THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 27

May

2020

DECISION

ZKE.440.66.2019

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 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) in connection with Art. 6 sec. 1 lit. c) and f), Art. 28 and art. 57 sec. 1 lit. a) and 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), after conducting administrative proceedings regarding the complaint of Ms K. Ż., Represented by Ms KD, for processing her personal data by GSA (previously: E. S. A.), President of the Personal Data Protection Office

refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly: Inspector General for Personal Data Protection) received a complaint from Ms K. Ż., Represented by Ms K. D., about the processing of her personal data by G. S.A. (formerly: E. S. A.), hereinafter referred to as: "the Company".

In the content of the complaint, the complainant alleged that the Company breached the principles of personal data protection by disclosing its data in the scope of: name, surname, address and information on the amount of the debt on the public and free of charge [...], located at: [...] - despite the lack of the consent of the complainant for such actions. Any user of the Internet could have access to the above-mentioned information, as it was possible to find the applicant's debt immediately after entering her first and last name in the search field available on the website.

In connection with the above, the complainant requested that, by way of an administrative decision, be restored to legal status,

by deleting her personal data from the website […].

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:

At the address: […] there is an offer for the sale of receivables, in which the complainant's personal data are given in the form of the first and last name and, moreover, address data, limited, however, to indicating the complainant's place of residence, ie […] excluding the number of the building or premises. In addition, the offer includes the gross value of the debt "[...]", the selling price offered "[...]" and the information on the past due date of the debt "[...]". As an issuer of receivables, the offer includes: "A.", hereinafter also referred to as: "the Fund" - managed by ASA, hereinafter also referred to as: "the Company", authorized by the Polish Financial Supervision Authority of [...] December 2008 to conduct activities consisting in on creating and managing investment funds (decision reference [...]).

The Fund acquired the applicant's liability under the assignment agreement of [...] December 2014 concluded with Bank A. S.A. and thus entered into the creditor's rights with regard to the claim relating to the applicant, becoming the controller of her personal data. The assignment of receivables took place pursuant to art. 509 et seq. of the Act of April 23, 1964, the Civil Code (Journal of Laws of 2019, item 1145), hereinafter: "the Civil Code".

The scope of data obtained by the Fund regarding the Complainant included identification data in the form of: PESEL number and ID document number, contact details in the form of: registered address, correspondence address and contact telephone number, as well as financial data regarding numbers of accounting documents or contracts from which the debt resulted, and debt components (balances, interest and others). The legal basis for the processing of the complainant's personal data at the time of their acquisition was art. 23 sec. 1 point 5 in connection with joke. 23 sec. 4 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), due to the fact that the Fund pursues claims for its business activities.

In order to pursue the claim against the complainant, the Fund concluded with E. S.A. an agreement of [...] January 2016 for the management of securitized receivables within the meaning of Art. 193 of the Act of May 24, 2007 on investment funds and management of alternative investment funds (Journal of Laws of 2020, item 95), hereinafter referred to as: "u.f.i.". Pursuant to the provisions of the agreement, its subject matter was the order for the management of the entire investment portfolio of the

Fund against payment (§ 2 section 1 of the agreement), consisting in, inter alia, on servicing the debts included in the Portfolio, conducting and coordinating debt collection activities or concluding settlements with debtors. On the basis of the contract in question, based on the content of Art. 193 u.f.i. and art. 31 of the Act of August 29, 1997 on the Protection of Personal Data, the Fund entrusted E. S. A., as a processor, with the processing of the complainant's personal data only for the purpose specified in the contract, i.e. for the purpose of pursuing claims for the business activity conducted by the Fund.

On [...] August 2016, the Fund concluded with F. S.A. a contract for the use of […] (the public platform for the sale of receivables). Under the agreement, the Fund entrusted F. S.A. the complainant's personal data in order to publish on the website [...] a proposal to sell the claim concerning the complainant, which was carried out in order to fulfill the legitimate interest of the administrator. The agreement also includes a provision according to which "on the basis of the agreement of [...] January 2016, the Fund entrusted the management of its securitized receivables to E. S.A. (hereinafter: the Managing Authority). Based on the aforementioned agreement and the power of attorney granted to the Manager of [...] February 2016, the Fund declares that it authorizes the Manager to perform a technical operation consisting in entering the data of the Fund's Debtors into the Website ".

With the consent of the Fund, E. S.A. transferred on [...] August 2016 to F. S.A. the complainant's personal data in order to put her debt up for sale. The scope of the entrusted data included: name, surname, address of residence (city, postal code, street, house number), PESEL number, telephone number, e-mail address, amount of debt and data identifying the document from which the claim resulted. However, the record published on the website contained only: name, surname and address of residence (without the house or premises number) of the debtor.

On [...] December 2017, due to the acquisition of the assets of E. S. A. by G. S.A., pursuant to the regulation contained in Art. 492-494 of the Act of September 15, 2000 Commercial Companies Law (Journal of Laws of 2019, item 505), above The company entered into all the rights and obligations of the acquired entity, including the rights and obligations in the field of managing the securitized debt portfolio for the benefit of the Fund. In this way, the Company obtained the personal data of the Fund's debtors, including information about the applicant's liability.

On May 25, 2018, in connection with the entry into force of 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 / EC (Official Journal EU L 119 of 04/05/2016, p. 1 and Official Journal

EU L 127 of 23/05/2018, p. 2), hereinafter also referred to as: "Regulation 2016 / 679 ", the Fund concluded with the Company an agreement to entrust the processing of personal data of the Fund's debtors. This processing could only take place for the performance of the main contract, ie the contract of […] January 2016 for the management of the Fund's securitized receivables. Thus, the legal basis for the processing of the complainant's personal data by the Company was art. 28 of the Regulation 2016/679.

Currently, due to the termination of the Fund's debt management agreement on [...] January 2019, the Company processes the complainant's personal data pursuant to Art. 6 sec. 1 lit. c) Regulation 2016/679, in order to fulfill its legal obligation referred to in art. 74 sec. 2 points 4 of the Act of September 29, 1994 on accounting (Journal of Laws of 1994, No. 121, item 591, as amended), and also pursuant to Art. 6 sec. 1 lit. f) Regulation 2016/679 in connection with art. 751 and 118 and 125 of the Civil Code, for purposes resulting from the legitimate interests of the Company, i.e. to protect against possible claims of the Complainant, including claims submitted in the proceedings conducted by the President of the Office for Personal Data Protection.

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 June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256). At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on 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 (EU Official Journal L 119 of 04.05.2016, p. 1 as amended and EU Official Journal L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under it, each supervisory authority on its territory monitors and enforces the application of this regulation (letter a) and considers complaints brought by the data subject or by an authorized 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).

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).

In the light of the currently applicable provisions of Regulation 2016/679, the processing of personal data is lawful when any of the conditions listed in art. 6 sec. 1 of the Regulation 2016/679 (equivalent to Article 23 (1) of the 1997 Act in force until 25 May 2018), i.e. when:

the data subject has consented to the processing of his personal data for one or more specific purposes (analogous to Article 23 (1) (1) of the Act of 1997);

processing is necessary for the performance of a contract to which the data subject is party, or to take action at the request of the data subject prior to concluding the contract (analogous to Article 23 (1) (3) of the Act 1997);

processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Art. 23 (1) (2) of the Act 1997);

processing is necessary to protect the vital interests of the data subject or another natural person;

processing is necessary for the performance of a task carried out in the public interest or as part of the exercise of public authority entrusted to the controller (by analogy in Article 23 (1) (4) of the Act 1997) or finally;

processing is necessary for the purposes of the legitimate interests pursued by the controller 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 protection of personal data, in particular when the data subject is a child (by analogy in Article 23 (1) (5) of the Act 1997).

These premises relate to all forms of data processing. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them. As it follows from the above, the consent of the data subject is not the only basis for the lawfulness of the processing of personal data. In particular, pursuant to Art. 6 of Regulation 2016/679, data processing is allowed when it is necessary for the purposes of the legitimate interests pursued by the administrator or by a third party.

When quoting recital 47 of Regulation 2016/679, it should be indicated that such a legitimate interest may exist, for example, in cases where there is a significant and appropriate type of relationship between the data subject and the controller, for example, when the data subject is a customer (or, as is the case here, the debtor) of the administrator or acts on his behalf. Undoubtedly, the pursuit of financial claims by the entity is its legitimate interest and in this sense it overrides the rights and freedoms of the data subject, as it does not restrict them disproportionately. It should be recognized that the pursuit of claims is a common phenomenon in economic turnover and, at the same time, a natural consequence of concluding contracts by parties with equal rights in this context, who, at the time of joining the contract, agree to the terms proposed therein, including submission to enforcement in the event of failure to comply with obligations by one of the parties.

Referring the above to the facts established in the case, it should be noted that A. acquired the applicant's liability under the assignment agreement of [...] December 2014 concluded with A. S.A. The above was based on the national legislation, ie Art. 509 § 1 of the Civil Code, according to which the creditor may, without the consent of the debtor, transfer the claim to a third party, unless this would be contrary to the act, a contractual reservation or the nature of the obligation. It should be clarified that the assignment of receivables is connected with the right to transfer to the buyer the personal data of the debtor (in this case, the data of the complainant), enabling the appropriate actions to be taken against him to recover the debt. It does not follow from the established facts that the admissibility of the assignment of receivables is subject to any contractual or statutory limitations. Moreover, the consent of the applicant was not required for the assignment. At this point, the position of the Supreme Administrative Court of 7 judges, which in the judgment of June 6, 2005 (reference number I OPS 2/2005), indicated that the transfer of personal data of debtors to debt collection companies may take place without their consent, without

prejudice to the provisions on the protection of personal data, which cannot be made absolute, because they must be applied and interpreted in conjunction with other statutory provisions that also protect other values.

In view of the above, it should be considered that the Fund, on the basis of the debt assignment agreement concluded, became the administrator of the personal data provided to it, processing it for the purpose of recovering the acquired receivables. The premise legalizing the processing of the complainant's personal data by the Fund was, on the date of filing the complaint, Art. 23 sec. 1 point 5 of the Act of August 29, 1997 on the Protection of Personal Data, and currently, i.e. from May 25, 2018, it is Art. 6 sec. 1 lit. f) Regulation 2016/679.

However, with regard to the subject of the complaint initiating these proceedings, which is the processing of the complainant's personal data by G. S.A. (legal successor of E. S. A.), it should be noted that pursuant to the provisions of the agreement of [...] January 2016, the Company was entrusted with the management of securitized receivables belonging to the Fund. Such action was based on the provisions of law, because pursuant to Art. 192 paragraph. 1 of the act on investment funds and management of alternative investment funds, the management of securitized receivables of a securitization fund may be performed (by agreement of the parties) by an entity other than an investment fund company. In order to be possible, debt management requires entrusting the managing entity with the personal data of the fund's debtors, otherwise this entity would not be able to effectively enforce them against them.

Taking into account the above, and also the content of the agreements binding the Company concluded with the Fund, it should be stated that the legal basis for the processing of the Complainant's personal data by the Company was, on the date of filing the complaint, Art. 31 of the 1997 Act, allowing the data controller (which in the case at hand was the Fund) to entrust another entity, by way of a written agreement, with the processing of data, stipulating only that the entity entrusted with the data could process it only to the extent and for the purpose provided for in the contract. In the opinion of the President of the Personal Data Protection Office, the already mentioned agreement for the management of the Fund's securitized receivables of [...] January 2016, both due to its form and content, corresponded to the requirements specified in Art. 31 of the 1997 Act, therefore the Company's activities related to the processing of the complainant's personal data should be considered authorized. On the other hand, referring to the legal status that arose in connection with the entry into force of the new provisions on the protection of personal data, the President of the Personal Data Protection Office indicates that from [...] May 2018 to [...] January 2019, i.e. with the Fund, entrusting the processing of personal data to the Company was authorized in Art.

28 of Regulation 2016/679, according to which the controller may entrust another entity by means of a concluded contract or other legal instrument, which are subject to European Union law or the law of a Member State and are binding on the processor and the controller, and define the subject and duration of processing, the nature and purpose of processing , type of personal data and categories of data subjects, obligations and rights of the controller.

Summarizing the considerations so far, it should be stated that the processing of the Complainant's data by the Company was justified both in the provisions of the Act on the Protection of Personal Data of August 29, 1997 and in the Regulation 2019/679 currently in force, because it acted on the basis of a contract on behalf of and on behalf of for the legitimate interest of the Fund as a data controller. Thus, the allegation that this activity is unlawful from the point of view of the principles of personal data protection should be considered unfounded.

However, when referring to the allegation that the Company disclosed the complainant's personal data at [...], located at [...], it should be noted that such action was legally justified by the provisions of Art. 23 sec. 1 point 5 in connection with Art. 31 of the 1997 Act (and from May 25, 2018 - in Article 28 (3) in connection with Article 6 (1) (f) of Regulation 2016/679). The element that determined the assessment of the legitimacy of the application of these provisions in a specific situation related to the processing of personal data was the existence of legitimate interests pursued by the administrator or by a third party, and therefore such interests that were justified in specific legal provisions.

Such a provision, taking into account the circumstances of the present case, is undoubtedly Art. 66 of the Civil Code, according to the wording of which the declaration of the other party's will to conclude a contract constitutes an offer, if it defines essential provisions of this contract (Art.66 § 1 of the Civil Code). Thus, in the case of a declaration of will to conclude a contract for the sale of receivables, it is indisputable that this receivable (subject of the contract) should be specified. In the analyzed case - as previously described - the claim was made concrete by indicating the complainant's personal data in terms of her first and last name and address of residence, however, which is important from the point of view of the right to privacy, without indicating the number of the building or apartment she occupies. The company G. S.A., acting on behalf of and for the benefit of the Fund, did not disclose on the website […] all the personal data it had in relation to the applicant's debt, but only the extent of such data necessary to concretize the claim. Therefore, this justifies the conclusion that in the analyzed case, the sharing of data on the Internet was made to the extent necessary to fulfill the legally justified purpose of the data controller, in a manner not going beyond that purpose and in compliance with the principle of data minimization, pursuant to Art. 5 sec. 1 lit. c)

Regulation 2016/679.

In the opinion of the President of the Personal Data Protection Office, in the established factual and legal status of the case, disclosure of the complainant's personal data cannot be assessed as violating her rights and freedoms. The applicant, as a debtor, must take into account the fact that, in delaying the fulfillment of an obligation, her right to privacy may be limited due to the claim by the creditor of his debts. Otherwise, a situation could arise in which the debtor, relying on the right to the protection of personal data, would effectively avoid his obligation to perform the service and, consequently, would limit the creditor's right to obtain the payment due to him. Invoking the right to the protection of personal data would also have to limit the above-mentioned right, provided for by specific provisions, to dispose of receivables and to take further steps to recover them. The above is confirmed by the jurisprudence of administrative courts, including in the judgment of the Provincial Administrative Court in Warsaw of November 30, 2004 (file reference: II SA / Wa 1057/04), in which the above-mentioned stated that "(...) a generally accepted rule, resulting not only from the provisions of civil law, but also from moral norms, principles of social coexistence and good manners, is the payment of liabilities (payment of debts). This principle fully applies to legal entities with the status of consumers. (...) A debtor who fails to fulfill his obligations must take into account the consequences of the provisions governing economic turnover. The debtor's attitude may not favor his legal position. If, in general, every case of processing personal data of the debtor (who is a consumer) was considered as infringing his rights and freedoms, there would be, on the one hand, unjustified protection of persons who fail to meet their obligations, and, on the other hand, violation of the principle of freedom of economic activity, which is certainly not was the intention of the legislator when passing the act on the protection of personal data ".

To sum up, in the case at hand, disclosing the complainant's personal data on the website in terms of her name and surname and the name of the city in which she lives is justified by the legitimate aim of the administrator. This goal should be understood as taking actions aimed at concluding a contract for the sale of receivables. According to the President of the Personal Data Protection Office, the disclosure in question was made to the extent necessary to achieve this goal, and as such did not violate the rights and freedoms of the complainant. In this situation, it is not possible to attribute to G. S.A. such a breach of the provisions on the protection of personal data that could result in an administrative decision ordering the removal of the complainant's personal data from the questioned website.

At the same time, it should be noted that currently, due to the termination of the Fund's debt management agreement on [...]

January 2019, the Company processes the complainant's personal data only pursuant to Art. 6 sec. 1 lit. c) Regulation 2016/679 in order to fulfill its legal obligation referred to in art. 74 sec. 2 points 4 of the Accounting Act of September 29, 1994, ordering the storage of accounting documents relating to fixed assets under construction, loans, credits and commercial contracts, claims pursued in civil proceedings or covered by criminal or tax proceedings - for a period of 5 years from the beginning of the year following the financial year in which the operations, transactions and proceedings were finally completed, paid off, settled or expired, and also pursuant to art. 6 sec. 1 lit. f) Regulation 2016/679 in connection with art. 751 and 118 and 125 of the Civil Code for purposes resulting from the legitimate interests of the Company, i.e. to protect against possible claims of the Complainant, including claims submitted in the proceedings conducted by the President of the Office for Personal Data Protection.

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 request a reconsideration of the case, they have the right 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.

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