

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

April

2021

DECISION

DKE.523.7.2021

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended) and pursuant to 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 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), in connection with Art. 6 sec. 1 lit. c) and 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), in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 4 and 5 of the Banking Law of August 29, 1997 (Journal of Laws of 2020, item 1896, as amended), after administrative proceedings regarding the complaint of Mr. P. S. against the processing of his personal data by A. S.A. and their disclosure to B. S.A., President of the Personal Data Protection Office

refuses to accept the request

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Mr. PS (hereinafter also referred to as: "Complainants"), represented by the attorney of Mr. DO (Kancelaria [...]), against the processing of his personal data by ASA Bank, hereinafter referred to as "the Bank" and their disclosure BSA hereinafter "B".

The Complainant's attorney indicated that the Bank processes the personal data of Mr. P. S. without a legal basis, ie without his consent, in the scope relating to the following contracts: contracts [...] of [...] November 2008; contracts [...] of [...] November 2008 and contracts [...] of [...] November 2008, because the Bank failed to fulfill the obligation to the Complainant arising from the provisions of Art. 105a paragraph. 3 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2020, item 1896, as amended), hereinafter referred to as: "Banking Law". The bank was asked several times to provide proof of the

Bank's compliance with the above-mentioned information obligation, however, the Bank indicated only the fact of sending an ordinary letter, which was never delivered to the Complainant. The plenipotentiary also pointed out that it is undisputed that under the above-mentioned contracts a debt was caused, which was finally repaid, and therefore, by repaying it in full, the legal relationship between the Bank and the Complainant was terminated.

In connection with the above, in the content of the complaint, the representative of the Complainant requested that the Bank be ordered to restore its legal status by ordering the Bank to cease processing the Complainant's personal data in B.

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

The Bank obtained the complainant's personal data in connection with the conclusion between the above-mentioned parties to the contract [...] of [...] November 2008, contract [...] of [...] November 2008 and contract [...] of [...] November 2008.

The Bank processed the complainant's data to the extent resulting from the above-mentioned contracts, in accordance with applicable law, in particular art. 105a paragraph. 1 of the Banking Law, in order to assess creditworthiness and risk analysis, art. 74 in connection with joke. 71 of the Accounting Act of September 29, 1994 (Journal of Laws of 2021, item 217) and § 49 of the Regulation of the Minister of Finance of October 1, 2010 on detailed accounting principles for banks (Journal of Laws No. 191, item 179).

The Bank, during the period of validity of the above-mentioned contracts, processed the complainant's personal data pursuant to art. 105a paragraph. 1 of the Act of August 29, 1997 Banking Law, in order to assess creditworthiness and analyze credit risk. At the same time, acting pursuant to Art. 23 sec. 1 point 2 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 connection with Art. . 105a paragraph. 4 of the Banking Law, the Bank disclosed the complainant's personal data to B., which took place on [...] December 2008 - to the extent resulting from the contract [...] of [...] November 2008; on [...] December 2008 - to the extent arising from the contract [...] of [...] November 2008 and on [...] January 2009 - to the extent arising from the contract [...] of [...] November 2008

There were delays in the debt repayment under the aforementioned products. Therefore, on [...] the day of delay, the Bank sent letters to the Complainant informing about the possibility of processing personal data without his consent after the expiry of the obligation. These letters were sent to the address indicated by the Complainant on: [...] December 2009 (contract [...]),

[...] January 2010 (contract [...]) and [...] January 2010. (contract [...]), and the date of posting [...] December 2014 on the documents corresponds to the date of generating the documents for the purposes of the complaint process (evidence in the case files). The bank did not receive a refund of the above-mentioned letters from the Complainant and the Complainant did not inform the Bank about a possible change of the correspondence address during the period in which the Bank sent the above-mentioned writings. The bank also indicated that the letters on the required by the provisions of Art. 105a paragraph. 3 of the Banking Law, the contents were sent to the Complainant three times, thus it had to be considered that with a high probability, bordering on certainty, it should have been assumed that at least one of the letters reached the Complainant (or rather all, taking into account the lack of return of any of the above-mentioned letters). The Bank emphasized that the Complainant was aware of the current situation related to his unpaid debt on the above-mentioned accounts. Moreover, on [...] December 2009, the Bank contacted the Complainant by phone in order to explain the lack of payment and to inform about the expiry of the payment deadline. On the other hand, during a telephone conversation with the Complainant on [...] January 2010, he declared his willingness to repay the debt, but the funds were not paid in on time, which was confirmed by another entry in the Bank's system of [...] January 2010. (evidence in the case file).

At this point, it should be noted that, due to the delay in fulfilling the obligations arising from the concluded contracts, the Bank processed in B., for the purposes of assessing creditworthiness and credit risk analysis, the Complainant's personal data without his consent, also after the expiry of the obligations in question. However, the Bank's practice described above does not fall within the provisions of Art. 105a paragraph. 3 of the Banking Law, as the Bank failed to effectively notify the Complainant of its intention to process data in this manner.

B., by letter of [...] February 2021, indicated that he was currently processing the Complainant's personal data in the context of the contract [...] of [...] November 2008 and the contract of [...] of [...] November 2008. Data The complainant's contract bill on [...] November 2008 will be processed by B. until [...] July 2026, and the contract bill data from [...] November 2008 to [...] January 2024. By contrast, in the explanations of [...] September 2020, B. indicated that he did not process the Complainant's data in connection with the contract of [...] of [...] November 2008 because the account had been deleted by the Bank.

Accounts related to the above-mentioned contracts are currently closed accounts and the Complainant's personal data are processed in order to use internal methods and other methods and models, pursuant to Art. 105a paragraph. 4 and 5 in connection with joke. 105 paragraph. 4 of the Banking Law.

The Bank - in accordance with its explanations submitted in these proceedings, on [...] March 2021, indicated that it is currently processing the Complainant's personal data resulting from the above-mentioned contracts based on 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 (general regulation on protection of personal data) (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", in connection with Art. 118 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2020, item 1740, as amended), hereinafter referred to as the "Civil Code", for the purposes of pursuing claims and defending against possible claims related to the implementation of contracts concluded by the Complainant with the Bank.

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: "the 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 Personal Data Protection Office on the basis of the Personal Data Protection Act of 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). 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, Regulation 2016/679 also applies.

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 shall monitor and enforce the application of this Regulation (point a) and handle complaints lodged 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 the 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).

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".

Therefore, the decisive factor for the decision that must be issued in the present case is the fact that the processing of the complainant's personal data began during the period when the Personal Data Protection Act of 1997 was in force and is currently being continued. Therefore, it should be stated that the relevant provisions in this case are the application of the provisions in force at the time of issuing the decision in the case, i.e. Regulation 2016/679, because the President of the Office must assess whether the questioned process of personal data processing as at the date of issuing the administrative decision is lawful.

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.

However, the legal act regulating in detail the processing of personal data of bank customers is primarily the Banking Law. Therefore, the assessment of the processing of the Complainant's personal data in connection with the contracts linking him with the Bank should be made in conjunction with the provisions of this Act.

When examining the legality of the disclosure of the Complainant's personal data by the Bank to B., in connection with the debt resulting from the contract [...] of [...] November 2008; contracts [...] of [...] November 2008 and contracts [...] of [...] November 2008, the President of the Personal Data Protection Office indicates that B. is an institution established pursuant to Art. 105 paragraph. 4 of the Banking Law, which stipulates that banks may, together with banking chambers of commerce, establish institutions for the collection, processing and disclosure of, among others, banks - information constituting banking secrecy to the extent that this information is needed in connection with the performance of activities bank, and also other institutions legally authorized to grant loans - information on receivables and on the turnover and balances of bank accounts to the extent that this information is necessary in connection with granting loans, cash loans, bank guarantees and sureties.

Pursuant to Art. 105a paragraph. 3 of the Banking Law, the institutions referred to in para. 1, may process information constituting banking secrecy regarding natural persons after the expiry of the obligation resulting from the agreement concluded with the bank or other institution authorized by law to grant loans, without the consent of the person to whom the information relates, when the person has not fulfilled the obligation or has been delayed for more than 60 days. in the performance of the service under an agreement concluded with a bank or other institution legally authorized to grant loans, and after these circumstances, at least 30 days have elapsed since the bank or other institution authorized to grant loans informed the person about the intention to process confidential information relating to him banking without her consent.

As established by the President of the Personal Data Protection Office, the transfer of the Complainant's personal data by the Bank to B. took place on [...] December 2008 - to the extent resulting from the contract [...]; on [...] December 2008 - to the extent arising from the contract [...] and on [...] January 2009 - to the extent arising from the contract [...], thus still while the previous legal regulation on the protection of personal data. The disclosure of the Complainant's data to B. was based on the premise mentioned in Art. 23 sec. 1 point 2 of the Act on the Protection of Personal Data of 1997, and for the legality of this disclosure, pursuant to Art. 105 paragraph. 4 of the Banking Law, the consent of the Complainant was not required.

At the same time, however, the supervisory authority points out that the Complainant is right in stating that the Bank processed in B. his personal data resulting from the obligations in question, after their expiry, in an unlawful manner. On the basis of the

evidence gathered in this case, including in particular the explanations of the Bank and the documentation presented to support them in the form of printouts from the Bank's IT system, it is not possible to unequivocally state that the Bank duly notified the Complainant about the intention to process his personal data, constituting banking secrecy. , for the purposes of assessing creditworthiness and analyzing credit risk, also after the credit obligation has expired. Such an obligation was imposed on the Bank as the administrator of personal data, pursuant to the wording of Art. 105a paragraph. 3 of the Banking Law. Pursuant to the regulation referred to here, banks may process information constituting banking secrecy regarding natural persons after the expiry of the obligation resulting from the contract concluded with the bank, without the consent of the person the information relates to, when the person has not fulfilled the obligation or has been delayed by more than 60 days in fulfilling benefits resulting from an agreement concluded with the bank, and after these circumstances, at least 30 days have elapsed since the bank informed the person about the intention to process this information without their consent. Unless it is in doubt that the Complainant was in default of debt under the contract [...] of [...] November 2008, contract [...] of [...] November 2008 and contract [...] with [...] November 2008 - he did not deny this circumstance during the proceedings - so it cannot be concluded that the Complainant received information about the planned continuation of the processing of his personal data after the settlement of the Bank's claims against the Complainant. Evidence of the proper transfer of the above-mentioned information, it is certainly not possible for the Bank to provide printouts from the bank's IT system. In the absence of proof of posting the letter at the postal operator's office, and no confirmation of its receipt or return to the sender due to the addressee's failure to collect it - it is impossible to conclude that the Bank has fulfilled its obligation. Thus, in the opinion of the President of the Personal Data Protection Office, the processing of the Complainant's personal data after the expiry of the above-mentioned obligations, found no basis in applicable law.

Regardless of the above, however, it should be explained that at present - due to the lapse of 5 years from the expiry of the above-mentioned liabilities and the Bank's correction in B., consisting in the fact that the information on the above-mentioned loan agreements are no longer presented in the reports used to assess credit risk - the fact that the Complainant was not satisfied with the information obligation under Art. 105a paragraph. 3 of the Banking Law. Although the Bank's operation actually violated the provisions on the protection of personal data in this respect, however, based on the evidence gathered in the case, it should be concluded that the state of non-compliance with the law of personal data processing has been removed and is no longer continued.

As is clear from the factual findings, B. is currently processing the complainant's personal data resulting from the above-mentioned contracts solely for the purpose of using internal statistical methods, to which he is entitled pursuant to art. 105a paragraph. 4 of the Banking Law, pursuant to which the Banks and institutions referred to in Art. 105 paragraph. 4, may process information constituting banking secrecy regarding natural persons after the expiry of the obligation resulting from the agreement concluded with the bank or other institution authorized by law to grant loans, without the consent of the person to whom the information relates, for the purposes of using internal methods and other methods and models, referred to in the third part of Regulation No 575/2013. At the same time, as results from the wording of Art. 105a paragraph. 5 of the Banking Law, such processing may be performed for a period not longer than 12 years from the expiry of the obligation - in the case of B. and not longer than 5 years from the expiry of the obligation - in the case of the Bank.

As for the Bank, it processes the Complainant's personal data only for evidence purposes, resulting from the limitation period for claims. Thus, the basis for the processing of the Complainant's personal data by the Bank is currently Art. 6 sec. 1 letter f) of Regulation 2016/679 in connection with art. 118 of the Civil Code.

In connection with the findings, it should be noted that the continuation of administrative proceedings by the President of Personal Data Protection, initiated by a complaint about irregularities in the processing of the complainant's personal data by the Bank, aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act is unfounded.

According to the wording of the above-mentioned of the provision, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the lawful state, in particular: removing the deficiencies (1), supplementing, updating, rectifying, disclosing or failure to provide personal data (2), application of additional security measures for the collected personal data (3), suspension of the transfer of personal data to a third country (4), data protection or transfer to other entities (5) or deletion of personal data (6). From the wording of Art. 18 sec. 1 of the Act of 1997, and at the same time from the definition of an administrative decision - as an act decisive in a ruling manner about the rights and obligations of the parties to the proceedings in the factual and legal status established and valid at the time of its issuance - it follows that the personal data protection authority does not assess past events, no continued at the time of the judgment. The decision of the President of the Personal Data Protection Office (UODO) is an instrument to restore lawfulness in the data processing process carried out at the time of issuing the decision.

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.

2021-05-13