THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 08

May

2020

DECISION

ZKE.440.31.2019

Based on Article. 104 § 1 of the Act of 14 June 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. 1, 3, 4 and 5 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357, as amended), following administrative proceedings regarding the complaint of Mrs. B. G., against the processing of her 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 President of the Personal Data Protection Office (formerly the Inspector General for Personal Data Protection) received a complaint from Mrs. B. (hereinafter also: Bank B.). It should be noted here that on [...] November 2016, Bank B. was split into two separate parts, one of which related to individual and business clients, excluding clients with mortgage products, was acquired by A. S.A. (hereinafter referred to as "the Bank") (the evidence concerning the split of Bank B. and the takeover of some of its products by A. S.A. is contained in the file of the present case). Therefore, all products for which the data processing period resulting from applicable law has not expired, were transferred by Bank B. to A. S.A.

The applicant, in connection with the repayment of the liability under the loan agreement of […] February 2004 No […], requested that the Bank not process its personal data for the purposes of assessing its creditworthiness and analyzing credit

risk.

Moreover, the Complainant indicated that the Bank, in connection with the debt under the loan agreement of […] February 2004 No. […], did not meet the conditions under Art. 105a paragraph. 3 of the Banking Law of August 29, 1997 (Journal of Laws of 2019, item 2357, as amended), hereinafter referred to as the Banking Law, i.e. the Bank did not notify the complainant of its intention to process her personal data without her consent in register A.

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

On […] February 2004, the Bank signed a cash loan agreement no. […] With the applicant.

The complainant's data on the cash loan agreement of [...] February 2004 No. [...] were provided by the Bank on [...] April 2004 to B. S.A. (hereinafter also: B.).

The Bank provided B. with the applicant's personal data in connection with the cash loan agreement of [...] February 2004 No. [...] pursuant to Art. 105 paragraph. 4 of the Banking Law.

In connection with the repayment of the above-mentioned obligations with arrears, the complainant's personal data were processed pursuant to art. 105a paragraph. 3 of the Banking Law.

The applicant repaid the liabilities under the cash loan agreement account of […] February 2004 No […] and that account on […] April 2012 was closed.

Due to the fact that on [...] November 2016, Bank B was split and all products for which the data processing period resulting from applicable law has not expired, including the product - the account of the loan agreement of February [...] 2004 no. […] And its closure concerning the applicant were transferred to ASA

In connection with the repayment by the applicant of the above-mentioned liabilities, the Bank and B. processed the complainant's personal data pursuant to art. 105a paragraph. 3 of the Banking Law, for the period specified in Art. 105a paragraph. 5 of the Banking Law, i.e. for a period of 5 years from the expiry of the liability, i.e. April 13, 2017.

In addition, the complainant's personal data related to the above-mentioned contract have been moved to the so-called "Statistical database" and are processed for the purposes of using internal methods and other methods and models referred to in Part Three of Regulation No. [...] (Article 105a (4) of the Banking Law) for the period specified in Art. 105a paragraph. 5 of the Banking Law, i.e. for a period of 12 years from the repayment of the liability.

According to the explanations of the Bank submitted in these proceedings (letter of [...] February 2015), the conditions listed in Art. 105a paragraph. 3 of the Banking Act, were complied with against the complainant in a letter of [...] August 2006. Considering that the complainant also attached as evidence a copy of the letter of [...] May 2014 containing incl. notification of the processing of the complainant's personal data for the purpose of assessing the creditworthiness and analyzing credit risk without her consent for a period of 5 years from the repayment of the liability (evidence: a copy of the letter of [...] May 2014 in the case file), it was necessary to recognize that the Bank had effectively notified the complainant of the intention to process her personal data without her consent and thus fulfilled the obligation under Art. 105a paragraph. 3 of the Banking Law.

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 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, 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.

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 contract between him and the Bank should be made in conjunction with the provisions of this Act.

Therefore, referring to the complainant's demand to declare the legality of the currently ongoing processing of her personal data, both by the Bank and B. . 105 paragraph. 4 of the Banking Law. Pursuant to 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; other institutions legally authorized to grant loans - information constituting banking secrecy to the extent to which such information is necessary in connection with granting loans, cash advances, bank guarantees and sureties; 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; lending 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 secrecy 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 credit risk analysis.

As shown by the factual findings, the Bank and B. are currently processing the complainant's personal data in connection with the conclusion of the cash loan agreement of [...] February 2004 No. [...], solely for the purposes of applying internal methods and other methods and models referred to in referred to in the third part of Regulation No 575/2013, to which they are entitled pursuant to art. 105a paragraph. 5 of the Banking Law, i.e. for a period of 12 years from the repayment of the liability.

In addition, according to the explanations of the Bank submitted in these proceedings and the evidence attached to the complaint lodged with the President of the Personal Data Protection Office by the complainant, i.e. a copy of the letter of [...] May 2014 containing a notification about the processing of the complainant's personal data in order to assess the creditworthiness and analysis of credit risk without its consent for a period of 5 years from the date of repayment of the liability, it had to be considered that the Bank effectively fulfilled the obligation referred to in Art. 105a paragraph. 3 of the Banking Law, i.e. he effectively notified the complainant of the intention to process her personal data in the above-mentioned purposes without her consent (proof: copy of the letter of [...] May 2014 in the case file).

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 fee for the complaint is PLN 200. The party has the right to apply for the right to assistance, including exemption from court costs.

However, due to the state of epidemic in force on the date of the decision, pursuant to Art. 15 Zzr paragraph. 1 point 1 of the Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374), the running of this period currently it will not start; it will start to run on the day following the last day of the epidemic or immediately following any possible epidemic threat.

2021-02-17