ZKE.440.84.2019

Based on Article. 104 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and pursuant to 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) in connection with joke. 12 point 2, art. 22 and art. 23 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), Art. 105 paragraph. 4 and art. 105a paragraph. 3 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357) and art. 6 sec. 1 lit. c and art. 57 sec. 1 lit. a) and 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 (Dz. Urz. UE L 119 of 04/05/2016, p. 1 and Dz. Urz. EU L 127 of 23/05/2018, p. 2, as amended), after conducting administrative proceedings regarding the complaint of Mr. SW, regarding the processing of his data personal data by the SSA, the President of the Personal Data Protection Office refuses to accept the request.

Justification

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. S.W., hereinafter referred to as the "Complainant", about the disclosure by S. S.A., hereinafter referred to as the "Bank", of his personal data to B. S.A., hereinafter referred to as "B. THERE ARE.". The complainant, by further specifying his request, in a letter of [...] October 2017, announced that he wanted to "complete and correct the closing date of the commitment of [...] -09-2004; the correct closing date is [...] -09-2012 and this date should appear in the report ". At the same time, he added that the quotation "B. THERE ARE. processes the data on the liability of [...] -09-2004 with the status of enforcement with the amount of PLN [...]. The execution ended on [...] -09-2012 (the case was conducted by the Court Bailiff at the District Court in G.). Since then, no enforcement activities have been carried out, and no interest is charged on the liability,

which proves that the debt is due to incorrect calculation of amounts by the Bank. Pursuant to the agreement, the method of calculating payments for the liability is recorded in this way - costs, interest and capital (...) on the principal should be charged interest. Due to this entry, I have a broken credit history and I cannot receive a loan from the bank, due to the mistake of S. S.A. In addition, I would like to point out that the case has long been expired. "

On the basis of the evidence collected in the case, the President of the Office for Personal Data Protection established the following facts:

In the explanations of [...] September 2019 (ref. : [...]), the Bank indicated that the quotation: "The Complainant's personal data was obtained by the Bank in connection with the loan agreement No. [...] of [...] September 2004. . concluded between the Complainant and ASA, whose legal successor in 2011 was the Bank "(evidence: copy of the loan agreement No. [...] of [...] September 2004). As a result of untimely repayment of the liability resulting from the above-mentioned Under the contract, the Bank [...] in July 2005 terminated the Complainant's contract and quoted "it made the debt immediately payable". Due to the continued failure to repay the receivables, the Bank brought the case to court, and then on [...] March 2007 to enforcement by a bailiff. The enforcement proceedings conducted by the Court Bailiff at the District Court in G. were discontinued [...] September 2012 due to the enforcement of the claim in accordance with the enforcement application, i.e. the principal claim (evidence: a copy of the letter of the Court Bailiff at the District Court in G. from [...] August 2017 - file reference [...]; a copy of the printout from the system of Kancelaria Komornicza - Currenda - on the status of the case [...] (court file reference [...]). the Complainant's personal data in BSA pursuant to Article 105a (3) of the Banking Law Act of 29 August 1997 and does not have a letter informing the Complainant that due to the arrears in repayment of the obligation lasting more than 60 days, the Bank will transfer the Complainant's personal data to BSA without his consent, after at least 30 days from the effective delivery of this information to the Complainant. "Transfer of the Complainant's personal data to BSA in the field of identification data, address data, data on obligations and settled banking products was based on Art. 105 paragraph. 4 in connection with Art. 105a paragraph. 1 of the Act of August 29, 1997 - Banking Law (Journal of Laws of 2019, item 2357). At present, the Bank does not report the Complainant's personal data to B. S.A. Due to the fact that the obligation under the loan agreement No. [...] of September 20, 2004 was finally repaid on [...] June 2018, the Bank processes the Complainant's personal data in the following scope: identification data, address data, data concerning banking product, employment and income data. The complainant's personal data are processed in order to establish, investigate and defend against any claims arising from the

performance of the contract, while the legal basis for the processing of this data is art. 6 sec. 1 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 UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2, as amended), hereinafter referred to as "GDPR". The Bank intends to process data until the deadlines related to the implementation of the above-mentioned purpose. At the same time, the Bank stated that by letters of [...] July 2017, [...] August 2017, [...] September 2017 and [...] September 2017, the Complainant requested that his personal data be rectified at BSA, to which the Bank replied by letter of [...] August 2017, [...] August 2017, [...] September 2017 and [...] October 2017 (proof: copy of the Bank's letter of [...] August 2017 , [...] August 2017, [...] September 2017 and [...] October 2017).

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

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), i.e. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became the Office for Personal Data Protection . Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, pursuant to 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 "1997 Act", in accordance with the principles set out in the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) .), hereinafter referred to as "Kpa". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) - 3 of the Act of 10 May 2018 on the protection of personal data).

Pursuant to Art. 57 sec. 1 (f) GDPR, without prejudice to other tasks under this Regulation, each supervisory authority on its territory shall deal with complaints lodged by the data subject or by a body, 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 the results of these proceedings within a reasonable time, in particular if it is necessary to pursue further proceedings or coordinate actions with another supervisory authority.

The President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to make a decision

based on the actual state of affairs at the time of issuing this decision. As the doctrine points out, "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 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).

At the time when the complaint was received by the Inspector General for Personal Data Protection, the Act of 1997 was in force, therefore, the President of the Office, on the basis of the collected evidence, assessed the controller's behavior in the context of the above Act. It should be emphasized that this assessment concerned only the processing of the Complainant's personal data, while the issues related to the performance of contracts, in particular incorrect charging of interest by the Bank, were not taken into account by the President of the Personal Data Protection Office. Such cases are civil matters within the meaning of Art. 1 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2019, item 1460, as amended) and are considered in proceedings conducted by common courts. By the way, it should be added that disputes arising from the loan agreement may also be settled out of court before the Banking Arbitrator at the Polish Bank Association or the Financial Ombudsman, about which the complainant was also informed by the Bank in letters: of [...] August 2017 and [...] October 2017. At the outset, it should be noted that pursuant to Art. 23 sec. 1 of the Act of 1997, the processing of personal data is allowed only if one of the conditions listed in this provision is met. These conditions apply to all forms of data processing listed in art. 7 point 2 of the Act, including their sharing. They 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. However, according to Art. 23 sec. 1 point 2 of the Act, data processing is permissible when it is necessary to exercise the right or fulfill an obligation resulting from a legal provision. The legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Banking Act of August 29, 1997 (Journal of Laws of 2019, item 2357). Assessment of the legality of the disclosure of the Complainant's personal data by the Bank to B. S.A. must therefore be made in conjunction with the provisions of the above-mentioned legal act. Pursuant to Art. 105 paragraph. 4 of the Banking Law, 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 use of statistical methods referred to in Art. 128 sec. 3 and in art. 128d paragraph. 1 (point 1), to other institutions statutorily authorized to grant loans - information constituting banking secrecy to the extent that this information is necessary in connection with granting loans, cash loans, bank guarantees and sureties (point 2), to credit institutions - 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). It should be noted that B. S.A. is an institution established on the basis of the above-mentioned art. 105 paragraph. 4 of the Banking Law. According to Art. 105a paragraph. 1 of the Banking Law, processing by banks, other institutions legally authorized to grant loans and institutions established pursuant to art. 105 paragraph. 4 (e.g. B. S.A.), information constituting banking secrecy with regard to natural persons may be performed, subject to Art. 104, 105 and art. 106-106c, for the purpose of creditworthiness assessment and credit risk analysis. Information contained in B. S.A. they are to serve the fulfillment by banks, as institutions of public trust, of their statutory obligations related to the need to exercise special care in ensuring the safety of stored funds, i.e. with regard to the protection of deposits (Article 50 (2) of the Banking Law), as well as with the necessity to properly examine creditworthiness the existence of which (pursuant to Article 70 (1) of the Banking Law) the bank makes granting the loan conditional. In the light of the above-mentioned provisions, disclosure of the Complainant's personal data by the Bank to B. S.A. was legal because it was performed for the purpose of assessing creditworthiness and analyzing credit risk, i.e. based on the premise referred to in Art. 23 sec. 1 point 2 of the 1997 Act, in connection with the above-mentioned Art. 105a paragraph. 1 and art. 105 paragraph. 4. At the same time, it should be emphasized that the consent of the Complainant was not required for the legality of this disclosure.

Regarding the Complainant's request to supplement and rectify his personal data contained in the report of B. S.A., i.e. the date of closing the obligation, it should be stated that it does not deserve to be taken into account. The evidence gathered in the case shows that the date indicated by the Complainant, ie [...] September 2012, is not a date that would definitively close the obligation. It is true that the Court Bailiff at the District Court in G. [...] on September 2012 discontinued the enforcement proceedings due to the enforcement of the receivables in accordance with the writ of execution, but the remission concerned only part of the debt. However, the debt due to penalty interest and additional costs related to late repayment, amounting to: "PLN [...]", remains to be paid. This debt was accrued despite the ongoing bailiff enforcement, because - as indicated by the

Bank - quoted: "the enforcement (...) does not suspend the charging of penalty interest and additional costs related to late repayment". About the above-mentioned In this fact, the Bank repeatedly informed the Complainant about the amount of the outstanding debt of PLN [...] in letters of [...] August, [...] September and [...] October 2017.

In the opinion of the President of the Office for Personal Data Protection, there are no grounds to conclude that the Complainant's personal data are processed by the Bank in a manner inconsistent with the provisions on the protection of personal data, and therefore there was no necessary condition for the President of the Office to issue a decision ordering the restoration to legal status.

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 200.00. The party has the right to apply for the right to assistance, including exemption from court costs.

2021-03-08