

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

of December

2018

DECISION

ZSPR.440.370.2018

Based on Article. 104 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and pursuant to 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) 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. 6 sec. 1 lit. f) and art. 28 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 UE L 119 of 04/05/2016, page 1 and Journal of Laws UE L 127 of 23/05/2018, page 2, as amended) after conducting administrative proceedings regarding the complaint of Mrs. EK, against the processing of her personal data by A Sp. z o.o., President of the Personal Data Protection Office
refuses to accept the request.

Justification

The Office of the Inspector General for Personal Data Protection received a complaint from Ms E. K., hereinafter referred to as the Applicant, represented by attorney Mr. P. B. from Kancelaria [...], hereinafter referred to as the Representative, regarding the processing of her personal data by A. Sp. z o.o., hereinafter referred to as the Company and ordering the removal of its personal data from the Company's databases.

In the content of the complaint, the complainant indicated that the Company processes her personal data without justified purposes for the processing of personal data or other justification for their processing on the basis 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: uodo 1997.

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

following facts:

On [...] September 2017, the applicant received a letter from the Company summoning her, as a person belonging to the circle of statutory heirs, to pay the debt of the deceased Mr. J. D. (the applicant's brother).

A claim against Mr JD (hereinafter: the Testator), resulting from the loan agreement No. [...] of [...] May 2007, concluded by the Testator with P., was acquired by A, hereinafter referred to as A, by way of a transfer agreement receivables of [...] March 2012 The claim against the Testator resulting from the loan agreement No. [...] concluded by the Testator with Spółdzielcza Kasa [...] was acquired by A. under a debt assignment contract of [...] November 2014. these were acquired by the Company in trust from A. under debt servicing contracts concluded on [...] March 2012 and [...] November 2014 (contracts on file).

The company commissioned, by way of a contract for the provision of legal services, Kancelaria P. [...] hereinafter referred to as: the Law Firm) the provision of legal services in the field of debt recovery from the Company's debtors, in court and enforcement proceedings, and the provision of legal assistance to the Company.

As the Heir passed away on [...] January 2015 without settling the obligations under the loan agreements, the Company was entitled to claim the testator's debt from his legal successors, therefore on [...] August 2016, the Company applied to the Ministry of the Interior and Administration of the Document Personalization Center with an application for disclosure of data from the PESEL register of persons who, in accordance with the Civil Code belong to the 1st, and if not, to the 2nd circle of inheritance, i.e. children, spouse, parents and siblings of the debtor, taking into account the request for the heir's name and surname, the degree of kinship and the last known place of residence.

In explanations of [...] August 2018, the Company indicated that the Complainant's personal data on [...] August 2017 had been obtained on the basis of an inquiry to the Document Personalization Center of the Ministry of Interior and Administration of the Data Disclosure Department about persons belonging to the circle of the testator's legal heirs. The scope of the obtained data included the first names, surname, address and date of registration for permanent residence as well as the degree of kinship of the applicant with the testator.

On [...] September 2017, A. filed a letter to the complainant informing about his claim to the testator and establishing that the applicant belongs to the circle of statutory heirs after the testator, as well as a trust transfer of the claim to the Company, on behalf of which the Law Firm operates .

On [...] September 2017, the Complainant, represented by the Attorney, informed the Company about her successful rejection

of the testator's inheritance and her objection to the processing of her personal data by the Company and the request to remove these personal data from the Company's and related entities' files and databases, of which were mentioned A. On [...] February 2018, the applicant again informed the Company about the successful rejection by it and its descendants of the testator's inheritance and made the Partial Order of the District Court for Warsaw Praga-Południe in Warsaw available on [...] March 2017, who decided to approve the applicant's evasion of legal consequences despite the failure to comply with the deadline for submitting a declaration of rejection of the inheritance, but refused to provide other additional documentation in the case.

On [...] March 2018, the Law Firm informed the Complainant that despite her rejection of the inheritance, there were still grounds for processing her personal data, as quoted: indicate that it is inherited by persons belonging to a further circle of heirs (and to establish a further circle of heirs), it must be shown that persons who are in the circle of heirs (thus also EK) do not inherit. "

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

It should be noted that on the date of 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), i.e. May 25, 2018, the Office of the Inspector General for Data Protection Personal Data 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, hereinafter referred to as the President of the Personal Data Protection Office, pursuant to the Personal Data Protection Act 1997 in accordance with the principles set out in the Act of June 14, 1960, Code administrative proceedings (Journal of Laws of 2018, item 2096, as amended), hereinafter: Kpa. All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective. From May 25, 2018, the provisions of the Personal Data Protection Act no longer apply.

In addition, it should be noted that the President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing 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 the public administration authority issues an administrative decision on the basis of 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 status of an administrative case. In this way, the public administration body implements the goal of administrative proceedings, which is the implementation of the binding 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 (Journal of Laws 00.98) 1071) M. Jaśkowska, A. Wróbel, Lex., EI / 2012). In the judgment of May 7, 2008 in the case file ref. Act I OSK 761/07 The Supreme Administrative Court 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 President of the Personal Data Protection Office, on the basis of the evidence gathered in this case, only assessed the processing of the complainant's personal data, but did not examine the issues related to inheritance, in particular the sequence of inheritance. Such cases are civil matters within the meaning of Art. 1 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, items 1025, 1104, 1629, 2073), hereinafter referred to as: the Civil Code and should be considered in proceedings conducted by common courts. In particular, pursuant to Art. 189 of the Civil Code the claimant may request the court to establish the existence or non-existence of a legal relationship or right, if he has a legal interest in doing so.

The complainant asked for the removal of her personal data processed by the Company, and therefore it had to be assessed in the proceedings whether there were grounds for further processing of the complainant's personal data by this entity.

Prerequisites for the lawfulness of the processing of personal data are set out in Art. 6 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 (Journal UE L 119 of 04/05/2016, page 1 and Journal of Laws UE L 127 of 23/05/2018, page 2, as amended), hereinafter referred to as: GDPR, and so in accordance with f) 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 protection of personal data, in particular when the data subject is a child. As it was shown by the conducted administrative proceedings, the Company has premises to process the complainant's personal data.

The legal basis for the processing of the complainant's personal data by the Company in the scope of: names, surnames, address and date of registration for permanent residence and the degree of kinship of the complainant with the testator is the legitimate interest of the company to recover the testator's debt from his legal successors resulting from art. 922 § 1 of the Civil

Code. This provision states that the property rights and obligations of the deceased pass upon his death to one or more persons, pursuant to the provisions of this book, in connection with Art. 1020 K.c. under which an heir who has rejected the inheritance is excluded from inheritance as if he did not survive the opening of the inheritance, therefore Art. 932 § 5 of the Civil Code, i.e. if any of the testator's siblings did not survive the opening of the inheritance, leaving descendants, the inheritance share that he would have fallen to his descendants. The division of this share follows the rules that apply to the division between the testator's further descendants. Therefore, the above meets the premise of Art. 6 sec. 1 lit. f) GDPR.

As shown by the proceedings, even the effective rejection by the complainant of the inheritance from the Testator will not affect the legal justification of the purpose of processing her personal data by the Company, because until further succession is determined, the processing of her data is legally justified until the creditor, in this case the Company, obtains the decision on confirmation of inheritance acquisition or debt repayment. At this point, one should also mention the position of the adjudicating panel of 7 judges of the Supreme Administrative Court, who in the judgment of 6 June 2005 (file reference number I OPS 2/05) stated that the legally justified purpose of the data controller referred to in Art. . 23 sec. 1 point 5 of the Act, may be based on the provisions of civil law. In the opinion of the Supreme Administrative Court, the act itself recognizes the pursuit of claims for business activity as such a legitimate aim.

In conclusion, in the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that the Complainant's personal data are processed by the Company in a manner inconsistent with the provisions of the GDPR, so there was no necessary premise for the President of the Personal Data Protection Office to issue a decision ordering the restoration of lawful status, i.e. removal the complainant's personal data.

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 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.

2019-03-29