THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

September

2020

DECISION

ZKE.440.25.2019

Based on Article. 104 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256, 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, art. 18 sec. 1 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 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 (general regulation on protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, page 1 and Journal of Laws UE L 127 of May 23, 2018, page 2), after conducting administrative proceedings regarding the complaint of Ms AK, on irregularities in the processing of his personal data by Mr. Ł. W., running a business under the name of Ł. W. [...], President of the Office for Personal Data Protection

refuses to accept the request.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from Ms AK (hereinafter referred to as "the Complainant"), about unlawful publication by Mr. Ł. W., running a business under the name of Ł. W. [...] (hereinafter referred to as the "Entrepreneur"), her personal data in the scope of name and surname and information about her debt, or to transfer her personal data to a third party who made such disclosure of her data. The applicant submitted that on [...] September 2014 letters were posted on the doors and on mailboxes belonging to residential premises at [...] (where she lives) and [...] (where she was registered) letters with the words "recovery "And her name and surname, as a result of which her personal data was unlawfully made public. The complainant established that the perpetrator of this event was the Entrepreneur or his employee, or a third company acting on behalf of the Entrepreneur. In

connection with the above event, the complainant asked the Inspector General for Personal Data Protection to order the Entrepreneur to cease the unlawful disclosure of her personal data and to cease the transfer of her personal data to third parties that make such disclosure.

In the course of the proceedings conducted in this case, the President of the Personal Data Protection Office, hereinafter also referred to as the "President of the Personal Data Protection Office", established the following facts:

From […] November 2007, the entrepreneur ran a business under the name of Ł. W. […]. As part of the business, the Entrepreneur provided financial services in the field of loans and non-bank loans. In this activity, he used the brand and logo of "[...]". The activity of the Entrepreneur was deleted from the Central Register and Information on Economic Activity on [...] June 2018.

The entrepreneur obtained the complainant's personal data on […] December 2013 in connection with the conclusion of a loan agreement with the number […]. The complainant concluded loan agreements with the Entrepreneur four times - the so-called "Payday loans" (with a 30-day payment term). The complainant also concluded a loan agreement with the Entrepreneur, which was renewed on [...] June 2014.

In connection with the loan and credit agreements concluded with the Entrepreneur, a debt of PLN [...] was incurred on the complainant's side as of [...] and [...] November 2014, on which days the Entrepreneur referred the complainant to the District Court [...] two lawsuits for payment.

As part of the debt collection activities, the Entrepreneur's employee went on [...] September 2014 to the applicant's place of residence ([...]) and to her place of residence ([...]), where - due to the applicant's absence - he left a business card with the logo in the apartment door "[...]" and the Entrepreneur's contact details, the inscription "RECOVERY" and the note "Ms AK, please urgently repay the loan [still illegible]". The above findings were confirmed by the Entrepreneur in the explanations submitted in this case in a letter of [...] February 2015. The Entrepreneur only denied that his employee had stuck to the entrance door to the apartments and the mailboxes belonging to them with any stickers.

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

On May 25, 2018, the provisions of the Regulation of the European Parliament and the EU Council 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the protection of personal data began to

apply in the Member States of the European Union. on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation) (Journal of Laws UE L 119 of 04.05.2016, p. 1, with the amendment announced in the Journal of Laws UE L 127 of on 23/05/2018, p. 2), hereinafter referred to as "Regulation 2016/679". Also on May 25, 2018, 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 on the territory of the Republic of Poland. 2018 ", implementing Regulation 2016/679 on the territory of the Republic of Poland and supplementing the regulations provided for in this legal act.

Pursuant to Art. 160 sec. 1 and 2 u.o.d.o. 2018, 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 of Laws of 2016, item 922, as amended), hereinafter referred to as "uodo 1997 ", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256, as amended), hereinafter referred to as" k.p.a. ". At the same time, pursuant to Art. 160 sec. 3 u.o.d.o. 2018, activities performed in proceedings initiated and not completed before the date of entry into force of its provisions, remain effective.

Taking into account the above legal regulations, it should be stated at the outset that this procedure, initiated and not completed before May 25, 2018, is conducted - in the scope covering the provisions governing the procedure procedure - on the basis of the provisions of u.o.d.o. 1997 and k.p.a. On the other hand, the substantive assessment of the legality and lawfulness of the processing of personal data (provided that the processing and possible violation of the provisions regulating this processing is continued on the date of the decision) should be based on the provisions of Regulation 2016/679. The above statement is consistent with the well-established position of the doctrine, according to which “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 on the basis of the provisions of law in force at the time of its issuance [...]. In the event of a change in legal provisions in the course of administrative proceedings, it should be considered whether the changed substantive law is retroactive, because only then may this change affect the content of the decision [...]. 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 objective 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 "(Wróbel Andrzej. Art. 104 in: Code of Administrative Procedure. Commentary, VIII edition, Wolters Kluwer Poland, 2020). In the judgment of the Supreme Administrative Court in Warsaw of October 4, 2000, file ref. Act V SA 283/00, LEX No. 50110, it was indicated that: “The provisions of the Code of Administrative Procedure do not bind the date of initiation of the proceedings on the factual and legal grounds for examining the case. The decisive factor in this respect is the state in force on the date of issuing the decision ”. 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, the 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".

Pursuant to the wording of Art. 23 sec. 1 u.o.d.o. 1997, applicable in the period covered by the complaint of the complainant, the processing of personal data was permissible when: the data subject consents to it, unless it concerns the deletion of data relating to him (point 1), it is necessary to exercise the right or fulfillment of the obligation resulting from a legal provision (point 2), it is necessary to perform the contract when the data subject is its party or when it is necessary to take action before concluding the contract at the request of the data subject (point 3) is necessary for the performance of legally defined tasks carried out for the public good (point 4), it is necessary to fulfill legally justified purposes pursued by data administrators or data recipients, and the processing does not violate the rights and freedoms of the data subject (point 5). Data processing - in accordance with the definition contained in art. 7 point 2 u.o.d.o. 1997 - is "any operations performed on personal data, such as collecting, recording, storing, processing, changing, sharing and deleting".

In the current legal status (at the date of issue of this decision), the provision indicating the conditions for the legality of the processing of personal data, corresponding to Art. 23 sec. 1 u.o.d.o. 1997, there is Art. 6 sec. 1 of the Regulation 2016/679. It provides that the processing of personal data is lawful only if one of the following conditions is met: a) the data subject has consented to the processing of his personal data for one or more specific purposes; b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; c) processing is necessary to fulfill the legal obligation incumbent on the controller; d) processing is necessary to protect the vital interests of the data subject or of another natural person; e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; f) 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.

In the present case, it is undisputed that the Entrepreneur obtained and processed the complainant's personal data with the condition of necessity for the performance of loan and credit agreements linking him with the complainant (the premise specified in art.23 par.1 point 3 of the Act the premise specified in Article 6 (1) (b) of the Regulation 2016/679 corresponds to that). As soon as the Complainant fails to fulfill its obligations towards the Entrepreneur under the said contracts and the Entrepreneur takes steps to pursue claims against the Complainant, the processing of the Complainant's personal data was justified in the legitimate purpose (interest) referred to in art. 23 sec. 1 point 5 u.o.d.o. 1997 (in the previous legal status) and in the corresponding art. 6 sec. 1 lit. f) Regulation 2016/679. The creditor may pursue his claim (debt repayment), and his obvious factual interest is legally justified in the provisions of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145, as amended).), hereinafter referred to as "the Civil Code", in particular in its Art. 353 § 1 stating that "the creditor may demand the benefit from the debtor, and the debtor should fulfill the benefit". For this reason, the legislator directly - in Art. 23 sec. 4 point 2 u.o.d.o. 1997 - indicated that a legitimate aim is, in particular, pursuing claims for business activity.

While stating, in principle, the admissibility of processing the debtor's personal data on the basis of the legitimate purpose of the administrator (creditor), it should be stated that this right (including the manner of its implementation) was not in the legal status applicable on the date of the event, and is not currently, absolute - not limited by anything. As Art. 23 sec. 1 point 5 u.o.d.o. 1997 (a similar regulation is provided for in the currently applicable provision of Art. the rights and freedoms of the data subject. The reservation of "non-violation of the rights and freedoms of the data subject" should be understood as the lack of "advantage" of the rights and freedoms of the subject of personal data over the interest of the administrator. The doctrine assumes that "[...] reference to the premise specified in Art. 23 sec. 1 point 5 is possible, if [...] there are no grounds to assume that the colliding, protected interests of the data subject prevail, as a result of which one can speak of a violation of his rights and freedoms "(A. Drozd [in:] Act on the Protection of Personal Data. Comment. Templates of letters and regulations, 4th edition, Warsaw 2008, art. 23.). In the present case, it is obvious that the rights and freedoms of the complainant (in particular the right to privacy, the right to protection of the good name, etc.) cannot be considered overriding or prevailing over the interest of the entrepreneur, in particular due to the fact that, when concluding loan and credit agreements, the complainant was aware of the creditor's rights in the event of a breach of the contract and had to agree to submit to activities aimed at the

implementation of these rights. In this context, the actions of the Entrepreneur consisting in attempts to contact the Complainant, including - in the absence of other contact options - on direct visits to the complainant's places of residence known to the Entrepreneur, should be considered justified and admissible. Such actions in themselves do not significantly infringe the rights and freedoms of the complainant, they also fall within the premise of "indispensability" to implement the interest of the Entrepreneur. "Demand from the debtor for the benefit" referred to in Art. 353 § 1 of the Civil Code, as it presupposes the necessity to contact the debtor in order to forward the demand for payment of receivables.

In the above context, the President of the Personal Data Protection Office may not consider the action of the Entrepreneur's employee to leave the Complainant's personal data at the complainant's place of residence, in a manner not protected against access by third parties, together with information indicating the existence of a financial obligation on his part and a demand for performance, as "necessary" in the above context. (in this case, a note saying "I am asking for urgent loan repayment"). Such action in a manner that is inadequate to the intended purpose violates the interests and rights of the complainant (the right to protection of private life and the right to protect her reputation); It is also not necessary, because the Entrepreneur could achieve the same goal by other means (e.g. by leaving the information in an unsecured form inside the mailbox or by leaving the information in a closed envelope with the neighbors).

For the above reasons, it should be stated that the actions of the Entrepreneur being the subject of the complaint constituted a violation of the provisions on the protection of personal data - consisting in making it available to unauthorized persons - without any legal basis (none of the enumerated ones enumerated in Art.23 (1) (3) of the Act on Personal Data in 1997) .

In addition, it should be noted that in the present case it has not been established that the Entrepreneur commissioned the pursuit of its claims against the Complainant to a third party and that the Complainant's personal data was provided to that third party for this purpose. However, it should be clearly emphasized that, as a rule, disclosure of the debtor's personal data to the entity carrying out debt collection activities against that debtor on behalf of the data controller (creditor) is permissible. However, the actions of the entity acting on behalf of the creditor are also assessed in the light of the above-mentioned criteria of necessity to fulfill the legitimate purposes of the controller and the non-infringement of the rights and freedoms of the data subject.

When finding in this case a breach by the Entrepreneur of the provisions on the protection of personal data, the President of the Personal Data Protection Office is, however, obliged, given its circumstances, to refuse to accept the complainant's

request. The event giving rise to the complaint should be regarded as one-off and incidental. It took place on […] September 2014, was not repeated thereafter and - most importantly - is not continued at the date of this Decision. Due to the fact that - as it was indicated at the beginning of the justification of this decision - the President of the Personal Data Protection Office adjudicates in this case on the basis of u.o.d.o. 1997 (having at its disposal only the means indicated in Article 18 (1) of this Act), the personal data protection authority has no grounds to decide in accordance with the complainant's demands. As indicated by the Supreme Administrative Court in the judgment of 17 July 2015, I OSK 2464/13 (LEX no. 2091094): “According to this provision [Art. 18 sec. 1 u.o.d.o. 1997], in a situation where there is a breach of the provisions of the Act on the Protection of Personal Data, the Inspector General, if such breach is found, by way of an administrative decision, orders the restoration of the legal status by issuing specific orders listed in this provision. The literature on the subject emphasizes that the decision of the Inspector General issued on the basis of the above provision is to restore the legal status. ... Importantly, the breach of the provisions on the protection of personal data identified by the authority should exist on the date of issuing the decision ”.

As it follows from the above, the President of the Personal Data Protection Office (UODO) in cases initiated before May 25, 2018, i.e. before the date of application of the provisions of Regulation 2016/679, is not possible to assess past infringements, not continued at the time of the ruling, e.g. for repressive purposes - aimed at in order to obtain the consequences of such violations. Such a possibility (the power to impose an administrative fine) was granted to the President of the Personal Data Protection Office only on the basis of the provisions of Regulation 2016/679 - in cases initiated after the date of its application.

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.

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