

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 28

May

2021

DECISION

DKE.523.5.2021

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735), 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. 18 sec. 1 point 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. 57 sec. 1 lit. a and lit. f of the Regulation of the European Parliament and of the Council (EU) 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 (Journal UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. MC, against the processing of his personal data by TSA, President of the Office for Protection Personal Data 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 Mr. M. C. about irregularities in the processing of his personal data by T. S.A. (hereinafter referred to as the "Company").

In the content of the complaint, the complainant requested the removal of the scan of his ID card from the operator's files and the cessation of processing his personal data for marketing purposes. As evidence of the processing of personal data for marketing purposes by the Company, the Complainant attached to his complaint a photo of a mobile phone with a cash loan offer displayed in the form of a text message, but the message does not indicate who submitted the offer.

In the course of the administrative procedure conducted in this case, the President of the Personal Data Protection Office (hereinafter: "the President of the Personal Data Protection Office") determined the following.

1. The company explained in a letter dated [...] December 2014 that it had obtained the complainant's personal data in

connection with the conclusion of contracts for the provision of telecommunications services: contract no [...] of [...] July 2014, contract no [...] with on [...] August 2014 (the second contract No [...] of [...] August 2014) and contract No [...] of [...] August 2014. The legal basis for the processing of personal data was Art. 23 sec. 1 point 3 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter: "the Act of 1997" and Art. 23 sec. 1 point 2 of the 1997 Act in connection with Art. 161 of the Act of July 16, 2004, Telecommunications Law (Journal of Laws of 2021, item 576), hereinafter referred to as: "Telecommunications Law". In addition, the Company indicated in the content of the above-mentioned letters that the Complainant's personal data are processed for the purpose of providing telecommunications services, in the scope of: name, surname, street, house number, flat number, zip code and city, series and number of ID card, PESEL number, date of birth, telephone number, subscriber's account number, copy of the document confirming the identity, copy of the decision on granting the tax identification number (NIP), copy of the certificate of the REGON identification number, contract number and date of its conclusion, phone IMEI number, SIM card number, payment details of the complainant, including bank account details, contact history data Companies with the Complainant, data on the provided telecommunications services and products regarding the performance of the contract with the Complainant. The Company also processes the complainant's e-mail address in the archives: [...] in connection with the correspondence between the Company and the Complainant.

2. In a letter dated [...] December 2014, the Company explained that, before signing the contract, it had provided the Complainant with a sample printout of the contract, which it had accepted. After activating the number in the Company's system, a checked box for consent to use the number for marketing purposes has appeared on the contract form. The document was destroyed with the consent and in the presence of the complainant, in a shredder. The reprinted contract did not contain the Complainant's consent to process the telephone number for marketing purposes. The company indicated that the error was the result of the operation of the Company's IT system. The contracts concluded with the Complainant ultimately did not contain any marketing consents. Moreover, the Company explained that the messages regarding the revocation of the consent given to the processing of the Complainant's data for marketing purposes were related to the fact that the telephone numbers were transferred and activated later than the date of the conclusion of the contract. The Company system blocked the sending of unsolicited marketing messages, about which the Complainant was informed. Moreover, the Company emphasized in the above-mentioned in writing that the incorrect marking of consents in the Company's IT system was incidental, no such

event was recorded again.

3. By letter of [...] June 2015, the Company admitted that it had obtained the Complainant's personal data in the form of a scan of the ID card in order to conclude the above-mentioned contracts for the provision of telecommunications services. The scan of the document was crossed out in the presence of the complainant. The Company also informed that the Company's consultant, by scanning the Complainant's ID card, additionally obtained (going beyond the data catalog necessary to conclude the contract and perform the contract) data on: the client's image, the name of the authority issuing the ID card and the date of issuing the ID card, without the consent of the Complainant. The scan of the evidence was obtained to confirm the correctness of the data at the time of concluding the contract. As indicated by the Company in the above-mentioned in writing, the scan is crossed out each time in the presence of the owner of the document, it is only of an evidence nature and is kept in the Company's archives. At the request of the Complainant, on [...] March 2015, the Complainant's personal data was removed from the scan of the abovementioned the document by obscuring (obscuring) the Complainant's personal data beyond the scope of data necessary for the performance of the contract and entered in this form into the Company's IT system. The scan of the ID card was made available to the Police Headquarters in W. in connection with the applicant's notification of a suspected crime. The scan of the ID card was not returned to the Company. Moreover, in the letter, the Company stated that it did not disclose the Complainant's personal data to other entities for marketing purposes and that it had informed the Complainant about this fact many times.

4. By letter of [...] April 2019, the Company again informed that it had obtained the Complainant's personal data in connection with the conclusion of contracts: No. [...] of [...] July 2014, No. [...] of [...] August 2014 year (the second contract no. [...] of [...] August 2014) and no. [...] of [...] August 2014, in the scope: name and surname, place and date of birth, place of residence, correspondence address , PESEL registration number, series name and number of ID card confirming identity, e-mail address, transmission data and location data. The above personal data of the complainant was obtained by the Company in order to conclude and perform the contract, which is in accordance with art. 6 sec. 1 lit. b of the Regulation of the European Parliament and of the Council (EU) 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 (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. Moreover, the Company explained that the processing of the complainant's personal data is necessary in connection with the fulfillment of legal obligations pursuant to art.

6 (1) (a) c of the Regulation 2016/679. For this purpose, the Company processes the Complainant's personal data during the period of this obligation (e.g. data contained in invoices, documents confirming activities and transactions). The company also indicated that the basis for the processing of the complainant's personal data is a legitimate interest in accordance with art. 6 (1) (a) f of the Regulation 2016/679, i.e. establishing and pursuing claims, debt collection, answering questions, applications, complaints, creating statements, analyzes, detecting fraud, blocking the use of services due to financial arrears.

5. By letter of [...] January 2021, the Company confirmed that it was still processing the Complainant's data for the purpose and on the basis of the letter indicated in its letter of [...] April 2019.

In this factual state, the President of the Personal Data Protection Office 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 "uodo", i.e. on May 25, 2018, the Office of the Inspector General 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 1997 Act, in accordance with the principles set out in the Act of June 14, 1960 Code of Conduct administrative (Journal of Laws of 2021, item 735), 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)).

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., 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 on the date of issuing the decision on the matter and whether it is done in a legal manner".

The procedure conducted by the President of the Office is aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act. According to this provision, in the event of a breach of the provisions on the protection of personal data, the President of the Office ex officio or at the request of the person concerned, by way of an administrative decision, orders the restoration of the legal status, in particular: 1) removal of the deficiencies, 2) supplementing, updating, rectifying, or failure to provide personal data, 3) application of additional security measures for the collected personal data, 4) suspension of the transfer of personal data to a third country, 5) data protection or transfer to other entities, 6) deletion of personal data. The condition for issuing a decision on the basis of the above-mentioned of the provision is the existence of a breach of the right to the protection of personal data at the time of issuing the decision.

Referring to the issue of obtaining by the Company a copy of the Complainant's ID card, it should be noted that copying documents is a technical activity which, by its nature, is not prohibited by the provisions on the protection of personal data. From the point of view of these provisions, it is important that the entity that performs this activity has one of the conditions for the legality of processing, including the collection of personal data. Pursuant to Art. 161 sec. 2 of the Telecommunications Law, which was in force at the time of filing the complaint, the provider of publicly available telecommunications services was entitled to process the following data concerning the user who is a natural person: surnames and first names; parents' names; place and date of birth; address of the place of permanent residence registration; PESEL registration number - in the case of a citizen of the Republic of Poland; name, series and number of documents confirming identity, and in the case of a foreigner who is not a citizen of a Member State or the Swiss Confederation - passport or residence card number; contained in documents confirming the possibility of performing an obligation towards a provider of publicly available telecommunications services resulting from the contract for the provision of telecommunications services. In addition, in accordance with the content of para. 3 of this article, in addition to the data referred to in para. 2, the provider of publicly available

telecommunications services could, with the consent of the user who is a natural person, process other data of that user in connection with the service provided, in particular the bank account number or payment card number, the user's correspondence address, if it is different from the address of the registered place of residence permanent of this user, as well as e-mail address and contact telephone numbers. Therefore, the processing of data by the provider of telecommunications services beyond the above-mentioned scope without the user's consent led to the processing of data without a legal basis. This view was also expressed in the judgment of the Supreme Administrative Court in Warsaw of June 13, 2019 (file reference number I OSK 1715/17), according to which obtaining personal data in a wider scope than specified in Art. 161 sec. 2 of the Telecommunications Law, i.e. obtaining data in the form of, among others: eye color, height, face image, gender, address of residence, name of the authority issuing the ID card and the date of issue and validity of the ID card, takes place without a legal basis.

The explanations provided by the Company in this case show that it did not present the Complainant's consent to the processing of data exceeding the scope specified in Art. 161 sec. 2 of the Telecommunications Law, which indicates that the processing of redundant data from the copy of the ID card was carried out without a legal basis. Despite this circumstance, it should be emphasized that on [...] March 2015, at the request of the Complainant, the Company removed redundant data from the scan of the abovementioned a document that was entered into the Company's IT system. Currently, the breach is not continued and the Company does not process the Complainant's personal data in the manner questioned in the complaint. Regarding the Complainant's request to stop processing his personal data by the Company for marketing purposes, it should be noted that the evidence collected in the case does not confirm the Complainant's allegation that his data was processed by the Company for marketing purposes and made available by the Company to other entities for marketing purposes. . In August 2014, after the Complainant raised an objection, the Company's system blocked the sending of unsolicited marketing messages to the complainant's telephone numbers. Moreover, the Company denied disclosing the Complainant's data to other entities for marketing purposes. The photo of a mobile phone presented by the Complainant with the displayed offer of a cash loan cannot be a proof of this allegation by the Complainant. Even assuming that the photo shows the complainant's telephone, the content of the message does not in any way indicate that the sender of the marketing offer could have obtained the complainant's telephone number from the Company.

To sum up, in the opinion of the President of the Personal Data Protection Office, there were no grounds for issuing an order

pursuant to Art. 18 sec. 1 of the 1997 Act. At the time of issuing this decision, there is no breach of personal data protection, therefore it is justified to issue a decision refusing to comply with the data subject's request.

Based on Article. 127 § 3 of the Code of Administrative Procedure, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision 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.

2021-07-15