THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 13

September

2021

DECISION

DKE.523.23.2021

Based on Article. 104 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2021, item 735, 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 art. 12 points 1-2 and article. 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 lit. f) 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 EU L 119 of 04/05/2016, p. 1 and EU Official Journal L 127 of 23/05/2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. R. S. against the processing of his personal data by O. Non-standardized Securitization Fund Inwestycyjny Closed, represented by N. S.A .. (formerly: O. S.A.), consisting in making them available on the websites: [...], [...], [...] and [...], President of the Personal Data Protection Office

refuses to accept the request.

Justification

Mr R. S. (hereinafter referred to as: the Complainant) received the President of the Personal Data Protection Office (formerly: the Inspector General for Personal Data Protection) for the processing of his personal data by O. Non-standardized Securitization Closed-End Investment Fund (hereinafter also referred to as: the Fund), represented by N. S.A. (hereinafter also referred to as: the Society), the legal successor of O. S.A, consisting in making this data available on the following websites: [...], [...], [...] and [...].

In the content of the complaint, the Complainant alleged that the Fund breached the principles of personal data protection by disclosing his name, surname, address, telephone number and PESEL number on the public online debt exchange located at: [...] - despite the failure to obtain the consent of the Complainant for such actions . Any user of the portal with a paid account

on the website could have access to the above-mentioned information. At the same time, the Complainant indicated that he had been notified by SMS that the information about the debt burdening him, along with his personal data, was also made available on the websites: [...], [...] and [...]. The complainant questioned the legality of the Fund's activities in this respect.

In connection with the complaint, the Complainant requested that, by way of an administrative decision, be restored to the lawful state, by ordering the Fund to remove his personal data from the above-mentioned websites.

In order to establish the circumstances relevant to the resolution of this case, the President of the Personal Data Protection Office conducted administrative proceedings. On the basis of the evidence collected in the case, he established the following facts:

Based on the agreement for the sale of receivables of [...] March 2014, concluded between Bank A. S.A. a O. Non-standardized Securitization Closed-End Investment Fund, represented by N. S.A. (formerly: O. S.A.), the Fund acquired from Bank A. S.A. a package of receivables due as at the date of the contract. As a result of the conclusion of the above-mentioned of the agreement, the Fund entered into the rights of the creditor in the field of receivables concerning, inter alia, The complainant, and thus became the administrator of personal data concerning him. 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 2020, item 1740, i.e.).

The scope of the data concerning the Complainant obtained by the Fund included identification data in the form of: name and surname, PESEL number and ID document number, contact details in the form of: address of residence, contact telephone number and e-mail address, financial data concerning, inter alia, contract numbers from which the debt resulted, and also debt components (balances, interest, debt collection fees and others). The legal basis for the processing of the complainant's personal data at the time of their acquisition was art. 193 of the Act of May 24, 2007 on investment funds and management of alternative investment funds (Journal of Laws of 2021, item 605), hereinafter referred to as: "u.f.i." and 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 activity.

In order to recover the debts to which it is entitled, the Fund concluded with Kancelaria C. sp.z o.o. and with G. S.A. - respectively […] December 2013 and […] December 2013 - a contract for the management of securitized receivables within the meaning of Art. 193 u.f.i. The subject of both of these contracts was the commission for paid management of the entire investment portfolio of the Fund. On the basis of the contracts 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 Kancelaria C. sp.z o.o. and G. S.A., as processors, the processing of the Complainant's personal data for the purpose of pursuing the claims of the Fund against the Complainant.

Following the intention to sell the debt, the offer for its sale was placed on the Internet Debt Exchange, located at: […]. However, the entry concerning the Complainant was suspended in 2016 (and therefore it was not visible on the website), as its legality was questioned by the Complainant himself.

Pursuant to the agreement for the assignment of receivables as part of the securitization process concluded on [...] February 2017, the Fund sold the receivable against the Complainant to C. Niewandaryzowany Fundusz Inwestycyjny Zamknięty. In connection with the above, the Fund does not currently process the personal data of Mr. R. S. for debt collection purposes.

The processing of the Complainant's personal data by the Fund in the scope of his name and surname, PESEL number, identity card number, address of residence, telephone numbers and e-mail addresses is currently carried out on the basis of art. 6 sec. 1 lit. c) of Regulation 2016/679, i.e. in order to fulfill the legal obligations incumbent on the Fund, and also pursuant to art. 6 sec. 1 lit. f) of Regulation 2016/679, for purposes resulting from the legitimate interests of the Fund, and therefore in order 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.

On the website: [...] there is currently an offer for the sale of receivables, in which the Complainant's personal data are provided in the form of his name and surname, as well as address data, limited, however, to the indication of the complainant's place of residence, i.e. the city "[...]" and the name of street, ie "[...]", omitting the number of the building or premises. Moreover, the offer includes the total value of the receivable "PLN […]", the offered sale price of "PLN […]" and the information on the past due date of the receivable "over […] years". Moreover, at the addresses: […] and […] there are offers for sale of two further receivables, possibly related to the Complainant (in their case, however, the name of the street, constituting the address of the debtor's residence, was not published). The issuer of all three offers is: S. Niezandaryzowany Fundusz Inwestycyjny Zamknięty I. Personal data of the Complainant are not processed at all on the websites: […], […] and […].

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 u.o.d.o., 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 "u.o.d.o. 1997 ", in accordance with the principles set out in the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735, as amended). 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 submitted by the data subject or by an authorized by him - in accordance with Art. 80 with 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 the 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 Act on GDPR, 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 (analogously in Article 23 (1) (1) of the Act of 1997);

processing is necessary for the performance of a contract to which the data subject is a party, or to take action at the request of the data subject, prior to concluding the contract (similarly in Art.23 (1) point 3 of the Act on Personal Data Protection Act 1997);

processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Art.23 (1) point 2 of the Act on Personal Data Protection 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 administrator (by analogy in Art.23 (1) point 4 of the Act on Personal Data Protection 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 Art.23 (1) point 5 of the Act on Personal Data Protection, 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. Therefore, 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 was the case here, the debtor) of the controller 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 O. Non-standardized Securitization Closed-End Investment Fund, represented by N. S.A. (formerly: O. S.A), acquired the Complainant's liability on the basis of a debt sale agreement of [...] March 2014 concluded with Bank 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, judging from 7 judges, which in the judgment of 6 June 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 violating at the same time, 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, which also protect other values.

In view of the above, it should be considered that the Fund, on the basis of the concluded agreement for the sale of receivables, has become the administrator of the personal data provided to it, processing them for the purpose of recovering the acquired receivables. The premise legalizing the acquisition and processing of the Complainant's personal data by the Fund was therefore Art. 23 sec. 1 point 5 in connection with Art. 23 sec. 4 point 2 u.o.d.o. 1997 and art. 193 of the Act of May 24, 2007 on investment funds and management of alternative investment funds.

Regarding the allegation of disclosure by the Fund of the complainant's personal data on the Internet Debt Exchange, located at [...], it should be noted that such action was legally justified in the norm resulting from Art. 23 sec. 1 point 5 u.o.d.o. 1997. The element that determined the assessment as to the legitimacy of the application of this provision in a specific situation

related to the processing of personal data was the existence of legitimate interests pursued by the administrator, 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). Therefore, 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. At the same time, according to the data protection authority, there is no clear evidence that the Fund disclosed on the website [...] all the personal data it had at its disposal in relation to the Complainant's debt, including his PESEL number or telephone number - which was raised in the complaint by Mr R. S. did not present any printout of the above-mentioned a website that would confirm the truth of his claims. The explanatory activities carried out by the President of the Personal Data Protection Office (UODO) ex officio in the course of these proceedings also did not allow for the conclusion that the Fund made available on the Internet Debt Exchange the scope of the Complainant's personal data wider than necessary to specify the claim. Therefore, this justifies the conclusion that in the analyzed case the data was made available on the Internet 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.

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 his rights and freedoms. The complainant as a debtor must take into account the fact that, in delaying the fulfillment of an obligation, his right to privacy may be limited due to the claim by the creditor of his receivables. 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 cannot favor his legal position. If, in general, every case of processing the 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 failing 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 ".

In the context of the above, the disclosure of the Complainant's personal data on the Internet Debt Exchange should be considered as having both factual and legal justification.

At the same time, it should be noted that currently - due to the conclusion of the debt transfer agreement as part of the securitization process of [...] February 2017, on the basis of which the Fund sold its claim against the Complainant to C. Non-standardized Closed-End Investment Fund - the Fund no longer processes personal data Mr. R. S. for debt collection purposes. The processing of the Complainant's personal data by the Fund in the scope of his name and surname, PESEL number, identity card number, address, telephone numbers and e-mail addresses is currently carried out only for the purposes of art. 6 sec. 1 lit. c) and Regulation 2016/679, i.e. in order to fulfill the legal obligations incumbent on the Fund, and also pursuant to art. 6 sec. 1 lit. f) Regulation 2016/679, for purposes resulting from the legitimate interests of the Fund, 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. Thus, this processing should be assessed as legal and based on applicable law.

Being related to the scope of the complaint, concerning the processing of the complainant's personal data by O. Non-standardized Closed-End Investment Fund, the supervisory body refrained from examining the legality of sharing such data on the Internet by their current administrator, ie C. F Non-standardized Closed-End Investment Fund. To do so would amount to an inadmissible extension of the scope of the complaint which concerned a specific entity and its actions.

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

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 submit an application for reconsideration, 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 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 of assistance, including exemption from court costs.

2021-11-02