THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 25

September

2020

DECISION

ZKE.440.61.2019

Based on Article. 104 § 1 and art. 105 § 1 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2020, item 256), art. 60, art. 160 sec. 1, 2 and 3 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781), art. 12 point 2, art. 18 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, art. 17 sec. 3. lit. e) 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, following the procedure administrative regarding the complaint of the PO, replaced by the attorney-at-law of the Ministry of Economy - on irregularities in the processing of the Complainant's personal data by:

I. S.A.

and

Fund T. (the name of the Fund at the time the action was brought), currently operating under the name L., represented by Ip.

THERE ARE.,

President of the Personal Data Protection Office:

1. The processing is discontinued by I. S.A. personal data of Mr. P. O. in [...] Register;

2. As to the remainder, it refuses to accept the application.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from P. O., hereinafter also referred to as the "Complainant", replaced by legal adviser M. G., about the processing of his personal data by I. S.A. and Fund T. (hereinafter also referred to as T.). In the content of the complaint, doubts were raised regarding the correctness of the processing of the Complainant's personal data by the above-mentioned entities in the

scope of:

the grounds for entering personal data in the [...] Register in the context of the fulfillment of the information obligation under Art. 105a paragraph. 3 of the Banking Law

justifiability of the refusal to delete data from [...] the Register

the basis for processing by I. S.A. the complainant's personal data

admissibility and lawfulness of the sale of receivables to T.

the legal basis and admissibility of processing the Complainant's data by T.

The complainant requested the initiation of administrative proceedings in order to clarify the above-mentioned issue and to issue an appropriate decision in the case.

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

The applicant concluded with W. S.A. two loan agreements:

- contract No [...] of [...] July 1999, hereinafter referred to as "claim No 1"

- contract No [...] of [...] September 1999, hereinafter referred to as "claim No 2"

On […] November 2000, the claim no. 1 was declared with the bank enforcement title no. […], Which […] on February 2001, by the decision of the District Court in T., file no. the act [...] was issued with an enforcement clause.

In 2006, W. S.A. was taken over by G. S.A., which assumed the rights of the creditor of the receivables in question.

G. S.A. transferred the claims in question to I. S.A. in the following way:

- debt No. 1 - under the debt assignment agreement of [...] December 2010.

- debt No. 2 - under the debt assignment agreement of [...] April 2011.

On [...] March 2011, by the decision of the District Court in T., file ref. Act. [...] an enforcement clause was issued for the bank enforcement order No. 1, this time for I. S.A.

On [...] July 2011 and [...] February 2012, on the basis of reports from I. S.A., entries containing the complainant's personal data were made in the [...] Register system maintained by the Polish Bank Association. The reason for submitting the data to the above-mentioned register was the failure by the Complainant to settle the obligations towards I. S.A., resulting from the claims No. 1 and 2 in question.

By letter of [...] March 2012, I. S.A. notified the Complainant about the transfer of his personal data to [...] the Register.

On [...] June 2015, the enforceable title [...] of the writ of execution number [...], relating to claim no. 1, was deprived of its enforceability by the judgment of the District Court in Ż., File ref. Act. […].

On the basis of the receivables assignment agreement of [...] May 2016, I. S.A. transferred claim No. 1 to Fund A.

On the basis of the receivables assignment agreement of [...] May 2016, I. S.A. transferred the claim no. 2 to the G.

The receivables in question were then transferred to other entities.

On [...] May 2016, Fund T. (hereinafter also referred to as Fund T.) acquired debt no. 1 on the basis of a debt transfer agreement concluded with Fund E., managed on the date of conclusion of the contract by O. S.A.

By letter of [...] December 2016, the complainant asked I. S.A. with a request to remove from [...] the Register the entries of [...] July 2011 and [...] February 2012, together with the Complainant's personal data, which were made on the basis of the ISA notification. granted to ISA to the processing of his personal data and requested that the bank ceases to process such data. In the letter, the Complainant indicated that the deletion of his personal data was justified by the deprivation of enforceability of [...] the writ of execution number [...].

By letter of [...] December 2016, I. S.A. provided the complainant with a reply in which he indicated that he did not find any legal grounds to fulfill the complainant's request of [...] December 2016. It was argued in the letter that the complainant's claims in I. S.A. expired due to the change of the creditor and that the creditor entitled to pursue both claims is Fund T. (which was incorrect, because from the evidence collected in the case, as previously indicated, Fund T. acquired only the claim No. 1 in question). It was argued in the letter that along with the acquisition of the claim against the Complainant, I. S.A. acquired the right to process in the system [...] Register of the Complainant's personal data, and the time limits of this right were outlined by the legislator in Art. 105a paragraph. 4 of the Banking Law, i.e. for a period not longer than 5 years from the date of expiry of the obligation. In addition, the letter indicated that for the application of the above-mentioned provisions, the statute of limitations of the claim does not matter, as it does not terminate the obligation but transforms it into the so-called a natural commitment. Moreover, it was argued that the disposition of Art. 105a paragraph. 3 does not make the entry of the debtor's data (to […] Register) conditional on whether the unperformed or improperly performed obligation is time-barred or not.

On [...] January 2017, the complaint was submitted to the Office of the Inspector General for Personal Data Protection.

By letter of [...] January 2017, I. S.A. informed the Complainant's attorney about the deletion of the Complainant's personal

data from [...] the Register.

In a letter of [...] August 2017, Z., in response to the request of the Inspector General for Personal Data Protection (GIODO) to provide explanations in this case, informed that he did not process the complainant's personal data in the [...] Registry system.

In a letter of [...] September 2017, I. S.A., submitted in response to the GIODO's call to provide explanations in this case, I. S.A. informed that he did not process the complainant's personal data.

On [...] January 2018, the T. Fund transferred claims No. 1 to the GP Fund.

In the course of the case, explanations from the T Fund were presented, indicating that on [...] January 2018, the T Fund transferred claims No. 1 to Fund G. It was indicated that in the period from [...] May 2016 to [... ] January 2018, the T. Fund processed the complainant's personal data in connection with the management of securitized receivables. The explanations submitted on behalf of the Fund contained information that the processing of the complainant's personal data was based on Art. 23 sec. 4 point 2 in connection with joke. 23 sec. 1 point 5 and art. 31 in connection with joke. 3 sec. 2 point 2 of the Act on the Protection of Personal Data (Journal of Laws 2016.922 t. J.) And pursuant to art. 193 of the Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws 2016.1896). Moreover, it was indicated that the Complainant's personal data were processed in order to obtain benefits by Fund T for securitized receivables and to pursue claims from the Complainant, as well as to fulfill the obligations provided for by law, including reporting and archiving obligations.

The explanations further indicate that from [...] January 2018, the T. Fund processes the Complainant's personal data for the purpose necessary to fulfill the legal obligations regarding the storage and archiving of documents and other information media referred to in Art. 69 of the Act of 27 May 2004 on investment funds and management of alternative investment funds, for the period specified in the provisions referred to above. The explanations indicated that the Fund processes the Complainant's personal data for the period necessary for the proper management of the securitized receivables, including protection against potential claims of the Complainant, i.e. for the period resulting from the general limitation periods for claims, and the legal basis for data processing are:

- Art. 6 sec. 1 lit. c) GDPR, i.e. processing necessary to fulfill the legal obligation incumbent on the administrator (which is the storage and archiving of documents pursuant to art.69 of the Act of 27 May 2004 on investment funds and management of alternative investment funds), and - art. 6 sec. 1 lit. f) GDPR, i.e. the legitimate interest pursued by the Administrator, which is

processing for the period necessary for the proper management of securitized receivables, including protection against potential claims, for the period resulting from the general limitation periods for claims

On [...], the T. Fund changed its name to L.

L. Fund was managed by […]. As a result, the management of Fund L. was taken over by Ip. THERE ARE.

On [...], the L. Fund changed its name to Lu.

After analyzing the evidence collected in the case, the President of the Office for Personal Data Protection states 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 also: the Act on the Protection of Personal Data of 2018, entered into force. the thought of Art. 160 sec. 1-3 of the Act on the Protection of Personal Data of 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 Office for Personal Data Protection 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 also referred to as the "Personal Data Protection Act of 1997", in accordance with the principles set out in the Code of Administrative Procedure (hereinafter referred to as the Code of Administrative Procedure). At the same time, the activities performed in the proceedings initiated and not completed before the date of entry into force of the provisions of the Act on the Protection of Personal Data of 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 / EC (general regulation on the protection of personal data) (Journal of Laws UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2), hereinafter referred to as "GDPR" .

Taking into account the above, it should therefore be stated that this procedure, initiated and not completed before May 25, 2018, is conducted on the basis of the Personal Data Protection Act of 1997 (in the scope relating to the provisions governing the administrative procedure) and on the basis of the GDPR (in the scope deciding on the legality of the processing of personal data).

The President of the Personal Data Protection Office is the competent authority for the protection of personal data and the supervisory authority within the meaning of the GDPR (Article 34 (1) and (2) of the Personal Data Protection Act of 2018). The President of the Personal Data Protection Office conducts proceedings regarding infringement of the provisions on the

protection of personal data (Article 60 of the Personal Data Protection Act of 2018), and in matters not covered by the Personal Data Protection Act of 2018, administrative proceedings before the President of the Personal Data Protection Office, in particular, regulated in Chapter 7 of the Act - proceedings on infringement of provisions on the protection of personal data, the provisions of the Code of Administrative Procedure shall apply (Article 7 (1) of the Act on the Protection of Personal Data of 2018). when issuing an administrative decision, it is obliged to decide on the basis of the facts existing at the time of issuing the decision. As the doctrine points out, “the public administration body assesses the facts of the case according to the moment of issuing the administrative decision. This rule also applies to the assessment of the legal status of the case, which means that a public administration authority issues an administrative decision based on the provisions of law in force at the time of its issuance (...). Settlement in administrative proceedings consists in applying the applicable law to the established factual state of an administrative case. In this way, the public administration body implements the goal 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 "(Commentary to the Act of June 14, 1960, Code of Administrative Procedure, M. Jaśkowska, A . Wróbel, Lex., El / 2012). The Supreme Administrative Court also 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 in the case and whether it is done in a lawful manner" - judgment of May 7, 2008 in the case with reference number no. I OSK 761/07.

Pursuant to the wording of Art. 23 sec. 1 of the Act on the Protection of Personal Data of 1997, in force during the period covered by the Complainant's complaint, 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 fulfill the obligation resulting from a legal provision (point 2), 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 person, to whom the data relate (point 3) is necessary to perform the tasks specified by law for the public good (point 4), 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 person whose the data relates to (point 5).

Pursuant to the provisions currently in force (from May 25, 2018, i.e. from the date of application of the provisions of the GDPR), the processing of personal data is lawful when the data controller has at least one of the provisions set out in art. 6

sec. 1 GDPR, material premises for the processing of personal data. According to the above-mentioned provision, 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 administrator or by a third party, except where these interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular, when the data subject is a child (Article 6 (1) (f) of the GDPR).

When quoting recital 47 of the GDPR, it should be indicated that the legal basis for the processing may be the legitimate interests of the controller, including the controller to whom personal data may be disclosed, or a third party, provided that, in the light of the reasonable expectations of data subjects, based on their connections with the controller is not overridden by the interests or fundamental rights and freedoms of the data subject. Such legitimate interest may exist, for example, where there is a significant and appropriate type of relationship between the data subject and the controller, for example where the data subject is a customer of the controller or acts on his behalf. It should be recognized that the pursuit of financial claims by the entity is the legitimate interest of the controller within the meaning of the GDPR. Pursuing claims and processing adequate personal data for this purpose does not constitute a disproportionate restriction of the rights and freedoms of the data subject.

With regard to the complainant's objections expressed in point 1-3 of the complaint, in the scope of the basis for entering his personal data in [...] the Register and the implementation of the information obligation, indicated in Art. 105a paragraph. 3 of the Banking Law, refusals by I. S.A. deletion of these data from the [...] Register, and the basis for data processing by I. S.A. - this procedure has become redundant due to the cessation of the processing of the complainant's personal data related to the claims in question, as a result of their deletion from the [...] register and the cessation of their processing by I. S.A. For the above reasons, the administrative proceedings had to be discontinued pursuant to Art. 105 § 1 of the Code of Civil Procedure

In accordance with the above-mentioned provision of Art. 105 § 1 of the Code of Civil Procedure, when the proceedings for any reason have become groundless in whole or in part, the public administration authority issues a decision to discontinue the

proceedings, respectively, in whole or in part. The doctrine states that "The discontinuation of the proceedings is not dependent on the will of the administrative body, and even less left to the discretion of the body - this body is obliged to discontinue the proceedings if it is found to be irrelevant. (...) The irrelevance of the proceedings may also result from a change in the facts of the case. The proceedings must be deemed to be groundless as a result of the cessation of the facts subject to regulation by the administrative authority by way of a decision (cf. the justification of the judgment of the Supreme Administrative Court of 29 September 1987, IV SA 220/87, ONSA 1987, No. 2, item 67) "- Przybysz Piotr Marek. Art. 105. In: Code of Administrative Procedure. Comment updated. LEX Legal Information System, 2019.

Referring to the complainant's doubts raised in points 4 - 5 of the complaint, it should be noted that Fund T. obtained the complainant's personal data as a result of the transfer of claims resulting from contracts initially concluded between the complainant and W. S.A. The assignment of receivables is based on Art. 509 § 1 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025) - hereinafter referred to as "Kc", according to which the creditor may transfer the debt to a third party without the consent of the debtor (transfer) , unless it would be contrary to the law, a contractual reservation or the property of the obligation. In the case at hand, the 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.

Effective raising the objection of the limitation of claims does not terminate the obligation towards the creditor and does not constitute an obstacle to the transfer of the claim. Limitation of obligations and expiry of obligations are not identical concepts. The expiry of the obligation may occur as a result of certain events, such as: performance of the obligation (Article 450 et seq. Of the Civil Code), performance in place of performance (datio in solutum - Article 453 of the Civil Code), permanent inability to perform the performance for which the debtor is liable not bears (Art. 475 of the Civil Code), set-off (498 and further of the Civil Code), renewal (Art. 506 of the Civil Code), release of the debtor from debt by the creditor (Art. 508 of the Civil Code), change of the creditor (Art. 509 and further of the Civil Code) , assumption of debt (Art. 519 et seq. of the Civil Code), issuance of a judgment in favor of one of the joint and several debtors (Art. 375 § 2 of the Civil Code). As indicated in the doctrine: "Thus, the effect indicated by the court in the form of the impossibility of pursuing a claim, will appear only when the debtor uses his allegation of limitation, but even then it will not mean the expiry of the creditor's claim, but will only deprive the claim of the qualification of an appeal against it and the possibility of his compulsory investigation. This means that if the debtor raised the objection of limitation (especially when he did not do so), and then performed the benefit to the creditor, he cannot demand its

return, because the claim, despite the statute of limitations, existed and expired only as a result of the performance (Art. 411 point 3 of the Civil Code). " Fras Mariusz, Habdas Magdalena and Zakrzewski Piotr. Art. 117. In: Civil Code. Commentary on Art. 117-125. LEX Legal Information System, 2019. The following position of the doctrine should also be raised: “The fact that the claim is time-barred has the only effect that raising the statute of limitations by the borrower will have an impact on the effectiveness of the party's claim for payment. The effectiveness of pursuing claims does not affect the lender's ability to process the complainant's personal data. The borrower's obligation still exists. " Judgment of the Provincial Administrative Court in Warsaw of May 15, 2013, II SA / Wa 2063/12.

Each secondary creditor enters into the rights of the primary creditor, including the right to process the debtor's personal data, with the acquisition of a claim. The transfer of receivables is associated with the right to transfer the debtor's personal data to the acquirer of the receivables, which allows taking appropriate actions to recover the receivables. The debtor's personal data are an integral part of the claim.

Fund T., on the basis of a debt assignment agreement, became the administrator of the Complainant's personal data and processed them for the purpose of debt collection. The premise legalizing the obtaining of the Complainant's personal data by the Administrator was art. 23 sec. 1 point 2 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), namely the law, in this case art. 509 § 1 constituting the assignment of claims. The premise legalizing the processing of personal data, including the processing of personal data for the purpose of debt collection before May 25, 2018, was Art. 23 section 1 point 5 above the Personal Data Protection Act of 1997, and currently it is Art. 6 sec. 1 lit. f GDPR.

Referring also to the complainant's doubts as to the admissibility and lawfulness of the sale of receivables to the T. Fund, it should be noted that neither the then General Inspector for Personal Data Protection, nor the President of the Office for Personal Data Protection who acted in his place, is the authority appropriate to verify the correctness of civil law contracts. The Supreme Court ruled in this respect as follows: "In terms of the assessment of concluded contracts, it is important that the Inspector General for Personal Data Protection is not competent to assess the correctness of civil law contracts and disputes arising on this basis, because only common courts. The authority cannot examine whether the contract is valid and legally effective, because in this case the public administration body, which the GIODO undoubtedly is, would exceed its statutory competences. For the Inspector General for Personal Data Protection, the concluded contract is a legal act not subject to his

assessment, producing legal effects until it is questioned in the form and manner prescribed by law (cf. e.g. the judgment of the Supreme Administrative Court of 26 May 2009, I OSK 808 / 08, Lex No. 513109, judgment of the Provincial Administrative Court in Warsaw of 19 July 2007, II SA / Wa 678/07, Lex No. 368229). The Act on the Protection of Personal Data does not limit the freedom of business activity by entrepreneurs. The conclusion of a debt assignment agreement produces legal effects regulated both by the provisions of the Civil Code and the provisions of the Act on the Protection of Personal Data. Consideration of the admissibility, effectiveness or validity of an assignment agreement is up to common courts, possibly in some of its aspects, may also be of interest to the President of the Office of Competition and Consumer Protection. This is the civil law aspect of this case, which cannot be of interest to a public administration body. " judgment of the Supreme Administrative Court I OSK 1850/14.

In the opinion of the President of the Personal Data Protection Office, in the established factual and legal status of the case, the processing of the Complainant's personal data by the Fund T cannot be assessed as violating his rights and freedoms. As a debtor, the complainant had to take into account the fact that, failing to comply with the obligation, her right to privacy may be limited due to the claims by the creditors of the amounts due to him. Otherwise, a situation could arise in which the debtor, relying on the right to the protection of personal data (the right to privacy), would effectively evade his obligation to perform the service and, consequently, would limit (exclude) the right of the creditor to obtain the payment due to him. . Invoking the right to the protection of personal data would also have to limit the - indicated above - right to dispose of receivables and to take further steps to recover them, provided for in specific provisions.

The processing of the Complainant's data by the T. Fund was justified both in the provisions of the Personal Data Protection Act of August 29, 1997 (Journal of Laws of 2016, item 922) and in the current GDPR. The issuing by the President of the Personal Data Protection Office of any admonition or order against the T Fund in this case is unjustified.

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 decision has the right to the party 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, 00-93 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.

2021-10-04