THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 03

July

2020

DECISION

ZKE.440.58.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256), 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 art. 12 point 2, art. 18 sec. 1 and art. 22 sec. 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and Art. 12 in connection with Art. 15 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 (Journal EU L 119 of 04/05/2016, p. 1 and Journal of Laws of the EU L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of the Lord of the Republic of Poland, against the processing of his personal data by OSA, including failure to fulfill the information obligation under Art. 32 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, the President of the Office for Personal Data Protection

orders O. S.A. fulfilling the information obligation towards Mr. R. P., by providing him with:

a) information about the categories of personal data concerning him, subject to processing by O. S.A. and;

b) a copy of his personal data subject to processing by O. S.A.

Justification

The President of the Personal Data Protection Office (formerly: the Inspector General for Personal Data Protection) received a complaint from the Lord of the Republic of Poland, hereinafter referred to as the "Complainant", about the processing of his personal data by OSA, hereinafter also referred to as: "the Company", including the failure to fulfill the obligation towards him information from art. 32 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922).

In the content of the complaint, the Complainant pointed out that in connection with the electronic complaints concerning the

services provided by the mobile operator - the consideration of which the operator made dependent on the provision of detailed personal data, including the PESEL number and the identity card number - the Complainant twice requested the Company to provide a copy of his personal data processed by the Company and related to the e-mail address used by the Complainant for the purposes of communication with the Company. The company did not provide the Complainant with the above-mentioned information, thus preventing him from exercising his rights under the provisions on the protection of personal data.

In connection with the allegations, the Complainant applied to the President of the Personal Data Protection Office for an administrative decision ordering the Company to fulfill the information obligation referred to in 33 section 1 in connection with Art. 32 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data.

In order to establish the circumstances relevant to the resolution of this case, the President of the Office for Personal Data Protection initiated administrative proceedings. On the basis of the evidence collected in the case, he established the following facts:

The complainant is a client of the Company in connection with the use - as part of the prepaid prepaid card service - of the telephone number [...].

On […] December 2013, using the e-mail address: […], the Complainant submitted a complaint by e-mail to the address of the Customer Service Office […] in connection with the provision of services provided by the mobile operator. When submitting the said complaint, the Complainant provided the Company with the necessary personal data in the scope of: name and surname, mailing address and telephone number, allowing for the unequivocal identification of the subscriber.

The legal basis for the acquisition and processing of the Complainant's personal data by the Company was 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), because the data was collected by the Company in order to fulfill the obligation resulting from the law, ie Art. 106 sec. 1 of the Act of July 16, 2004 - Telecommunications Law (Journal of Laws of 2019, item 2460), according to which the provider of publicly available telecommunications services is obliged to consider complaints about the telecommunications service.

In response to the submitted complaint, on [...] January 2014, the Company asked the Complainant to send, with the same correspondence, a telephone number, PUK code or detailed data of the owner of the number if the number is registered (i.e. name, surname, address, series and number of ID card and PESEL number) - indicating that the above-mentioned the

information will allow for the analysis of the factual grounds of the complaint and for providing a response.

On [...] January 2016, the Complainant submitted another complaint notification No. [...], in which he provided all data necessary for its consideration. The electronic correspondence, supplementing the notification of [...] January 2016, was conducted by the Complainant with the Company also on [...] January 2016 and [...] January 2016. In connection with the examination of the complaint, the Company informed the Complainant that via SMS, about the need to provide a correspondence address in order to enable him to provide an appropriate reply. The complainant questioned the above-mentioned activity of the Company, stating that he had provided it with the address data together with the first message initiating the complaint process. At the same time, the Complainant, within the scope of his right under Art. 32 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data, on [...] January 2016, he requested to provide him with information on the personal data processed by the Company relating to his person and related to the e-mail address: [...] - by providing a copy of this data. The company did not respond in any way to the complainant's request formulated in this way.

On [...] July 2016, the Complainant again, using the Customer Service Office's electronic mailbox, asked the Company about the method of activating one of its services. This time, however, in the e-mail, he signed only with his name and surname, excluding other personal data concerning him. On the same date, the Company informed the Complainant that it would be possible to respond to his inquiry after sending the following data: the telephone number concerned, the name and surname of the owner of the number and the subscriber code, or - if they are not known - the registered address and correspondence address, PESEL number or ID card number and series. In connection with the above, on [...] July 2016 the Complainant once again requested to be sent to his e-mail address information on the scope and content of the Complainant's personal data at the disposal of O. S.A.

In order to verify whether the person who made the request is the person authorized to obtain the above information, the Company asked the Complainant to provide the data clearly identifying his person, i.e. the PESEL number and the ID card number. In the absence of the above-mentioned information, the Company withdrew from fulfilling the request.

Currently, the Company processes the Complainant's personal data in the following areas: name and surname, address, telephone numbers, e-mail address and PESEL number, the latter being obtained by the Company in connection with the entry into force of the provisions of the Act of 10 June 2016 on anti-terrorist activities (Journal of Laws of 2019, item 2460), imposing on the users of pre-paid services the obligation to provide the provider of these services with the specified data categories. The

legal basis for the processing of the complainant's personal data by the Company is art. 6 sec. 1 lit. b) 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 EU L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), hereinafter: "Regulation 2016/679", as the processing is necessary to perform the contract, which the party is the Complainant. Moreover, the Company processes the complainant's personal data pursuant to art. 6 sec. 1 lit. c) of Regulation 2016/679, in order to fulfill the legal obligations incumbent on her as the administrator of personal data, such as: storing connection data for the purposes of future proceedings of authorized bodies, responding to complaints within the time and form provided for by law, ensuring network security in accordance with with the provisions of the Telecommunications Law or the detection and prevention of fraud. In connection with the provision of telecommunications services to the Complainant - due to the application of the provisions of Regulation 2016/679 on May 25, 2018 - the Company sent him a text message indicating that all information on the legal grounds and purposes of data processing and the Complainant's rights, available are available on the operator's website at: [...]

In this factual state, the President of the Personal Data Protection Office (hereinafter also referred to as the "President of the Personal Data Protection Office") weighed as follows.

On May 25, 2018, the provisions 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.", entered into force.

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection Act, 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 Act of August 29, 1997 on the Protection of Personal Data (Journal U. of 2016, item 922, as amended), hereinafter also referred to as the "1997 Act", 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). Importantly, in the context of this procedure, these provisions specify measures to restore the legal status, which may be applied - by way of an administrative decision - by the President of the Office for Personal Data Protection in the event of a breach of the provisions on the protection of personal data. Pursuant to Art. 18 sec. 1 of the 1997 Act, the President of the Personal Data Protection Office may order: 1) the removal of deficiencies, 2) supplementing, updating, rectifying, disclosing or not disclosing personal data, 3) applying additional measures securing the collected personal data, 4) suspending the transfer of personal data to the

state third, 5) securing data or transferring them to other entities or finally, 6) deleting personal data.

From May 25, 2018, 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 / WE (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended and Journal of Laws UE L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679", whose provisions regulate issues related to the processing of personal data of natural persons.

Taking into account the above, it should be stated that the present proceedings, initiated and not completed before May 25, 2018, are conducted on the basis of the Act of August 29, 1997 on the protection of personal data (with regard to the provisions governing the administrative procedure) and on the basis of the Regulation 2016/679 (in the scope determining the legality of the processing of personal data). The manner of conducting proceedings in cases initiated and pending before the date of entry into force of new regulations on the protection of personal data, resulting from the provisions of law, correlates with the well-established position of the doctrine, according to which “a public administration body assesses the actual state of the case according to the date of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that the public administration authority issues an administrative decision on the basis of the provisions of law in force at the time of its issuance ”(Commentary to the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws No. 00.98.1071), M. Jaśkowska, A. Wróbel, Lex., El / 2012).

At the same time, however, taking into account the fact that the request for disclosure of personal data addressed by the Complainant to the Company, as well as the submission of an application to the President of Personal Data Protection, in connection with the refusal to comply with the request in question by the Company, took place during the period of application of the Act of 29 August 1997 on the protection of personal data, it should be stated that the analysis of the processing of the Complainant's personal data by the Company cannot be carried out in complete isolation from the regulation contained in the above-mentioned legal act.

The Act of August 29, 1997 on the protection of personal data defined the rules of conduct in the processing of personal data and the rights of natural persons whose data is or may be processed in data files (Article 2 (1) of the Act). The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 sec. 1 of the Act, according to which the processing of data was allowed only when it was necessary to exercise the right or fulfill an obligation

resulting from a legal provision; 3) it was necessary for the performance of the contract when the data subject was a party to it or when it was necessary to take action before concluding the contract at the request of the data subject; 4) it was necessary to perform tasks specified by law for the public good, or; 5) it was necessary to fulfill legally justified purposes carried out by data controllers or data recipients, and the processing did not violate the rights and freedoms of the data subject.

Taking into account the above, it should be stated that the Company obtained the complainant's data and processed them pursuant to art. 23 sec. 1 point 2 of the Act of 1997, because these data were necessary for her to fulfill the obligation resulting from the provisions of the law. The provision stipulating such an obligation in the present case was, in turn, Art. 106 sec. 1 of the Act of July 16, 2004 - Telecommunications Law (Journal of Laws of 2019, item 2460), according to which the provider of publicly available telecommunications services is obliged to consider complaints about the telecommunications service. The complainant provided his personal data to the Company in connection with the numerous complaints he made about the services provided by the mobile operator as part of the use of the prepaid card offer for the telephone number […]. The company processed the Complainant's data for a period of at least 30 days from the date of filing the complaint, i.e. for the period in which the telecommunications service provider - pursuant to § 7 para. 1 of the Regulation of the Minister of Administration and Digitization of February 24, 2014 on complaints about telecommunications services (Journal of Laws of 2014, item 284) - should respond to the complaint. Thus, the activities of the Company, consisting in collecting and processing information about the Complainant, for the purpose specified in the above-mentioned legal provisions, should be considered fully legal from the point of view of the provisions on the protection of personal data.

Similarly, in the opinion of the President of the Personal Data Protection Office, the Company cannot be accused of demanding an excessively wide scope of personal data which, in the opinion of the Complainant, was to be conditional on the consideration of complaints submitted by him. According to § 4 sec. 1 of the aforementioned Regulation of the Minister of Administration and Digitization of February 24, 2014 on complaints about a telecommunications service, the complaint should include, among others: 2) specification of the subject of the complaint and the period complained about; 3) presentation of the circumstances justifying the complaint and; 4) the number assigned to the complainant to which the complaint relates, the identification number given to the complainant by the service provider or the address of the network termination point. As follows from the copy of the correspondence exchanged between the Complainant and the Company attached to the files of the proceedings, the Company, for the purposes of complaints, requested the Complainant to disclose only the first and last

name, telephone number and subscriber code - indicating the legitimacy of providing additional personal data (e.g. PESEL number or ID card) only if the Complainant would be one of the customers whose telephone number is to be registered. The complainant, as a person using the pre-paid card service, not subject to registration, was in no way obliged to provide the Company with additional personal data, and therefore the information contained in the summons regarding the owners of registered numbers was for him only informative and in no way was it. tied up. In order to avoid any doubts in the above scope, the Company should have included, in response to the Complainant's complaint, a clear instruction indicating that providing it with additional data is only optional.

Regarding the Complainant's allegation that the Company did not provide him with the information referred to in Art. 32 sec. 1 of the 1997 Act (i.e. information on the scope and content of the personal data processed by the Company regarding the Complainant), it should be clarified that, pursuant to the previously applicable Art. 33 paragraph 1 of the Act of 1997, at the request of the data subject, the data controller was obliged, within 30 days, to inform him of his rights and provide the information referred to in art. 32 sec. 1 items 1-5a of the 1997 Act, including, inter alia, provide in an intelligible form: what personal data was contained in the set, how the data was collected and for what purpose and scope these data were processed. The commented provision was related to Art. 32 of the Act of 1997, which provided that the data subject could request the controller to provide him with certain information. In accordance with paragraph 1 of this provision, each person had the right to control the processing of data concerning him contained in data files, and in particular the right to: obtain exhaustive information whether such a set exists and to determine the data controller, the address of its registered office and full name, and in if the data controller is a natural person - his place of residence and first and last name (point 1), obtain information about the purpose, scope and method of processing data contained in such a set (point 2), obtain information from when his data is processed in the set concerning, and providing in an intelligible form the content of these data (point 3), obtaining information about the source from which the data concerning it originate, unless the data controller is obliged to maintain state, official or professional secrets in this respect (point 4) , obtain information on how to share data, in particular information about recipients or categories of recipients, kt for which these data are made available (point 5), to obtain information about the premises for taking the decision referred to in art. 26a paragraph. 2 (point 5a) of the Act 1997.

The above-mentioned regulations were also reflected in the provisions on data protection in force since May 25, 2018 - which is important as, although the Complainant requested the Company to fulfill the information obligation pursuant to the provisions

of Act 1997, the public administration body was obliged to is to issue an administrative decision on the basis of the provisions of law in force at the time of its issuance, which after May 25, 2018 will be the provisions of Regulation 2016/679.

Currently, the fulfillment of the information obligation at the request of the data subject is justified in art. 15 of the Regulation 2016/679. This provision stipulates that the data subject is entitled to obtain from the controller confirmation as to whether personal data concerning him or her are being processed, and if so, access them (paragraph 1). The administrator, in turn, is obliged to provide the data subject with a copy of the personal data subject to processing. If the data subject requests a copy by electronic means and, unless otherwise indicated, the information is provided in a commonly used electronic form (paragraph 3).

Art. 15 of the Regulation 2016/679 is to provide persons whose personal data are processed with access to information about the circumstances of their processing. Reliable fulfillment by the data controller of the obligation to ensure continuous access to data is necessary, because it guarantees the data subject the ability to exercise control over the correctness of the processing. Submitting an application for access to data obliges the controller to take appropriate actions, in particular to provide the natural person with the requested information - each time in the scope resulting from the application, and at the same time not narrower than provided for in the provision of Art. 15 of the Regulation 2016/679. This provision specifies the minimum information that the data controller must provide to the applicant, but it is important that the information requested by the Complainant under this provision refers to his person and corresponds to the definition of personal data defined in Regulation 2016/679.

At the same time, it should be noted that pursuant to Art. 12 of Regulation 2016/679, the controller shall take appropriate measures to provide the data subject with all information referred to in art. 13 and 14, and conduct any communication with her pursuant to Art. 15-22 and 34 on processing. Information shall be provided in writing or otherwise, including, where appropriate, by electronic means. If the data subject so requests, the information may be provided orally, provided the identity of the data subject is confirmed by other means.

Therefore, since in the case at hand, the Complainant submitted to the Company twice via e-mail a request that meets the requirements of the application under Art. 33 of the Act 1997 (currently - art. 15 of Regulation 2016/679), the Company, as the data controller, was obliged to provide him with information on the processed data, within the limits set by his request and the scope specified by art. 32 sec. 1 points 1-5a of the Act 1997 (currently - Article 15 of Regulation 2016/679), and thus to provide

the Complainant with information about the scope and content of the processed data in a commonly understood form. It should also be pointed out that there was nothing unjustified to make the fulfillment of the commented obligation dependent on the Complainant providing the Company with a wider range of data than it resulted from the content of his application. The complainant, when making the request, provided the Company with his name, surname, correspondence address, telephone number and e-mail address. The above data - contrary to the Company's claims - should be considered sufficient to unambiguously verify the identity of the Complainant. As is clear from the established facts, the Complainant, in connection with the complaints submitted, invariably contacted the Company using the same e-mail address, and the Company accepted this form of communication with the Complainant. Considering the above, in the opinion of the President of the Personal Data Protection Office, there were no grounds to assume that the application pursuant to Art. 33 paragraph 1 of the 1997 Act, any other unauthorized person could apply. Thus, it should be acknowledged that the Company unjustifiably refused to provide the Complainant with information on the scope and content of the personal data processed by it concerning the Complainant, which breached the provisions on the protection of personal data.

Therefore, having regard to the Complainant's right, referred to in Art. 15 sec. 1 of the Regulation 2016/679 and the corresponding obligations of the Company as a data administrator, resulting from art. 12 in connection with Art. 15 sec. 3 of Regulation 2016/679, the President of the Office for Personal Data Protection ordered the Company to fulfill the information obligation towards the Complainant by providing him - in accordance with the request - with information about the categories of personal data subject to processing (ie on the "scope of data processing", which was treated in Art. 32 (1) (2) of the Act 1997) together with a copy of the Complainant's personal data held by OSA

In this factual and legal state, the President of the Personal Data Protection Office resolved as at the beginning.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to file 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 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.

2021-03-30