

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.59.2019

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 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with art. 12 point 2 and art. 22 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), Art. 6 sec. 1 lit. f) and art. 57 sec. 1 lit. a) 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 (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), and in connection with Art. 105 paragraph. 4 and art. 105a paragraph. 1, 3 and 4 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2018, item 2187, as amended), following administrative proceedings regarding the complaint of Mr. MM against the processing of his personal data by ASA, 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. MM, hereinafter referred to as the "Complainant", about the processing of his personal data by ASA, hereinafter also referred to as the "Bank", consisting in making them available to B., hereinafter also referred to as "B.". The complainant alleged that the Bank processed his personal data (including by making them available to B.) without a legal basis and in breach of his disclosure obligations, after the expiry of the obligations arising from the agreement between him and the Bank of [...] December 2009 with the number [...]. In view of the presented situation, the Complainant requested: fulfillment by the Bank of the information obligation resulting from the content of Art. 25 sec. 1 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 "u.o.d.o. 1997 ",

deletion of his personal data from the BI database. or "updating them to the actual state, and therefore transferring them to statistical section B."

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

On [...] December 2009, the Complainant concluded with C. (whose legal successor - in connection with his takeover pursuant to Art. 492 § 1 point 1 of the Act of 15 September 2000, Code of Commercial Companies - is ASA) Agreement no. [...] By [...], hereinafter referred to as the "Credit Agreement". According to this agreement:

a) The complainant "was informed about his right to access and correct his personal data and the fact that the data controller is BANK with its seat [...]. Providing data is voluntary and serves the purpose of fulfilling the Agreement. Based on Article. 105 paragraph. 4 of the Act of August 29, 1997 Banking Law [...] these data will be transferred to B. [...] and may be processed by B. and made available to other banks and other institutions for the purposes and to the extent specified in Art. 105 and 105a of the Banking Law. The BORROWER has the right to access this data, correct it, request the cessation of data processing and raise objections under the conditions set out in the Act of August 29, 1997 on the protection of personal data [...] "(point [...] of the Credit Agreement) ,

b) The complainant "was informed that [...] BANK may transfer his personal data as well as information covered by banking secrecy to V., institutions affiliated with V. or other such Payment Organizations, inter alia, for billing purposes, processing complaints or preventing fraud, and that these data may be processed by the above-mentioned institutions "(point [...] of the Loan Agreement),

c) The complainant consented to the processing of his personal data by the Bank after the expiry of the Loan Agreement in order to promote the Bank's financial products and to assess the creditworthiness and credit risk (point [...] of the Loan Agreement),

d) The complainant was informed that "pursuant to Art. 105 paragraph. 4d of the Banking Law Act, the BANK may, through BI. provide financial institutions that are bank subsidiaries with information on obligations arising under the agreement and related to the performance of banking activities "(point [...] of the Loan Agreement),

e) The complainant consented to "processing by B. and making available to financial institutions information provided by BANK about obligations arising from this Agreement for a period not exceeding five years." (point [...] of the Credit Agreement).

Due to the delay in the repayment of obligations under the Loan Agreement (in November 2011, amounting to - as explained by the Bank - 76 days), a written statement of [...] December 2011, sent on [...] December 2011 to the address indicated in Credit agreement, the complainant's address, the Bank terminated the credit agreement. In this statement, the Bank called the Complainant to pay the arrears on the account of the Credit Agreement and informed, inter alia, on the intention to use, pursuant to art. 105a paragraph. 3 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2018, item 2187, as amended), hereinafter referred to as "pr.bank." (due to the delay in payment of the liability exceeding 60 days), the right to process information constituting banking secrecy for a period of 5 years after the expiry of the obligation, without the consent of the Complainant, including processing in system B.

The loan agreement was terminated in January 2012, after the 30-day deadline for the payment of arrears on the account of the Loan Agreement, set by the Bank ineffectively.

On [...] June 2014, the Complainant made full repayment of the arrears on the account of the Credit Agreement. Thus, the obligation under the agreement between the Complainant and the Bank expired, and the Bank and B. started processing information about the Complainant and the obligation under the Credit Agreement, initially based on his consent expressed in the Credit Agreement, and from [...] July 2016 (ie from the date on which the first letter from the Complainant was received by the Bank, which was treated by the Bank as a withdrawal of its consent) pursuant to Art. 105a paragraph. 3 bank pr. - without his consent.

By letters of [...] June 2016 (date of receipt by the Bank: [...] July 2016), [...] September 2016 (date of receipt by the Bank: [...] September 2016) and [...] October 2016 (date of receipt by the bank: [...] October 2016) The complainant called on the Bank to stop processing his data related to the Credit Agreement in order to assess creditworthiness and credit risk, and in particular to remove them from B., System [...] And possibly other registers and institutions. The complainant justified his request by the Bank's failure to meet one of the conditions justifying such processing (referred to in Article 105a (3) of the Banking Law) - the obligation to inform him by the Bank about the intention to process banking secret information concerning him, without his consent, for a period of 5 years from the expiry of the obligation. The Bank refused the Complainant's requests, indicating that such information was provided to the Complainant in the statement of [...] December 2011 on the termination of the Loan Agreement, sent by registered mail on [...] December 2011 to the Complainant's address indicated in the Loan Agreement. In the explanations submitted in these proceedings, the Bank presented the confirmation of sending this letter via operator I. - a

copy of the mailing book of [...] December 2011.

Currently, the Bank - in accordance with its explanations submitted in these proceedings on [...] September 2019 - processes the Complainant's personal data in the following areas: identification data, address data and data regarding the banking product (Loan Agreement) pursuant to 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" and pursuant to art. 118 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145, as amended) in connection with Art. 5 sec. 1-3 of the Act of April 13, 2018 amending the Act - Civil Code and certain other acts (Journal of Laws of 2018, item 1104). The Bank processes the Complainant's personal data for purposes related to the establishment, pursuit of claims and defense against any claims related to the implementation of the Loan Agreement. Currently, B. - in accordance with his explanations submitted in these proceedings on [...] September 2019 - processes the Complainant's personal data provided to him by the Bank in the scope of data related to the Loan Agreement pursuant to Art. 105 paragraph. 4 and 5 pr.bank. The Loan Agreement account in B. has the status of a closed account and is processed for the use of internal methods and other methods and models.

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), hereinafter referred to as "u.o.d.o. 2018 ", ie 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, on the basis of u.o.d.o. 1997, in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "the Code of Administrative Procedure". All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1-3) of the Act on Personal Data Protection Act 2018).

Pursuant to Art. 57 sec. 1 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 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", without prejudice to other tasks determined pursuant to this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and deals with complaints brought by the data subject or by a data subject empowered by him, 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., EI / 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".

In the present case, the Complainant questioned the processing by the Bank - pursuant to Art. 105a paragraph. 3 bank pr. - his personal data for the purpose of assessing creditworthiness and analyzing credit risk after the expiry of the obligation under the Credit Agreement, consisting in transferring and processing them in system B.

The legal act that regulates in detail the processing of personal data of bank customers is primarily pr. Bank. Therefore, the assessment of the processing of the Complainant's personal data in connection with the contract between him and the Bank should be made in conjunction with the provisions of this Act.

Pursuant to Art. 105 paragraph. 4 bank pr. banks may, together with banking chambers of commerce, establish institutions authorized, inter alia, to collect, process and make available to: 1) 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 internal methods and other models, 2) 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. The institutions established on the basis of the provision referred to above include, inter alia, B. Pursuant to Art. 105a paragraph. 1 bank pr. processing by banks and institutions established pursuant to art. 105 paragraph. 4 bank pr. (and thus also by B.), information constituting banking secrecy with regard to natural persons may be performed, subject to Art. 104, art. 105 and art. 106-106c of Bank Law, in order to assess creditworthiness and analyze credit risk.

Pursuant to Art. 105a paragraph. 2 bank pr. the institutions referred to in para. 1 (including banks and B.), may, subject to subpara. 3, process information constituting banking secrecy in the scope relating to natural persons after the expiry of the obligation resulting from the contract concluded with the bank or other institution authorized by law to grant loans or loans, provided that the written consent of the person to whom the information relates has been obtained. This consent may be revoked at any time.

The issue of processing information constituting banking secrecy relating to a natural person after the expiry of the obligation resulting from the contract concluded with the bank, in the event of the lack of consent of that person, is regulated by Art. 105a paragraph. 3 bank pr. This provision states that the institutions referred to in para. 1 (including banks and B.), may process information constituting banking secrecy concerning 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 or loans, without the consent of the person the information relates to, when the person the person has not fulfilled the obligation or has delayed more than 60 days in the performance of the service resulting from the contract concluded with the bank or other institution legally authorized to grant loans or loan, and after these circumstances at least 30 days have elapsed from informing the person about the intention to process the related information constituting a bank secret without its consent. Pursuant to Art. 105a paragraph. 5 bank pr. such processing may be carried out for a period not exceeding 5 years from the date of termination of the obligation.

However, pursuant to Art. 105a section 4 of the Banking Law. banks and institutions referred to in art. 105 paragraph. 4 bank pr. (including B.), may process information constituting banking secrecy concerning natural persons, after the expiry of the

obligation resulting from an agreement concluded with a bank or other institution authorized by law to grant credits or a loan, without the consent of the person the information relates to, for the purposes of applying internal methods and other methods and models. Pursuant to Art. 105a paragraph. 5 bank pr. such processing may be carried out for a period of 12 years from the date of termination of the obligation

The scope of the processed information referred to in art. 105a paragraph. 3 and 4 of the Bank Law, may include data on a natural person or data on a liability (section 6 of the Bank Law).

Referring to the above-mentioned provisions of the Law of Bank. to the facts of the case it should be stated that:

During the term of the loan agreement (from its conclusion [...] December 2009 until its termination in January 2012), the Complainant's personal data was processed by the Bank for the purpose of implementing the Loan Agreement pursuant to Art. 23 sec. 1 point 3 of the then effective 1997. The transfer of the Complainant's data to B. and their further processing in B's system for the purposes of creditworthiness assessment and credit risk analysis was based on the provisions of Art. 105 paragraph. 4 and 105a sec. 1 bank pr.

In the period from the termination of the Loan Agreement until the expiry of the obligation (ie until [...] June 2014), the Bank processed the Complainant's personal data in order to pursue claims arising in connection with the Loan Agreement, pursuant to Art. 23 sec. 1 point 5 in connection with Art. 23 sec. 4 u.o.d.o. 1997. The processing of the Complainant's data in the B system during this period for the purpose of assessing creditworthiness and analyzing credit risk continued to be based on the provisions of Art. 105 paragraph. 4 and 105a sec. 1 bank pr.

In the period from the expiry of the obligation arising from the Loan Agreement to [...] July 2016, the processing of the Complainant's personal data by the Bank and B. was based on the consent given by the Complainant upon the conclusion of the Loan Agreement on [...] December 2009. and canceled by the Complainant's letter dated [...] June 2016, received by the Bank on [...] July 2016.

In the period from [...] July 2014 to [...] July 2019, the Bank was authorized to process the Complainant's personal data in the B system (without the Complainant's consent) pursuant to Art. 105a paragraph. 3 bank pr.

At this point, the allegation of the Bank's failure to comply with Art. 105a paragraph. 3 bank pr. the obligation to inform him about the intention to process his personal data after the expiry of the obligation under the Credit Agreement. To confirm the fulfillment of the obligation, the Bank provided a copy of a letter dated [...] December 2011, containing a statement on the

termination of the Loan Agreement along with a clause informing about the intention to process the Complainant's personal data after the expiry of the obligation, and a copy of the mailing book clearly confirming the fact sending this letter to the complainant's address. Irrelevant for the assessment of the Bank's compliance with the objective under Art. 105a paragraph. 3 bank pr. the fact that during that period he did not live at the address indicated (he was outside Poland) remains, raised by the complainant, since the Bank did not inform about it and did not provide him with another correspondence address.

Currently, B. - as explained in the letter of [...] September 2019 - is processing the Complainant's personal data, without his consent, in the scope relating to the Loan Agreement in order to use internal methods and other methods and models, which is legally based in art. 105a paragraph. 4 bank pr.

Currently, the Bank - in accordance with the statement made in the letter of [...] September 2019 - processes the Complainant's personal data, without his consent, in the scope relating to the Loan Agreement for purposes related to the determination, investigation and defense of possible claims arising from the implementation of the Loan Agreement, in based on Art. 6 sec. 1 lit. f) Regulation 2016/679. In the absence of the Complainant's objection to such processing of his personal data and the fact that it was not questioned by the Complainant in a complaint addressed to the President of the Personal Data Protection Office or during these proceedings, it should be considered legal.

Summarizing the above, it should be stated that the Complainant's personal data were not and are not unlawfully processed (without a legal basis) by the Bank. The Complainant's request for the removal of his personal data from B's database should not be taken into account, also because the current factual situation (existing at the time of issuing this decision) corresponds to the content of the Complainant's alternative (as compared to the complete deletion of data from B's system) request - "Update his personal data to the actual state, and thus transfer them to the statistical section B."

Referring to the Complainant's request for the Bank to fulfill the information obligation under Art. 25 sec. 1 u.o.d.o. 1997, it should be noted that the provision indicated by the Complainant (applicable as the entire - as a rule - PDPO 1997, until May 24, 2018) concerned a situation in which the data controller collected personal data not from the data subject, but from other sources. Therefore, it does not apply in the present case, as the Bank obtained the Complainant's personal data directly from him during the conclusion of the Loan Agreement. In such a situation, the data controller's obligation to inform was regulated by Art. 24 sec. 1. u.o.d.o. 1997. This obligation in the present case was fulfilled by the Bank because - as it was established and presented in point 1 of the statement of reasons for this decision concerning the description of the facts of the case - the

loan agreement, accepted and signed by the Complainant on [...] December 2009, contained information indicated in art. 24 (1) of the Act on 1997, i.e. the address of the registered office and the full name of the data controller, the purpose of data collection, indication of possible recipients or categories of recipients of his data, information on the right to access and correct his data, as well as information on the voluntary submission of data by the Complainant.

Bearing in mind the above, it should be stated that there are no grounds for the President of the Personal Data Protection Office to take into account the complainant's requests and to issue an administrative decision by which the authority would order the Bank to remove his personal data from the B system or transfer them to section B. data are processed for the purposes of applying internal methods and other methods and models, as well as fulfilling the Complainant's information obligation specified in Art. 25 sec. 1 (or actually: Art. 24 (1)) u.o.d.o. 1997. In this factual and legal situation, 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.

2021-05-11