THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 27

May

2020

DECISION

ZKE.440.6.2019

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 Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) in connection with joke. 12 point 2, art. 18, art. 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. a) and f) and Art. 6 sec. 1 lit. c) and f) and art. 28 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 (general regulation on the protection of data) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), after conducting administrative proceedings regarding the complaint of Ms AP, regarding the processing of her personal data by ASA, the President of the Data Protection Office Personal,

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 Ms A. P. (hereinafter also referred to as the "Complainant") about the processing of her personal data by A. S.A. (hereinafter also referred to as "the Society") and their provision to C. Sp. z o.o. (also referred to as the "Company").

The content of the complaint shows that:

- [...] in July 2012, a fire broke out in the applicant's apartment, in her absence, and the findings showed that the cause of the fire was the self-ignition of the refrigerator's cooling unit. There was no third party involvement in this event. The investigation in this regard was discontinued without presenting any charges against anyone.

- In the opinion of the complainant, Art. 828 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 2025, as amended), because the Prosecutor of the District Prosecutor's Office in N. discontinued the investigation in this regard. The

complainant added that the decision was also binding on the Society and the Company and thus the complainant was not liable for any damage caused by a tort.

- The company breached Art. 31 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter also referred to as: "the Personal Data Protection Act of 1997" because, in the opinion of the Complainant, her data was transferred to the Company not on the basis of a written agreement, but on the basis of a power of attorney. In the opinion of the complainant, the Society also failed to fulfill the information obligation referred to in Art. 25 of the Personal Data Protection Act of 1997.

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

The Insurance Company obtained the complainant's personal data in connection with the performance of the insurance contract concluded between the Insurance Company and Mr. R. Z., who suffered damage as a result of flooding the apartment with water leaking from the complainant's apartment.

The Society paid Mr. R. Z. compensation for flooding his flat and under Art. 828 of the Civil Code, through the company entrusted by the Society with the processing of personal data referred to in art. 31 of the Personal Data Protection Act of 1997, brought a recourse to the complainant.

Recourse actions are performed by the Company on the basis of the contract for the performance of recourse actions in individual property damages of [...] February 2011 concluded with the Company (proof: a copy of the above-mentioned contract in the case files), which both due to its form and the content complied with the requirements set out in Art. 31 of the Personal Data Protection Act of 1997. The agreement referred to in Art. 31 of the Act on the Protection of Personal Data of 1997 is not subject to disclosure to the data subject, in this case to the complainant.

[...] in March 2013, the Society provided the Company with the complainant's data, including: name and surname, address and information related to the claim.

[...] in April 2013, the Company sent to the complainant a request for payment for the damage related to the flooding [...] of July 2012 of Mr. R. Z.'s apartment, enclosing the documentation related to the recourse (damage report, compensation decision, calculation of the damage repair). The summons also contained information on the Society's fulfillment of the obligation referred to in Art. 25 of the Act on the Protection of Personal Data of 1997 (proof: payment request of [...] April 2013 in the

case file).

The basis for the processing of the complainant's personal data by the Society until May 25, 2018 was art. 23 sec. 1 point 5 of the Act on the Protection of Personal Data of 1997, while after May 25, 2018, the legal basis is Art. 6 sec. 1 lit. c) and 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 (General Data Protection Regulation) (Journal of Laws UE.L.2016.119.1 and Journal of Laws UE.L.2018.127.2), hereinafter also "Regulation 2016/679.

On the other hand, the basis for the processing of the complainant's personal data by the Company until May 25, 2018 was art. 31 of the Personal Data Protection Act of 1997, and after May 25, 2018, the legal basis is Art. 28 of Regulation 2016/679.

The data of the complainant were processed by the company for the purpose necessary to assess the existence of the complainant's liability for damage pursuant to art. 828 § 1 of the Civil Code (insurance recourse) and to pursue any claims against the complainant in this respect on behalf and for the benefit of the Company.

As the Society explained, the Complainant's position that the Company was not entitled to process the complainant's personal data is incorrect. The manner in which the criminal proceedings were terminated, which in connection with the event (damage) giving rise to claims for damages against the applicant, only determines that the law enforcement authorities did not find any signs of a crime in connection with this event. The decision of the District Prosecutor's Office in N. does not adjudicate on the existence or non-existence of the applicant's civil liability for the damage caused by the event, in particular that the applicant is not responsible for the damage within the meaning of Art. 828 of the Civil Code. Thus, the complainant's argument that the processing of her personal data was unauthorized due to the decision issued by the law enforcement authorities is incorrect.

The period of storing the complainant's data is specified in Art. 4421 of the Act of 23 April 1964 of the Civil Code (Journal of Laws of 2019, item 1145, as amended), as the period of limitation of claims and art. 74 sec. 2 point 4 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 31, as amended), as the period of storing accounting evidence relating to claims pursued in civil proceedings.

Currently, the complainant's data is processed pursuant to Art. 74 sec. 2 point 4 of the Accounting Act. These data will be processed until [...] December 2020 (the damage occurred [...] July 2012, three years of limitation of claims - until [...] July 2015, five years from [...] January 2016 to the end year - by [...] December 2020).

After analyzing the evidence collected in the case, the President of the Office for Personal Data Protection states as follows.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data entered into force (Journal of Laws of 2019, item 1781), hereinafter also: "Act on the Protection of Personal Data of 2018 r. "

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 Office for Personal Data Protection on the basis of the Act of August 29, 1997 on protection of personal data (Journal of Laws of 2016, item 922, as amended), hereinafter also referred to as: "Personal Data Protection Act of 1997", in accordance with the principles set out in the Act of June 14, 1960, Code administrative proceedings (Journal of Laws of 2020, item 256, as amended). 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 the protection of personal data) (Journal of Laws UE L 119 of 04.05.2016, p. 1 and Journal of Laws UE L 127 of 23.05.2018, p. 2), hereinafter referred to as the "Regulation 2016/679 ".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified 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 - in accordance with Art. 80 by Regulation 2016/679 - the entity, organization or association, 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 (point f).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of 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., El / 2012). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 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 on the matter and whether it is done in a legal manner".

Regulation 2016/679 constitutes provisions on the protection of natural persons with regard to the processing of personal data and provisions on the free movement of personal data, and protects the fundamental rights and freedoms of natural persons, in particular their right to the protection of personal data (Article 1 (1) and (2) of Regulation 2016 / 679). This issue was adequately regulated by Art. 2 clause 1 of the Act on the Protection of Personal Data of 1997. In the light of the provisions of the above-mentioned legal act, 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 Personal Data Protection Act of 1997). These conditions apply to all forms of data processing listed in art. 4 point 2 of Regulation 2016/679 (formerly Article 7 point 2 of the Personal Data Protection Act of 1997), including, in particular, their disclosure. 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.

Pursuant to Art. 828 § 1 of the Civil Code, unless otherwise agreed, the insurer's claim against the third party responsible for the damage shall be transferred by operation of law to the insurer up to the amount of compensation paid on the day of payment of compensation by the insurer. If the undertaking covered only part of the damage, the policyholder shall have priority over the remaining part of the claim over the insurer's claim.

The period of data storage is specified in Article 4421 of the Act of April 23, 1964 of the Civil Code (Journal of Laws of 2019, item 1145, as amended), according to which a claim for compensation for damage caused by a tort shall be statute-barred after years three from the date on which the aggrieved party found out or, with due diligence, could learn about the damage and about the person obliged to repair it. However, this period may not be longer than ten years from the date on which the event giving rise to the damage occurred.

However, after the expiry of the limitation period, the basis for further data storage is Art. 74 sec. 2 point 4 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 31, as amended), according to which, accounting evidence regarding fixed assets under construction, loans, credits and commercial contracts , claims pursued in civil proceedings or

subject to criminal or tax proceedings - for 5 years from the beginning of the year following the financial year in which operations, transactions and proceedings were finally completed, paid off, settled or time-barred. And according to Art. 74 sec. 3 of the Accounting Act, the storage periods specified in sec. 2 is calculated from the beginning of the year following the financial year to which the data sets relate.

The President of the Office for Personal Data Protection, examining the basis for the processing of personal data by the Company, disclosure of personal data by the Company to the Complaining Company and the fulfillment of the information obligation towards the Complainant referred to in Art. 25 of the Act on the Protection of Personal Data of 1997, it stated that, in the above-described circumstances of the case in question, there are no grounds for formulating an order against the Society and the Company.

It should also be noted that the President of the Personal Data Protection Office, on the basis of the evidence collected in this case, assessed the processing of the complainant's personal data in the context of the applicable provisions of the Act on the Protection of Personal Data, but did not examine the merits of the claim and the allegations related to it. Such cases are civil matters within the meaning of Art. 1 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025, as amended) and should be considered in proceedings conducted by common courts. Thus, the President of the Personal Data Protection Office has no authority to consider the claim of the complainant as to the validity of the claim and the allegations related to it. The position in this case is also confirmed by the judgment of the Provincial Administrative Court of November 10, 2006, file ref. II SA / Wa4 / 06, Lex No. 330425.

Taking into account the above, it should be concluded that there was 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 not justified to issue any of the orders referred to in Art. 18 of the Personal Data Protection Act of 1997 and in Art. 58 of the Regulation 2016/679.

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 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.

2021-02-19