THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

July

2020

DECISION

ZKE.440.83.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 160 sec. 1 and 2 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2019, item 1781) and art. 12 point 2, 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 of 2018, item 138), in connection with Art. 6 sec. 1 lit. c, 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 EU L 119 of May 4, 2016, p. 1 and EU Official Journal L 127 of May 23, 2018, p. 2), in connection with Art. 105 a 4, 5 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2018, item 2187, as amended) after conducting administrative proceedings regarding IF's complaint against the processing of personal data without a legal basis by GSA A. S.A. T. S.A. representing D., B. S.A., President of the Personal Data Protection Office

refuses to accept the request.

JUSTIFICATION

The President of the Office for Personal Data Protection (formerly the Inspector General for Personal Data Protection) received a complaint from Ms IF, hereinafter referred to as the "Complainant", about deficiencies in the process of processing her personal data by GSA, hereinafter also referred to as "G.", ASA, hereinafter also referred to as "A . ", D., hereinafter also referred to as:" F. ", including their making available to BSA, hereinafter referred to as:" B. ".

The applicant indicated in the complaint that G., A. and F. were carrying out activities against her to enforce the repayment of a consumer cash loan that had been taken out by an unknown person using her stolen ID card. Moreover, she alleged the above-mentioned entities that unjustifiably process their personal data and make them available to B.

In connection with the above, the complainant requested the quotation "for the proceedings in the present case to be initiated

by the Inspector General for Personal Data [...] against persons guilty of faults and breaches of applicable law in the processing of my personal data and for my deletion by G. S.A. [...], A. S.A. and D. from all debtors' lists, including those from B. […] ”.

In order to establish the circumstances of the case, the President of the Office for Personal Data Protection initiated explanatory proceedings. On the basis of the evidence collected in the case, the following facts were established:

1. The applicant informed about the suspicion of committing a crime on [...] March 2014, the Police Headquarters III in G. regarding the forging of her signatures on loan agreements: A. S.A. of […] January 2006 (no. [….]) and C. S.A. i.e. a crime under Art. 270 § 1 of the Act of 6 June 1997 of the Penal Code (Journal of Laws of 2019, item 1950,2128, of 2020, item 568), hereinafter: the Penal Code. The proceedings conducted by the District Prosecutor's Office G. W. (reference number […]) ended with the discontinuation of the proceedings due to the failure to identify the perpetrator.

2. From the explanations of G. S.A. filed in the letter of [...] December 2017, it appears that he obtained the complainant's personal data in connection with the conclusion of the consumer cash loan agreement no. [...], NRB [...] on [...] January 2006 and processed the complainant's personal data based on Article. 5 and 6 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357, of 2020, item 284, as amended), hereinafter referred to as: "Banking Law". Moreover, A. in the above-mentioned in this letter, he stated that he had processed the complainant's personal data pursuant to Art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data, hereinafter referred to as the "Act of 1997" in connection with Art. 105a paragraph. 3 of the Banking Law, after informing the complainant about the intention to process her personal data without consent within 5 years from the expiry of the credit obligation, A. indicated in the explanations that after the quotation "the complainant finished using the banking product" he processed her personal data pursuant to Art. 23 sec. 1 point 2 of the Act of 1997 in connection with Art. 74 sec. 2 point 8 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 351 as amended), hereinafter referred to as: "u.o.r." for a period of 5 years, in connection with Art. 8 a sec. 2 of the Act of November 16, 2000 on counteracting money laundering and terrorist financing (Journal of Laws of 2016, item 299, as amended) - currently art. 49 sec. 1 of the Act of March 1, 2018 on counteracting money laundering and financing of terrorism (Journal of Laws of 2018, item 723), hereinafter referred to as: "the Act on Counteracting Money Laundering and Terrorism Financing", in connection with Art. . 118 of the Act of April 23, 1964, the Civil Code (Journal of Laws of 2019, item 1145, as amended), hereinafter referred to as: "Civil Code" and the Act of July 14, 1983 on the national archival resource and

archives (Journal of Laws of 2020, item 164), hereinafter referred to as: "the Act on the National Archival Resource and Archives".

3. In a letter of [...] December 2017, A. explained that under the contract for the sale of receivables of [...] September 2011, F. had acquired the applicant's liability and became a creditor (assignment of receivables). The scope of the obtained personal data included: surnames and forenames, parents' names, date of birth, place of birth, address of residence or stay, PESEL number, NIP number, place of work, series and number of ID card, telephone number, e-mail address, correspondence address, accounting document number , contracts from which the debt arises, debt components (balances, interest, other debt components). Moreover, in a letter of [...] December 2019, D. informed that the processing of personal data of debtors constitutes a legitimate interest of F. and is justified in Art. 193 of the Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws of 2004, No. 146, item 1546, as amended), hereinafter referred to as: "u.f.i". Currently, F. is processing the complainant's personal data pursuant to Art. 74 sec. 2 points 4 u.o.r. - i.e. as accounting evidence regarding fixed assets under construction, loans, credits and commercial contracts, claims pursued in civil proceedings or subject to criminal or tax proceedings - for 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.

4. B. explained in a letter of [...] December 2017 that the complainant's personal data had been provided by A. on [...] January 2012 pursuant to Art. 105 paragraph. 4 of the Banking Law on the basis of the contract binding the parties. Currently B. is processing the complainant's personal data pursuant to Art. 105 a sec. 4 of the Banking Law, i.e. for the purposes of applying internal methods and other models referred to in Part Three of Regulation No 575/2013 in the field of credit inquiries, monitoring and customer management.

5. In a letter of [...] December 2017, G. indicated that the object of her activity was to settle the liabilities due to the Fund, which was a justified purpose for the processing of the complainant's personal data pursuant to Art. 23 sec. 1 point 5 in connection with joke. 23 sec. 4 pts 2 of the 1997 Act. G. further explained that the complainant's personal data had been transferred to her in connection with the performance of the mandate contract of [...] September 2015 for the management of the entire investment portfolio of the Fund. At the same time, G., in a letter of [...] December 2017, indicated that after receiving documents proving that the complainant was not obliged to pay the claimed debt, she withheld all debt collection activities and informed the complainant about this fact in a letter of [...] September 2017. G. stated that he was not currently processing her

personal data.

6. By letter of [...] November 2019, D. explained that on the basis of the decision of F.'s investors' meeting and the agreement on taking over F.'s management concluded on [...] October 2017, the management company was changed to SSA, hereinafter: " S. " After taking over the management of F., the complainant's personal data was entrusted to G. under the contract of [...] December 2017 for the management of the investment portfolio including the securitized receivables of F. managed by S. and the contract for entrusting the processing of personal data of [...] May 2018 concluded between F. and S.

7. According to D.'s explanations of [...] November 2019, it also appears that F. again disclosed the complainant's personal data to G. on the basis of an agreement for the transfer of receivables belonging to F. of [...] June 2017. Moreover, F. disclosed the personal data of the complainant pursuant to Art. 281 paragraph. 2 u.f.i., according to which "information constituting a professional secret may be disclosed to the General Inspector of Fiscal Control in connection with the proceedings pending before the fiscal control authority in the case of a fiscal offense or a fiscal offense, if necessary in the pending proceedings". On [...] June 2019, a declaration of withdrawal from the above-mentioned contract was submitted. F. did not disclose the complainant's personal data to B.

In these facts, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, the provisions of the Act of May 10, 2018 on the protection of personal data (Journal of Laws 2019, item 1781), hereinafter referred to as "the Act", entered into force.

Pursuant to Art. 160 sec. 1-3 of the 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, in accordance with the principles set out in the Act of June 14, 1960. Administrative Procedure Code (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as "Kpa". At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act shall remain effective.

From May 25, 2018, also 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 (Journal of Laws UE L 119 of 04.05.2016, p. 1 as amended), hereinafter referred to as "Regulation 2016/679".

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 1997 (with regard to the provisions governing the administrative procedure) and on the basis of Regulation 2016/679 (with regard to the legality of the processing of personal data). The method of conducting proceedings in cases initiated and not completed 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 “the public administration body assesses the actual state 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 ”(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 judgment of May 7, 2008 in the case with reference number 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 lawful manner" .

At the time the event described by the applicant took place, the 1997 Act was in force. After May 25, 2018, the provisions of Regulation 2016/679 apply. The provision of fundamental importance for the assessment of the legality of the processing of personal data was Art. 23 sec. 1 of the 1997 Act (Article 6 (1) of Regulation 2016/679 respectively). Pursuant to the aforementioned provision, the processing of personal data is lawful when the data controller meets one of the conditions listed in this article, i.e. when:

the data subject has consented to it, unless it concerns the deletion of data concerning him (Article 6 (1) (a) of Regulation 2016/679, respectively),

it is necessary to exercise an entitlement or fulfill an obligation resulting from a legal provision (Article 6 (1) (c) of Regulation 2016/679, respectively),

it is necessary for the performance of the contract when the data subject is a party to it or when it is necessary to take action before concluding the contract at the request of the data subject (Article 6 (1) (b) of the Regulation 2016/679, respectively) ,

it is necessary to perform tasks specified by law for the public good (Article 6 (1) (e) of Regulation 2016/679, respectively),

it is necessary to fulfill legally justified purposes pursued by data controllers or data recipients, and the processing does not

violate the rights and freedoms of the data subject (Article 6 (1) (f) of the Regulation 2016/679, respectively).

It should be added that these conditions apply to all forms of data processing listed in art. 7 sec. 2 of the 1997 Act, including making them available. Each of the above-mentioned premises legalizing the processing of personal data is autonomous and independent from each other. This means that meeting at least one of them conditions the lawful processing of personal data.

The legal act containing detailed regulations regarding the processing of personal data by banks is primarily the Banking Law. The assessment of the legality of the processing of the Complainant's personal data by the Bank and also by B. must therefore be carried out in conjunction with the provisions of the Banking Law.

Regarding the legality of the processing of the complainant's personal data by the Bank and B., it should be noted that the complainant's personal data was transferred to B. in accordance with art. 105 paragraph. 4 of the Act of August 29, 1997 Banking Law (Journal of Laws 2018, item 2187 as amended). In the light of this provision, "banks may, together with banking chambers of commerce, establish institutions authorized to collect, process and make available to: banks information constituting banking secrecy to the extent that this information is needed in connection with the performance of banking activities and in connection with the application of internal methods and other methods and models referred to in Part Three of Regulation No 575/2013, to other institutions statutorily authorized to provide loans with information constituting banking secrecy to the extent that such information is necessary in connection with granting loans, cash loans, bank guarantees and sureties (point 2), to credit institutions of information constituting banking secrecy to the extent necessary to assess the consumer's creditworthiness, as referred to in Art. 9 of the Act of 12 May 2011 on consumer credit (point 3), loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit on the basis of reciprocity, information constituting respectively banking secrets and information provided by loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, to the extent necessary to assess the consumer's creditworthiness, as referred to in art. 9 of this Act and the credit risk analysis (point 4) ”.

However, according to Art. 105a paragraph. 3 of the Banking Law - "banks, institutions and entities referred to in sec. 1, may process information constituting banking secrecy and information provided by loan institutions and entities referred to in art. 59d of the Act of 12 May 2011 on consumer credit, concerning natural persons after the expiry of the obligation resulting from the contract concluded with a bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, without the consent of the person to whom the information relates,

when the person has not fulfilled the obligation or has been in delay of more than 60 days in fulfilling the service under the contract concluded with the bank, another institution legally authorized to provide loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, and after these circumstances at least 30 days have elapsed since the person was informed by the bank, other institution authorized by law to grant loans, a loan institution or an entity referred to in art. 59d of the Act of 12 May 2011 on consumer credit, on the intention to process this information without its consent ”.

In the content of the complaint, the complainant requested the deletion of her personal data processed by A., who obtained her personal data on the basis of the 2006 consumer cash loan agreement no. [...], ie pursuant to Art. 23 sec. 3 of the 1997 Act. The applicant, listed in the abovementioned of the contract, as the borrower, submitted a notification of committing an offense under Art. 270 § 1 of the Penal Code - forging her signature. Due to the lack of evidence to determine by whom the signature was actually made and, therefore, who was the perpetrator of the signature forging offense, the criminal proceedings conducted by the District Prosecutor's Office G. - W. in the case No. the act [...] was discontinued due to the failure to identify the perpetrator. In the case at hand, until the proceedings conducted by the District Prosecutor's Office G. - W., ie until [...] October 2014, were discontinued, A. was wrong as to the person of the borrower. Moreover, as A. explained, he processed the complainant's personal data pursuant to Art. 23 sec. 1 point 2 of the Act of 1997 in connection with Art. 105 a sec. 3 of the Banking Law after informing the complainant about the intention to process her personal data without consent within 5 years from the expiry of the loan obligation. On [...] January 2012, A. transferred the complainant's personal data to B. pursuant to Art. 23 sec. 1 point 2 of the 1997 Act, i.e. a legal provision - Art. 105 of the Banking Law.

At present, A. is processing the complainant's personal data pursuant to Art. 6 sec. 1 lit. c in connection with Art. 74 sec. 2 point 8 of the Accounting Act of September 29, 1994 (hereinafter also "u.o.r.") for a period of 5 years, in connection with Art. 8 a sec. 2 of the Act of November 16, 2000 on counteracting money laundering and terrorist financing (Journal of Laws of 2016, item 299, as amended) - currently art. 49 sec. 1 of the Act of March 1, 2018 on counteracting money laundering and financing of terrorism. Pursuant to this provision, “obligated institutions shall keep, for a period of 5 years, counting from the first day of the year following the year in which the business relationship with the client was terminated or in which occasional transactions were concluded: 1) copies of documents and information obtained as a result of applying financial security measures; 2) evidence confirming the transactions and records of transactions, including original documents or copies of documents necessary to identify the transaction ”. Moreover, A. indicated that he was processing the complainant's personal data

pursuant to Art. 6 sec. 1 lit. c in connection with Art. 118 of the Civil Code, i.e. in connection with the complainant's claims and the act on the national archival resource and archives, for archival purposes.

However, when responding to the complainant's request to delete her data from B., it should be noted that B. is entitled to process personal data pursuant to Art. 6 (1) (a) c of Regulation 2016/679, i.e. processing is necessary to fulfill the legal obligation incumbent on the administrator. The legal obligation results from Art. 105 a sec. 4 and 5 of the Banking Law (i.e. for the purposes of applying internal methods and other models referred to in Part Three of Regulation No 575/2013). The complainant's personal data constituting banking secrecy will therefore be processed for a period of 12 years after the expiry of the obligations under the contract concluded with Getin Noble Bank.

Referring the above to the facts established in the case, it should be noted that the Company obtained the complainant's personal data in connection with F. z A. concluding a conditional agreement for the sale of receivables of [...] September 2011. The above is justified in 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 (transfer of the claim), unless this would be contrary to the act, the contractual reservation or the liability. Under the above agreement, F. purchased from A. a claim against the applicant. The assignment of receivables is associated with the right to transfer to the buyer the personal data of the debtor, enabling him to take appropriate actions aimed at recovering the receivables. The above admissibility of the assignment of receivables was not subject to any contractual or statutory limitations. The consent of the complainant to transfer the receivables was also not required. At this point, it is necessary to appoint the position of the Supreme Administrative Court, sitting in a bench of 7 judges, which in the judgment of 6 June 2005 (OPS 2/2005), indicated that the transfer of personal data of debtors to debt collection companies may take place without their consent, without violating including the protection of personal data, which should be considered up-to-date in relation to the case at hand.

Referring to the complainant's request to delete her personal data by F., it should be noted that he became the administrator of the provided data on the basis of the above-mentioned contract, processing them in order to recover the acquired receivables. Thus, the premise legalizing the acquisition of the complainant's personal data by the Fund was Art. 23 sec. 1 point 2 of the 1997 Act, namely the legal provision - assignment of receivables. In the case of data processing by the Fund before May 25, 2018, the legal basis was Art. 23 section 1 point 5 of the 1997 Act, and currently it is Art. 6 sec. 1 lit. f of Regulation 2016/679, according to which "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 , requiring the protection of personal data, in particular where the data subject is a child ”. The pursuit of financial claims by the subject is a legitimate interest and in this sense overriding the rights and freedoms of the data subject.

Moreover, the premise legalizing the processing of personal data by F. is Art. 6 (1) (a) c of the Regulation 2016/679 in connection with art. 193 u.f.i, according to which "The securitization fund and the entity with which the company has concluded a contract for the management of securitized receivables collect and process personal data of debtors of securitized receivables only for the purposes of managing securitized receivables".

Currently, F. is processing the complainant's personal data pursuant to Art. 6 (1) (a) f of Regulation 2016/679 in connection with 74 par. 2 points 4 u.o.r. - i.e. as accounting evidence regarding fixed assets under construction, loans, credits and commercial contracts, claims pursued in civil proceedings or subject to criminal or tax proceedings - for 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.

When responding to the complainant's request to delete her personal data processed by G., it should be noted that he obtained the complainant's personal data in connection with the performance of the mandate contract of [...] September 2015 for the management of the entire investment portfolio of F. - in order to satisfy the claims due F. The premise legalizing the processing of the complainant's personal data by G. was Art. art. 31 of the 1997 Act, and currently Art. 28 of Regulation 2016/679, according to which the processing by the processor takes place on the basis of a contract or other legal instrument that binds the processor and the controller, specifies the subject and duration of processing, the nature and purpose of processing, the type of personal data and the categories of persons whose the data relate to and the obligations and rights of the controller.

Moreover, as G. explained, the premise legalizing the processing of the complainant's personal data was Art. 23 sec. 1 point 5 in connection with joke. 23 sec. 4 pts 2 of the 1997 Act, the processing of the complainant's personal data was justified by the pursuit of claims by G. on behalf of F. G. stopped processing the complainant's personal data and suspended all debt collection activities [...] on September 2018 after it had been established that the complainant was not obliged to pay the debt.

Summing up the above considerations, it should be stated that there are no grounds for the President of the Personal Data Protection Office to issue a decision ordering the removal of the complainant's personal data in accordance with Art. 18 sec. 1

point 6 of the 1997 Act. The complainant based her request for the deletion of the data on the fact that the signature of the contract was forged and that it was not she who had concluded the loan agreement. The President of the Personal Data Protection Office is not competent to adjudicate on the existence or non-existence of a legal relationship between the Complainant and A., and the decision presented by her to discontinue the proceedings due to failure to identify the perpetrator is not evidence that she did not sign the contract. Such evidence may be a judgment of a court in a criminal case, which will indicate the perpetrator, or a judgment of a civil court in an action to establish the existence or non-existence of a legal relationship. Due to the fact that the Complainant did not provide evidence that she is not a party to the loan agreement, the President assessed the legality of data processing by the entities specified in the complaint based on the statements and documents collected in the evidence, and found no shortcomings in the processing the complainant's personal data. The processing of her personal data was based on the provisions of the Act of 1997 and the provisions of Regulation 2016/679. Considering the above, it should be concluded that there is no reason for the President of the Personal Data Protection Office to issue a decision ordering the restoration of lawfulness, therefore it is reasonable to issue a decision refusing to accept the 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 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 (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.

2021-05-10