THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, day 24

of December

2019

DECISION

ZKE.440.57.2019

Based on Article. 104 of the Act of June 14, 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 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) and Art. 6 sec. 1 lit. f) and art. 57 sec. 1 points a) and f) 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 of Laws UE L 119 of 04/05/2016, p. 1 and Journal of Laws EU L 127 of 23/05/2018, p. 2, as amended), after conducting administrative proceedings regarding the complaint of Mr. AW for irregularities in the process of processing his personal data by Kancelaria Prawna H. Sp. k. and W. Sp. z o.o., the President of the Personal Data Protection Office

refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (previously: the Inspector General for Personal Data Protection) received a complaint from Mr. A. W. (hereinafter referred to as: the Complainant) about irregularities in the processing of his personal data Kancelaria Prawna H. Sp. k. (hereinafter also referred to as: Kancelaria) and by W. Sp. z o.o. (hereinafter also referred to as: the Company).

In the content of the complaint, the complainant indicated that the Law Firm and the Company process his personal data without justified purposes for their processing, or any other justification under the Act of August 29, 1997 on the protection of personal data. In connection with the above, the Complainant requested that the data protection authority take steps to stop processing his personal data by the above-mentioned entities. At the same time, the Complainant indicated that he had addressed the same request directly to the Company and the Law Firm, however, they reacted negatively to the request

formulated in this way.

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

The subject of activity of W. Sp. z o.o. (KRS No. [...]), against which the Complainant lodged his complaint, is, inter alia, legal, accounting and tax consultancy activities, other financial service activities, except insurance and pension funds, and other financial intermediation.

By way of a debt assignment agreement of [...] December 2014, the Company acquired a debt against Mr W. K., under the loan agreement No. [...] of [...] June 2013, concluded between the above-mentioned and Spółdzielcza Kasa [...]

In order to recover the outstanding debt, the Company commissioned Kancelaria Prawna H. Sp. k. providing legal services in the field of debt recovery from the Company's debtors, both in court and enforcement proceedings, and the provision of legal assistance to the Company. At the same time, the Company, as the administrator of personal data within the meaning of the Act of August 29, 1997 on the protection of personal data, in accordance with art. 31 of the same act, entrusted the Law Firm with the processing of personal data of its debtors.

Due to the fact that Mr. W. K. (hereinafter also referred to as: the Testator) died on […] July 2013 without paying the obligations under the loan agreement […], the Company gained the right to claim the testator's debt from his legal successors.

Therefore, on [...] February 2015, the Company applied to the Ministry of Interior and Administration of the Document Personalization Center with a request for access to the PESEL register of data of persons who, according to the Civil Code, belong to the 1st or 2nd circle of inheritance from the Testator, i.e. children, the debtor's spouse, parents and siblings, taking into account their names and surnames, the degree of kinship with the Testator and the last known place of residence.

Based on the information provided by the Document Personalization Center of the Ministry of the Interior and Administration of the Data Sharing Department, the Company obtained on [...] October 2015 the personal data of Mrs. MW (the testator's sister), to which it sent on [...] March 2016 a pre-court request for payment arrears under loan agreement No […]. In response to the above, Ms MW informed the Company in writing of the fact of submitting a declaration regarding the rejection of the inheritance of the deceased WK (date of receipt of the letter by the Company - [...] May 2016), to which she also submitted a copy of the notarial deed of [...] May 2016 (Rep. [...]), containing the above-mentioned a statement, and also statements of identical content made by other heirs, including by the applicant (the testator's nephew). In this way, the Company obtained the

Complainant's data regarding his name and surname, parents' names, PESEL number, address of residence as well as series and number of ID card.

By letter of [...] July 2016, the Law Firm, acting on behalf of the Company, notified the Complainant about the processing of his personal data in connection with the pursuit of the Company's claims against the heirs of the deceased debtor. According to the correspondence addressed to the Complainant, the Company processed the Complainant's data in order to manage the debt under the loan agreement No. [...] and to determine the persons responsible for the inheritance debts of the late W. K.

In response to the above, by a letter of [...] August 2016 (with the date of receipt by the Law Firm - [...] September 2016), the Complainant notified the Company of the successful rejection of the inheritance and expressed his objection to the processing of his personal data by the Company or its transfer other entities.

By letter of [...] September 2016, the Law Firm informed the Complainant that despite his rejection of the inheritance, there were still grounds for processing his personal data. In particular, the above-mentioned she pointed out that the quotation "the fact that [the complainant] made an effective declaration of rejection of the inheritance of his deceased uncle - debtor W., does not mean that the creditor does not have a legitimate purpose to process [the complainant's] personal data. This goal is valid as long as the heirs of W. K. are not established. In the process of determining the inheritance, the creditor must have the data of all persons who are included in the circle of statutory heirs after the testator, including those who rejected the inheritance (...) because they are treated as if they did not survive the inheritance, which means that they are replaced by further heirs. " It was also explained that when the persons responsible for the reimbursement of the inheritance or the repayment of the debt are identified, or when the creditor decides not to pursue claims against those who inherit the inheritance, the Complainant's personal data will be immediately deleted. The company also indicated that the basis for the acquisition and processing of the Complainant's personal data was Art. 23 sec. 1 point 5 in connection with Art. 23 sec. 4 point 2 of the Act of August 29, 1997 on the protection of personal data in connection with art. 922 § 1, art. 932 § 4 and 5 and article. 720 of the Act of 23 April 1964 Civil Code, and in the case of the Law Firm - Art. 31 of the Act of August 29, 1997 on the protection of personal data.

Currently, due to the resignation from debt recovery under the loan agreement No. [...] of [...] June 2013, the Law Firm and the Company process the complainant's personal data in the following areas: name, surname, parents' names, series and number of ID card, PESEL number and the address of residence only for the purpose pursued by the legitimate interest of the administrator, i.e. to defend against possible claims, including in connection with the proceedings in this case by the President

of the Personal Data Protection Office. The basis for the processing of the complainant's personal data is currently art. 6 sec. 1 lit. f 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.

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 2019, item 1781), hereinafter also referred to as: "PDA", i.e. on May 25, 2018. The Office of the Inspector General for Personal Data Protection 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 currently conducted by the President of the Personal Data Protection Office, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws 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 2018, item 2096, as amended ). All activities undertaken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective.

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 (Official Journal of the European Union L 119 of May 4, 2016, p. 1 and the Official Journal of the European Union L 127 of May 23, 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 the regulation, each supervisory authority on its territory monitors and enforces its application (point a) and considers complaints brought by the data subject or by authorized by him - in accordance with joke. 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 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).

Taking into account the above, the President of the Personal Data Protection Office, on the basis of the evidence collected in this case, assessed the legality of the processing of the Complainant's personal data. The complainant asked for the removal of his personal data processed by the Company and the Law Firm acting on behalf of the Company, and therefore in the proceedings it had to be determined whether there were grounds for further processing of the complainant's personal data by the above-mentioned entities.

In the light of the 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 (analogously in Article 23 (1) (1) of the Act 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 conditions relate to all forms of data processing and are equal to each other, which means that for the legality of the data

processing process, it is sufficient to meet one of them.

Referring to the subject matter of this case - which is the processing by the Company of the Complainant's personal data, obtained in connection with the acquisition of claims against the deceased testator of the Complainant - it should be clarified that in pursuing claims, one of the conditions for the admissibility of personal data processing is the implementation of the legitimate interests of the administrator (the premise of referred to in Article 6 (1) (f) of Regulation 2016/679, and before May 25, 2018 - in Article 23 (1) (5) of the Act 1997). In this case, the processing of personal data is legally permissible and does not require the consent of the data subject. Therefore, attempts by the debtor to withdraw the consent will be ineffective, as it is not the basis that entitles the administrator to process his personal data. Creditors may pursue debt repayment themselves or use the intermediation of specialized companies for this purpose. They may also sell the debt to another entity - as was the case in the present case, because the Company acquired a claim against W. K. by way of a debt transfer agreement from the testator's original creditor, Spółdzielcza Kasa [...]. In the case of the sale of receivables, the debt collection company that purchased the debt becomes the administrator of the personal data of the debtors and is obliged to comply with the obligations arising from Regulation 2016/679. Therefore, it should inform debtors against whom debt collection activities are carried out, inter alia, on the legal basis and the purpose of processing their personal data and their rights to access their data and the possibility of correcting them. On the other hand, in a situation where debt recovery has been commissioned to another entity on the basis of the provision of a service in this area (in the case at hand, such entity is the Law Firm), the data controller should conclude an agreement with him for entrusting the processing of personal data referred to in art. 28 of the Regulation 2016/679 (previously - in Article 31 of the Act 1997). Such an agreement should specify, inter alia: the subject and duration of processing, its nature and purpose, the type of personal data and categories of data subjects, as well as the rights and obligations of both the controller and the entity entrusted with data processing.

As it was shown by the conducted administrative proceedings, the Company and the Law Firm providing legal services to it met the conditions on which the recognition of the lawfulness of the processing of the Complainant's personal data depends, both at the time of obtaining his personal data and on the date of issuing the decision ending these proceedings.

It should be pointed out that the Company obtained the Complainant's personal data on [...] May 2016, i.e. still during the period of the previous legal regulation on data protection. The legal basis for the processing of the Complainant's personal data in the scope of: name, surname, parents' names, series and number of ID cards, PESEL number and address of

residence was art. 23 sec. 1 point 5 in connection with Art. 23 sec. 4 point 2 of the Act of 1997, because this processing was necessary for the implementation of the legitimate interest of the Company - expressed in the recovery of debt after the deceased W. K. from his legal successors. This possibility is provided for in Art. 922 § 1 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145), hereinafter referred to as: "the Civil Code", according to which the property rights and obligations of the deceased are transferred to one or a few people (…). It should be noted that the heir who rejected the inheritance is excluded from inheritance as if he did not survive the opening of the inheritance (Article 1020 of the Civil Code), while if any of the testator's siblings did not survive the opening of the inheritance, leaving the descendants, the inheritance share that would be he was, is his descendant (Article 932 § 5 of the Civil Code). The above - taking into account the facts of the case described in the introduction - justifies, in the opinion of the President of the Personal Data Protection Office, the processing of the Complainant's data by the Company.

At the same time, as the proceedings showed, even the Complainant's successful rejection of the testator's inheritance does not cancel the legally justified purpose of processing his personal data by the Company, because until the next inheritance order is established, the processing of his data is legally justified - until the creditor obtains (including accident, the Company) decisions confirming the acquisition of inheritance or until the debt is repaid. At this point, the position of the Supreme Administrative Court should also be mentioned, which in the judgment of 6 June 2005 (file reference number I OPS 2/05) recognized 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. As rightly pointed out by the Supreme Administrative Court, the act of 1997 itself recognizes the pursuit of claims for business activity as such a legitimate aim.

Regarding the request to delete the complainant's personal data by the Law Firm, it should be noted that in the present case the Law Firm was not the data controller at the time of their acquisition, but the entity to whom the Company commissioned their processing under a legal services contract of [...] December 2013 r. The Law Firm processed the complainant's personal data only on the basis and for the purposes indicated in the above-mentioned in the contract, i.e. for the purpose of claiming debts from the Company's debtors in court and enforcement proceedings. The legal basis for the Law Firm's operation was Art. 31 of the Act of 1997. This provision stipulated that the controller may entrust another entity, by way of a written agreement, with the processing of data (paragraph 1), while the entity referred to in paragraph 1, may process data only to the extent and for the purpose provided for in the contract (section 2), and prior to the commencement of data processing, it is

obliged to take measures securing the data set, referred to in art. 36-39 and meet the requirements set out in the provisions referred to in Art. 39a. The entity is responsible for compliance with these provisions as the data controller (paragraph 3). A characteristic feature of the entrustment agreement is that the data controller does not have to personally perform activities related to the processing of personal data. For this purpose, it may use the services of specialized external entities, commissioning them to perform the entire process of personal data processing, or only certain activities, e.g. their collection or storage. In the event of the transfer of personal data, we deal with the processing of data on behalf of the administrator, within the limits specified in the data processing agreement and not for the processor's own purposes, but for the purposes of the data administrator. Importantly, when entrusting the processing of personal data, their administrator does not change. Thus, the Company was in fact the administrator of the Complainant's personal data, and the Law Firm performed on its behalf and on its behalf the activities ordered under the cooperation agreement concluded with the Company.

However, referring to the current situation, it should be clarified that due to the resignation from the recovery of debt under the loan agreement No. [...] of [...] June 2013, the Law Firm and the Company process the complainant's personal data only for the purpose of the legitimate interest of the administrator, i.e. to defend against possible claims, including in connection with the proceedings in this case by the President of the Personal Data Protection Office. The basis for the processing of the complainant's personal data is therefore Art. 6 sec. 1 lit. f 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. In view of the fact that there is a prerequisite legalizing the processing of the Complainant's personal data, the allegations raised by him in the complaint should therefore be considered unfounded.

In connection with the findings, it should be noted that the continuation of administrative proceedings by the President of Personal Data Protection, initiated by a complaint about irregularities in the processing of the complainant's personal data by the Company and the Law Firm, aimed at issuing an administrative decision pursuant to Art. 18 sec. 1 of the 1997 Act is unfounded.

According to the wording of the above-mentioned of the provision, in the event of a breach of the provisions on the protection of personal data, the President of the Personal Data Protection Office ex officio or at the request of the person concerned, by way of an administrative decision, orders to restore the legal status, and in particular: to remove the deficiencies (1),

supplement, update, correct , disclosure or non-disclosure of personal data (2), application of additional security measures for the collected personal data (3), suspension of the transfer of personal data to a third country (4), data protection or transfer to other entities (5) or deletion of personal data (6). From the wording of Art. 18 sec. 1 of the Act of 1997, and at the same time from the definition of an administrative decision - as an act decisive in a ruling manner about the rights and obligations of the parties to the proceedings in the factual and legal status established and valid at the time of its issuance - it follows that the personal data protection authority does not assess past events, no continued at the time of the judgment. The decision issued by the supervisory body is an instrument aimed at restoring legal status in the data processing process carried out at the time of its issuance.

Considering the above, it should be stated that there are currently no grounds for formulating an order referred to in Art. 18 sec. 1 of the Act, because the Complainant's personal data are processed by entities the complaint concerns in a manner consistent with applicable law, and furthermore, this processing does not require the Complainant's consent. Due to the above, the administrative proceedings in the present case should have been concluded with a decision refusing to grant the applicant's request.

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 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 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 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.

2021-03-29