THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.37.2019

Based on Article. 105 § 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 joke. 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) and with Art. 57 sec. 1 points a) and f) 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 of Laws UE L 119 of May 4, 2016, p. 1 and Journal of ASA, his personal data in the field of eye height and color, obtained as a result of making and storing photocopies of his ID card, President of the Office for Personal Data Protection

discontinues the proceedings.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Mr. M. W., hereinafter referred to as the "Complainant", about the processing of his personal data, regarding the height and color of his eyes, by B. S.A. (currently: A. S.A.), hereinafter referred to as "the Society". The applicant submitted that the Society, in connection with the settlement of the motor claim No. information about his height and eye color, which, in his opinion, is not necessary in the claim settlement procedure. Additionally, the Complainant pointed out that the Society had failed to inform him about the purpose of processing these data, thus breaching the information obligation imposed on the personal data administrator in relation to the data subject. In view of the presented situation, the Complainant requested: removal by the Society of his personal data in the field of eye height and color, and o

fulfillment by the Society of the information obligation in relation to him by indicating for what purpose the Society processes his personal data in terms of height and eye color.

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

In February 2015, i.e. in the period in which the events giving rise to the complainant's allegations as formulated in his complaint took place, the Complainant was connected with the Insurance Company by the Autocasco insurance contract, according to which the Insurance Company was obliged to pay the complainant compensation in the event of a motor vehicle loss his vehicle.

In connection with the concluded insurance contract, Autocasco, the Company obtained the complainant's personal data necessary "for the performance of the contract for the liquidation of property damage to the customer's vehicle". As the legal basis for the processing of the complainant's personal data, the Society indicated Art. 23 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 ”- point 1 of this provision (consent of the Complainant), point 2 thereof (exercise of a right or fulfillment of an obligation resulting from a legal provision) and point 3 thereof (performance of the contract concluded with the Complainant).

On [...] February 2015, the complainant reported to the Insurance Company the motor damage to his vehicle, which was then marked by the Society with the reference number [...].

During the inspection of the Complainant's vehicle, carried out in connection with the liquidation of the damage, on [...] February 2015, the appraiser who performed this activity on behalf of the Society made a photocopy of the Complainant's ID card, obtaining and recording in this way, inter alia, data on the applicant's height and eye color. The inspection report signed by the Complainant contained information about the full name and address of the Society's headquarters as the complainant's data administrator, about the purpose of processing these data, about the voluntary submission of such data and about the right of the data subject to access and correct their data. In the same document, the Complainant consented to "processing by B. S.A. his personal data, and in the event of a personal injury - also data on his health, for the purposes related to the liquidation of the reported damage. "

In a complaint letter of [...] March 2015, sent electronically (e-mail) to the Society, the Complainant asked the Society for information for what purpose and on what basis the Society collects his personal data, obtained by "scanning" his evidence personal, in particular, data on height and eye color. At the same time, the complainant asked for "the cessation of data processing in this regard".

In the Society's letter of [...] April 2015, in response to the Complainant's complaint of [...] March 2015, the Society did not address the complainant's requests regarding the processing of his personal data.

In explanations submitted in the course of these proceedings [...] May 2015, the Society informed that “B. complied with the client's request, hence the data such as the growth and color of the client's eyes have been permanently removed from the photo of the ID card as actually redundant data in the process of determining B.'s liability and the amount of the insurance benefit. " By letter of [...] October 2019, the Society provided evidence that the data questioned by the applicant had been removed - a copy of the applicant's ID card, from which the image of the applicant and information about his height and eye color had been removed.

By a letter of [...] June 2015, the Society informed the Complainant that it had removed the data on his height and eye color from the photocopy of his identity card in his possession.

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, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, . item 922, as amended), 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 "kpa". 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., 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".

Referring the above to the established facts, it should be stated that in the course of the investigation, the President of the Office for Personal Data Protection established that currently the complainant's personal data in terms of his height and eye color are not processed by the Society. They were removed from the copy of the Complainant's ID held by the Society no later than [...] May 2015, that is before the date on which the Society submitted - under these proceedings - a declaration of such action.

For the above reasons, the proceedings became redundant and therefore had to be discontinued pursuant to Art. 105 § 1 of the Code of Administrative Procedure, as it is irrelevant.

Pursuant to the above-mentioned provision, when the proceedings for any reason have become redundant in whole or in part, the public administration authority issues a decision to discontinue the proceedings, in whole or in part, respectively. The wording of the above-mentioned provision leaves no doubt that in the event that the proceedings are deemed groundless, the

authority conducting the proceedings will obligatorily discontinue them. At the same time, the literature on the subject indicates that the pointlessness of the administrative procedure, as provided for in Art. 105 § 1 of the Code of Civil Procedure means that there is no element of a material legal relationship, and therefore a decision to settle the matter cannot be issued by deciding on its substance. The prerequisite for discontinuation of the proceedings may exist even before the proceedings are instituted, which will be revealed only in the pending proceedings, and it may also arise during the course of the proceedings, i.e. in a case already pending before an administrative authority (B. Adamiak, J. Borkowski, Code of Administrative Procedure Comment ", 14th edition, CH Beck Publishing House, Warsaw 2016, p. 491). The same position was taken by the Provincial Administrative Court in Kraków in its judgment of 27 February 2008 in the case with reference number act III SA / Kr 762/2007, in which he stated that "the procedure becomes pointless when any of the elements of the substantive legal relationship is missing, which means that it is impossible to settle the matter by deciding on the merits".

In the present case, this element of the substantive law relationship, which ceased to exist during the proceedings, is the processing by the administrator of the complainant's personal data (to the extent - limited by the content of the complaint and the demands made therein - the data about the height and color of the complainant's eyes). The finding of this fact would only allow a decision on its legality (the existence of a legal basis for processing) and compliance with the provisions on the protection of personal data (including the controller fulfilling its obligation to provide information to the Complainant).

The determination by the public administration body of the existence of the condition referred to in Art. 105 § 1 of the Code of Civil Procedure obliges him, as it is emphasized in the doctrine and jurisprudence, to discontinue the proceedings, because there are no grounds to decide the merits of the case, and the continuation of the proceedings in such a case would be defective, which would have a significant impact on the result of the case.

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.

2021-04-01