

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 18

January

2019

DECISION

ZSPR. 440.998.2018

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. 7 sec. 1 and art. 60 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended) and Art. 6 sec. 1 lit. c) and f), Art. 21 section 1 and section 2 in connection with joke. 18 sec. 1 lit. d) and art. 19, art. 57 sec. 1 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 Journal of Laws UE L 127 of 23/05/2018, p. 2, as amended), after conducting administrative proceedings regarding the complaint of Mr. WG, residing in W., for processing his personal data by TSA based in W., the President of the Personal Data Protection Office refuses to accept the request.

Justification

The Personal Data Protection Office received a complaint from Mr. W. G., residing in W., hereinafter referred to as the Complainant, about the processing of his personal data by T. S.A. with its seat in W., hereinafter referred to as the Society. In the content of the complaint, the complainant indicated that the Society processes his personal data contrary to Art. 5 and 6 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 May 4, 2016, p. 1 and EU Official Journal L 127 of May 23, 2018, p. 2), hereinafter referred to as the GDPR. The complainant asked for the Society to be prohibited from processing his personal data in the scope of objections raised with the Society and for the Society to be ordered to inform the Complainant about all recipients to whom his personal data had been disclosed, unless it turned out to be impossible or would require a disproportionate effort, as well as quoted: "taking actions preventing the Society from further violating the GDPR and the Polish legal order from the Constitution of the

Republic of Poland, and ending with other legal acts binding for the Society - protecting the rights of citizens - specified in Chapter 3 of the Constitution of the Republic of Poland. "

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

The Society, in its explanations of [...] September 2018, indicated that the Complainant's personal data had been obtained from him in connection with the conclusion of [...] August 1999 a motor vehicle insurance contract. In the following years 2001-2009, the complainant concluded motor vehicle insurance contracts with the Company in the scope of third party liability of the vehicle owner and autocasco. The scope of the Complainant's data obtained included: name, surname, registered address and vehicle data.

In the years 2015-2018, the Complainant concluded real estate insurance contracts with the Company, the last of which is still active.

On [...] May 2018, the complainant appealed to the Society against the processing of his personal data for purposes directly or indirectly related to marketing, including profiling, as well as against the processing of his personal data pursuant to Art. 6 sec. 1 lit. f) GDPR, including profiling, as well as transferring them to any other entities for these purposes.

In a letter of [...] June 2018, the Society noted the Complainant's objection to the processing of his personal data for marketing purposes, including profiling, and informed that the Complainant's personal data would not be processed for these purposes by the Society. In addition, it informed the Complainant that his objection to the processing of his personal data pursuant to Art. 6 sec. 1 lit. f) GDPR due to the fact that processing is necessary for the purposes of the legitimate interests pursued by the administrator.

In a letter of [...] June 2018, the complainant maintained his position on the objection not accepted by the Society pursuant to Art. 21 sec. 1 GDPR against the processing of his personal data pursuant to art. 6 sec. 1 lit. f) GDPR and demanded pursuant to art. 19, second sentence of GDPR, inform the Complainant about all recipients to whom his personal data have been disclosed, unless it turns out to be impossible or will require a disproportionate effort.

In a letter of [...] July 2018, the Society informed the Complainant that it had disregarded his objection to the processing of his personal data pursuant to Art. 6 sec. 1 lit. f) GDPR.

On [...] July 2018, the complainant submitted a formal complaint to the President of the Personal Data Protection Office against

the Society, as a result of which administrative proceedings were initiated.

The complainant's personal data is currently being processed by the Society:

in order to implement an active insurance contract concluded with the Complainant on [...] August 2018,

in order to fulfill the obligation of the Company to keep a register of concluded insurance contracts, containing the identification data of the policyholder and the insured, pursuant to the Regulation of the Minister of Finance of April 12, 2016 on specific accounting principles of insurance and reinsurance companies,

in order to implement the legitimate interest of the Company to establish, investigate and defend against claims related to insurance contracts concluded with the Complainant, as well as in connection with the proceedings conducted by the Data Protection Officer of the Association regarding the Complainant's objection to the processing of his personal data submitted to the Company in a letter from on [...] May 2018,

for archival purposes in connection with losses reported under insurance contracts concluded by the Complainant, for the legitimate interest of the Company to establish, investigate and defend against claims related to the payment of the benefit in connection with the occurrence of an insured event.

For the above purposes, the Insurance Company processes the Complainant's personal data in the "Insurance Data Collection" file in the following scope: name, surname, address, PESEL number, date of birth and telephone number, address of the insured property, details of the insured vehicle and information on the course of insurance events reported for the purpose of payment of benefits.

In this factual state, the President of the Personal Data Protection Office considered the following.

In the case at hand, as regards the Complainant's objection expressed pursuant to Art. 21 (1) of the GDPR and regarding the processing of his personal data for marketing purposes, including profiling, the Company noted an objection to the processing for these purposes in its IT systems, therefore the Complainant's personal data are not currently processed for marketing purposes, including profiling.

The principles of lawfulness of processing are set out in Art. 6 GDPR and yes, in accordance with art. 6 (1) (a) c) GDPR, processing is lawful when it is necessary to fulfill the legal obligation incumbent on the administrator, and in accordance with art. 6 sec. 1 lit. f) GDPR, when processing is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and

freedoms of the data subject, which require data protection personal data, in particular when the data subject is a child.

With regard to the Complainant's objection to the processing of his personal data pursuant to art. 6 sec. 1 lit. f) GDPR, it was necessary to assess in the proceedings whether there were grounds for further processing of the Complainant's personal data by the Society on this legal basis. Art. 6 sec. 1 letter f) of the GDPR allows for the processing of data needed to achieve the administrator's goals, but in this case it requires an assessment of whether in a given situation we are dealing with a purpose resulting from the legitimate interests of the administrator or a third party and whether the processing of personal data is necessary for such purposes. Pursuant to recital 47 of the GDPR, the legal basis for processing may be the legitimate interests of the controller, including the controller, unless, in the light of the reasonable expectations of the data subjects, based on their relationship with the controller, the interests or fundamental rights and freedoms of the data subject do not override the data subjects. data relate to. In order to establish the existence of a legitimate interest, a careful assessment would have to be made in each case, including an assessment of whether, at the time and in the context in which personal data are collected, the data subject has reasonable grounds to expect that there may be data processing for this purpose. The interests and fundamental rights of the data subject may override the interests of the data controller, in particular in cases where personal data are processed in a situation where data subjects do not have reasonable grounds to expect further processing. In particular, the processing of personal data for the purpose of possible determination, investigation or defense against claims, including those resulting from concluded insurance contracts, may be considered an activity performed in a legitimate interest. Such interest must also comply not only with the regulations on the protection of personal data, but also with other legal provisions. As indicated in the literature, "however, the phrase <legally>, in relation to the justification of interest, cannot be equated with the right to process data, which would result from some specific legal provision" (P. Litwiński [ed.], EU Regulation on the protection of natural persons with regard to the processing of personal data and the free movement of such data. Commentary, Beck, 2017, p. 305).

In the opinion of the President of the Personal Data Protection Office, it should be stated that the processing of the Complainant's personal data by the Company is currently based on the premises of Art. 6 sec. 1 lit. c) GDPR, in order to implement an active insurance contract concluded with the Complainant; art. 6 (1) (a) c) GDPR, in order to fulfill the obligation of the Insurance Company to keep a register of concluded insurance contracts, containing the identification data of the policyholder and the insured, pursuant to § 6.1. 3) Regulation of the Minister of Finance of April 12, 2016 on specific

accounting principles for insurance and reinsurance undertakings (Journal of Laws of 2016, item 562); art. 6 sec. 1 lit. f) GDPR in order to implement the legitimate interest of the Company to establish, investigate and defend against claims related to insurance contracts concluded with the Complainant, as well as in connection with the proceedings conducted by the Data Protection Inspector of the Company regarding the Complainant's objection to the processing of his personal data submitted to the Company by letter of [...] May 2018; art. 6 sec. 1 lit. f) GDPR for archival purposes in connection with losses reported under insurance contracts concluded by the Complainant, for the legitimate interest of the Company to establish, investigate and defend against claims related to the payment of the benefit in connection with the occurrence of an insurance event.

Currently, the Company processes the Complainant's personal data for the above-mentioned purposes: name, surname, address of residence, PESEL number, date of birth and telephone number, address of the insured property, details of the insured vehicle and information on the course of insurance events reported for the purpose of payment of benefits.

Referring to the complainant's allegation that the Society did not comply with his request to provide him with information pursuant to Art. 19, second sentence of the GDPR, the decisive factor is that the provision referred to should be treated in its entirety. Above the provision concerns the obligation to notify about rectification or deletion of personal data or restriction of processing and, in accordance with it, the administrator informs about the rectification or deletion of personal data or restriction of processing that has been made in accordance with art. 16, art. 17 sec. 1 and art. 18, each recipient to whom personal data has been disclosed, unless it proves impossible or will require a disproportionate effort. The administrator informs the data subject about these recipients, if the data subject requests it.

Pursuant to Art. 18 sec. 1 lit. d) GDPR, the data subject has the right to request the controller to restrict processing in the event that the data subject has objected to it pursuant to Art. 21 sec. 1 against processing - until it is determined whether the legitimate grounds of the administrator override the grounds for objection of the data subject. Pursuant to Art. 21 sec. 1 GDPR, the data subject has the right to object at any time - for reasons related to his particular situation - to the processing of his personal data based on art. 6 sec. 1 lit. e) or f) GDPR, including profiling based on these provisions. The administrator is no longer allowed to process this personal data, unless he demonstrates the existence of valid legitimate grounds for processing, overriding the interests, rights and freedoms of the data subject, or the grounds for establishing, investigating or defending claims.

"An element of objection to the processing of personal data based on Art. 6 sec. 1 lit. e or f GDPR, it should be demonstrated

that the applicant has a special situation that justifies the objection. (...) A special situation should be considered any factual situation which - first of all - did not exist at the time of collecting personal data, if the personal data were collected directly from the data subject (...). Secondly, the specific situation of the data subject should affect the processing of his personal data in such a way that the balance of interests of that person and the data controller is upset - as a result, the interest of the data subject should outweigh the interest of the data controller. . In other words, the need to protect the privacy of the data subject should outweigh the need to process such data by the controller. (...) "(see P. Litwiński (ed.), P. Barta / M. Kawecki: EU Regulation on the protection of natural persons in relation to with the processing of personal data and the free movement of such data. Commentary, Wydawnictwo CHBeck, Warsaw 2018, p. 426). On the basis of the material collected in the proceedings, it should be stated that the Complainant has not demonstrated the existence of a special situation on his side which would justify the opposition.

In addition, it should be noted, "(...) that apart from the situation in which we are dealing with direct marketing, the right to object is not an absolutely effective right. The administrator may, by refusing to stop processing personal data, refer to: 1) the existence of valid legally valid grounds for the processing of data that override the interests, rights and freedoms of the data subject, or 2) the existence of grounds for establishing, investigating or defending claims. In this case, despite the objection by the data subject, the controller may still process his personal data. " (cf. GDPR General Data Protection Regulation. Comment, Scientific editor Edyta Bielak-Jomaa, Dominik Lubasz, Wolters Kluwer, Warsaw 2018, p. 557).

In conclusion, in the opinion of the President of the Personal Data Protection Office, there are no grounds for stating that the Complainant's personal data are currently processed for marketing purposes, including profiling, since the Society noted an objection to the processing of the Complainant's personal data for marketing purposes in its IT systems. There was no prerequisite for the President of the Personal Data Protection Office to issue a decision ordering the restoration of the lawful state, i.e. an order to cease processing the Complainant's personal data,

The conducted proceedings also show that the complainant's personal data are processed by the Society pursuant to art. 6 sec. 1 lit. f) GDPR in accordance with the law, so there was no necessary premise for the President of the Personal Data Protection Office to issue a decision ordering the restoration of the lawful state, i.e. ordering the cessation of the processing of the complainant's personal data.

Due to the fact that the Society demonstrated the existence of valid, legally valid grounds for the processing of the

Complainant's personal data, the request to limit the processing pursuant to art. 18 sec. 1 lit. d) the GDPR was not justified, and therefore it did not arise under Art. 19 of the GDPR, the obligation to notify about rectification or deletion of personal data or restriction of processing, and in particular the obligation to inform the Complainant about the recipients to whom personal data have been disclosed, therefore there was no necessary condition for the President of the Personal Data Protection Office to issue a decision ordering the Insurance Company to fulfill the request of the data subject.

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

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