

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.88.2019

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) in connection with joke. 18 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended) and 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) and art. 57 sec. 1 point f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal Urz. UE L 119 of 04/05/2016, p. 1, as amended), after conducting administrative proceedings regarding the complaint of Mr. MG, against the processing of his personal data by ASA, the President of the Office for Personal Data Protection refuses to accept the request.

JUSTIFICATION

The Inspector General for Personal Data Protection (currently the President of the Personal Data Protection Office) received a complaint from Mr. M. G., hereinafter referred to as the "Complainant", about the processing of his personal data by A. S.A., hereinafter referred to as the "Bank".

In the content of the complaint, the Complainant indicated that the quotation: "On [...] November 2017, the Bank presented to me an advertisement for a cash loan (after logging in) on the internet banking service (attached), despite my objection to the processing of personal data for the purposes of marketing when concluding an agreement with the Bank. Despite the complaint, the Bank did not respond to the processing of my personal data.

To the above-mentioned of the complaint. The complainant attached an e-mail to the Bank of [...] November 2017, in which he asked for an answer to a question concerning, inter alia, indication of the legal basis authorizing the Bank to display on its account in the Bank's electronic banking service - an advertisement for a cash loan.

On the basis of the evidence collected in the case, the President of the Office for Personal Data Protection established the following facts:

The Bank's explanations of [...] June 2018 submitted in the course of the proceedings show that the Bank obtained personal data directly from the Complainant on [...] June 2016 in connection with the implementation of activities aimed at concluding a savings and checking account agreement No. [...]. On that day, the Complainant also signed a framework agreement enabling access to electronic channels. The Bank processes the complainant's personal data in the file "K." in the following scope: name, surname, PESEL number, date of birth, country of birth, place of birth, series and number of the ID card, validity date of the ID card, citizenship, marital status, registered address, address of residence, correspondence address, country of residence, foreign exchange status, mobile phone number, business telephone number, image, mother's maiden name, father's name, mother's name, e-mail address, information about the tax office under which the complainant is subject. The complainant's personal data are processed pursuant to art. 23 sec. 1 point 3 of the Act - in order to implement active account maintenance agreements, i.e. checking and savings account no. [...], Checking and savings account no. [...], Checking and savings account no. [...], Savings account no. [...], Current account [...] No [...], Long-term deposit account No [...], Long-term deposit account No [...]. The Bank informed that it had not obtained the Complainant's consent to the processing of his data for marketing purposes, however, as a result of the analysis of the Complainant's objections contained in the complaint, it found that the following quotation was: a technical problem as a result of which, temporarily, after logging into the platform, customers could display screens with marketing information despite the objection raised. " At the same time, the Bank stated that the above-mentioned irregularity was immediately corrected and he assured that "it was a marginal situation", "and the presentation of the offer in the form of an advertising screen was a result of a technical error". The Bank also referred to the issue of the Complainant's failure to receive a reply to the complaint, i.e. to the e-mail of [...] November 2017, namely that it explained that the quotation "to reports received by the Bank by e-mail, the Bank provides general replies that do not require verification of customer data in the system. The above approach is related to the care for the security of customer data. According to the Bank's complaint policy, a complaint may be submitted [...]" . The Bank also added that on [...] November 2017, it informed the Complainant that in order to verify the situation he described, it was necessary to contact the hotline or the Bank's branch. A client during which he would file a complaint about the issues raised through the communication channels indicated by the Bank. "

In these facts, the President of the Personal Data Protection Office considered the following.

At the outset, it should be noted that on May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), the Office The Inspector General for Personal Data Protection has become 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, pursuant to 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 "1997 Act", in accordance with the principles set out in the Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), hereinafter referred to as "Kpa" . All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) and (2) of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 57 sec. 1 lit. f) Regulation of the European Parliament and the EU Council 2016/679 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 "GDPR", without prejudice to other tasks specified under this Regulation each supervisory authority on its territory shall deal with complaints brought by the data subject or by a body, organization or body 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 pursue further investigations or coordinate actions with another supervisory authority.

On May 25, 2018, the GDPR came into force, the provisions of which regulate issues related to the processing of personal data of natural persons. From that date, the President of the Personal Data Protection Office is obliged to apply the provisions of the GDPR to all administrative proceedings he conducts. When issuing a decision in a given case, the President of the Office takes into account the legal status in force at the time of issuing the decision.

Considering the above and the fact that the proceedings in this case were initiated at the time the 1997 Data Protection Act was in force, the President of the Office, when issuing a decision in this case, is obliged to take into account both the procedural provisions of the 1997 Data Protection Act and the GDPR. .

Pursuant to Art. 18 sec. 1 of the Act on Data Protection of 1997, in the event of a breach of the provisions on the protection of

personal data, the General Inspector for Personal Data Protection (currently 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 legal status , and in particular, inter alia, elimination of deficiencies.

The President of the Office, acting on the basis and within the scope of the competences conferred on him by the provisions of the GDPR, when issuing a decision in a specific case, examines the factual and legal status as at the date of issuing a given decision. The findings made by the President of the Personal Data Protection Office show that the Bank's release of a cash loan advertisement was a one-off action, which is currently not continued.

Therefore, as at the date of this decision, there is no breach by the Bank of personal data protection provisions in the above-mentioned scope. Consequently, the President of the Personal Data Protection Office is not able to issue an administrative decision ordering the restoration of legal status in this case pursuant to Art. 18 of the Data Protection Act of 1997 in connection with joke. 160 sec. 2 of the Data Protection Act of 2018.

Considering that as at the date of the decision in question, the Complainant's personal data are still processed for the purposes of implementing the aforementioned contracts, i.e. pursuant to Art. 23 sec. 1 point 3 of the 1997 Act, the President of the Personal Data Protection Office resolved as in the sentence.

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

2021-03-08