THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 07

of August

2020

DECISION

ZKE.440.42.2019

Based on Article. 104 § 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 10 May 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), 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, art. 17 sec. 3. lit. e), art. 57 sec. 1 lit. a), 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, following the procedure administrative on the complaint of the Ministry of Justice, hereinafter also referred to as the "Complainant", against the processing of her personal data by the Fund U., hereinafter also referred to as "the Law", represented by the FSA, the President of the Personal Data Protection Office,

refuses to accept the request.

JUSTIFICATION

The Office of the Inspector General for Personal Data Protection (currently: the Office for Personal Data Protection) received a complaint from M. S. about the processing of her personal data by U. The complainant indicated that she did not consent to the processing of personal data by U.

The complainant applied for a decision ordering the cessation of processing and the deletion of her personal data from the database of U.

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

On […] .01.2011, the applicant concluded with P. S.A. loan agreement No […].

P. S.A. sold the claim resulting from the above-mentioned loan agreement to I., entered in the register of entrepreneurs of

England and Wales under number [...], hereinafter also referred to as "I.", on the basis of a framework agreement concluded on [...] .07.2013, with later changes.

I. sold the above-mentioned claim to U. under a debt assignment agreement concluded on [...] .08.2014.

On [...] .10.2016, U. decided to terminate the actions against the applicant towards effective recovery of debts and currently Art. 17 sec. 3 lit. e) Regulation of the European Parliament and of the Council (EU) 2016/679.

U. operates under the authorization of the Polish Financial Supervision Authority of […] .03.2006. On […] .09.2006 it was entered in the register of investment funds kept by the District Court in Warsaw under the number RFI […].

The manner of representation of investment funds is specified in Art. 4 sec. 1 of the Act on Investment Funds and Alternative Investment Funds Management (i.e. Journal of Laws of 2020, item 95, as amended), which indicates that the Company creates an investment fund, manages it and represents the fund in relations with third parties.

Until [...] .06.2019, U. was represented by A. S.A., hereinafter also referred to as A. S.A.

From [...] .06.2019 U. is represented by F. S.A., hereinafter also referred to as F. S.A.

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 Personal Data Protection Office on the basis of the Act of August 29, 1997 on the protection of personal data (Journal of Laws of 2016, item 922, as amended), hereinafter 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 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 concerning the provisions governing the administrative procedure) and on the basis of the GDPR (in the scope of deciding about the legality of the processing of personal data).

The President of the Personal Data Protection Office is the authority competent for the protection of personal data and the supervisory authority within the meaning of the GDPR (Article 34 (1) and (2) of the Act on the Protection of Personal Data 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, the provisions of the Code of Administrative Procedure (Article 7 (1) of the Act on the Protection of Personal Data of 2018) regulated in Chapter 7 of the Act - proceedings on infringement of provisions on the protection of personal data.

Pursuant to Art. 57 sec. 1 GDPR, without prejudice to other tasks under this Regulation, each supervisory authority on its territory monitors and enforces the application of this Regulation (point a) and conducts investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or another public authority (point h). The instruments for the implementation of the tasks provided for in Art. 57 sec. 1 GDPR are specified in particular in Art. 58 sec. 2 GDPR, remedial powers, including the possibility of: issuing warnings to the controller or processor regarding the possibility of violating the provisions of this Regulation by planned processing operations (point a), issuing reminders to the controller or processor in the event of violation of the provisions of this Regulation by processing operations (point b), to order the controller or processor to adapt the processing operations to the provisions of this Regulation, and, where applicable, indicate the method and date (point d).

Pursuant to Art. 57 sec. 1 GDPR, without prejudice to other tasks set out under this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and handles complaints brought by the data subject or by an authorized person - in accordance with art. 80 GDPR - an 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).

It should be noted here that the President of the Personal Data Protection Office, when issuing an administrative decision, is

obliged to decide on the basis of the actual state of affairs at the time of issuing this 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). Also the Supreme Administrative Court - in the judgment of May 7, 2008 in case no. Act I OSK 761/07 stated that: "when examining the legality of the processing of personal data, GIODO is obliged to determine whether the data of a specific entity are processed as at the date of issuing the decision on the matter and whether it is done in a legal manner".

Pursuant to the wording of Art. 23 sec. 1 of the Act on the Protection of Personal Data of 1997, in force during the period covered by the complaint of the Complainant, the processing of personal data was permissible when: the data subject consents to it, unless it concerns the deletion of data relating to him (point 1 ), it is necessary to exercise the right or 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 upon request the data subject (point 3) is necessary to perform 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 the data subject (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 if the data controller has at least one of the ones specified in art. 6 sec. 1 GDPR, the 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 a 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.

Referring the above legal names to the facts established in the case, it should be noted that U. obtained the complainant's personal data in connection with the conclusion of the contract for the sale of receivables of [...] .08.2014. This legal act 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. The claim against the complainant, which was originally due to P. S.A., was purchased by I. and then by U .. The assignment of the claim is associated with the right to transfer the debtor's personal data to the buyer, enabling him to take appropriate actions to recover the debts. 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 debt was also not required. At this point, the position of the Supreme Administrative Court (hereinafter: 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 prejudice to the protection of personal data.

In view of the above, on the basis of the above agreement, U. became the administrator of the transferred data, processing

them for the purpose of recovering 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 Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), namely the legal provision - assignment of receivables. In the case of data processing by the Law Office before May 25, 2018, the legal basis was Art. 23 section 1 point 5 above the Act on the Protection of Personal Data, and currently it is Art. 6 sec. 1 lit. f GDPR.

The processing of the complainant's data by the Laws is justified both on the basis of the provisions of the Act on the Protection of Personal Data of August 29, 1997 (Journal of Laws of 2016, item 922) and in the currently applicable GDPR, because the Laws as the Administrator data operates on the basis of a contract and processes this data for its legitimate interest. 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 U. cannot be assessed as violating her rights and freedoms. The applicant, as a debtor, must take into account the fact that, in delaying the fulfillment of an obligation, her right to privacy may be limited due to the claim by the creditor 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.

U. completed the actions towards the effective recovery of debts towards the complainant on [...] October 2016 and currently indicated art. 17 sec. 3 lit. e) GDPR. The content of this provision indicates that the data subject has the right to request the administrator to immediately delete his personal data, and the administrator is obliged to delete personal data without undue delay, but this rule does not apply to the extent that the processing of such data is necessary to establish, assert or defend claims. The doctrine indicates that "(...) the exclusion of the right to request the deletion of data, referred to in paragraph 3 lit. e of the commented article applies to cases where data processing is necessary "to establish, assert or defend claims". The EU legislator decided that in this case the possibility of exercising the right to request the deletion of data could make it impossible to exercise the rights of other entities (e.g. creditors) and could constitute an abuse of the right to data protection, therefore it excluded the possibility of exercising the right in question. " Fajgielski Paweł. Art. 17. In: Commentary to Regulation 2016/679 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 data protection), [in: ] General Data Protection Regulation. Personally Identifiable Information Protection Act. Comment. Wolters Kluwer Polska, 2018.

In the present case, it must be considered that U. has a legal basis to process the complainant's personal data. Therefore, there are no grounds for issuing an administrative decision ordering the cessation of processing and deletion of the complainant's personal data from U. U. any of the orders referred to in Art. 58 GDPR.

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.

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