THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 17

June

2020

DECISION

ZKE.440.35.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2020, item 256), 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) in connection with Art. 6 sec. 1 lit. c) and lit. f), art. 28, and art. 57 sec. 1 lit. a) and lit. f) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Journal EU L 119 of May 4, 2016, p. 1 and the EU Official Journal L 127 of May 23, 2018, p. 2) and Art. 6a sec. 1 point 1 lit. l), art. 104 sec. 2 point 2 lit. a) and art. 105a paragraph. 1 of the Act of August 29, 1997 Banking Law (Journal of Laws of 2019, item 2357), after conducting administrative proceedings regarding the complaint of Mr. W. P. about disclosure of his personal data by Bank H. S.A. for D. S.A., as well as for Kancelaria Prawnicza M. Sp. k., President of the Personal Data Protection Office refuses to accept the request.

JUSTIFICATION

The President of the Personal Data Protection Office (formerly: the Inspector General for Personal Data Protection) received a complaint from Mr. WP, hereinafter referred to as: "Complainant", about disclosure of his personal data by HSA Bank, hereinafter: "Bank", to DSA, hereinafter also referred to as : "D." and for Kancelaria Prawnicza M. Sp. k., hereinafter also referred to as: the "Law Firm".

In the content of the complaint, the Complainant pointed out that the Bank - with which the aforementioned is related to a credit card agreement - breached the rules of personal data protection, transferring the Complainant's personal data to other entities without his consent. In particular, the complainant questioned the legality of disclosing bank secret information concerning him to the companies: D. S.A. and Kancelaria Prawnicza M. Sp. k., which, according to the complainant's knowledge, were

authorized by the Bank to collect the debt arising from the lack of timely repayment of the due financial liability to the card's account. In the opinion of the Complainant, the unlawful activity of the Bank, as a result of which the employees of the above-mentioned debt collection companies inconveniently harassed him by phone and intruded on his place of residence, exposed him to the risk of loss of health and even life.

In connection with the allegations, the Complainant requested the President of the Personal Data Protection Office to investigate the legality of the processing of his personal data by the Bank, in particular as regards making it available to D. S.A. and the Law Firm.

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

The Bank obtained the Complainant's personal data in connection with his application for a Credit Card [...] of [...] October 2003 and the agreement for the use of the aforementioned Card.

The complainant's personal data was obtained pursuant to art. 23 sec. 1 point 2 and 3 of the Act of August 29, 1997 on the protection of personal data in connection with art. 105a paragraph. 1 of the Banking Law of August 29, 1997, in order for the Bank to take the necessary actions related to the conclusion and servicing of the above-mentioned agreement, including the assessment of creditworthiness and credit risk analysis.

The scope of the Complainant's personal data processed by the Bank included: name, surname, mother's maiden name, date of birth, citizenship, PESEL number, series and number of an identity document, marital status, education, address of residence, telephone number, place of employment, positions held, length of service , profession, form of employment, amount of income and period of employment with the current employer on the day of submitting the loan application.

The complainant was in default in the payment of his obligations under the Credit Card Agreement [...], therefore the Bank terminated it on [...] October 2013 and ordered the debt collection company D. S.A. to recover its outstanding debts.

The Bank disclosed the complainant's personal data to D. on [...] October 2013, on the basis of the contracts concluded on [...] May 2010: [...] - the subject of which was the pursuit of pecuniary claims arising from The bank for banking operations as part of the pre-trial, amicable debt collection procedure for consumer customers (§2 point 1 of the contract [...]). The basis for the disclosure of the complainant's personal data was Art. 6a sec. 1 point 1 lit. l) the Act of August 29, 1997 Banking Law and Art.

31 sec. 1 of the Act of August 29, 1997 on the protection of personal data, on the basis of which the Bank, acting as the data controller, entrusted D. with the processing of the complainant's personal data only to the extent and for the purpose provided for in the aforementioned agreements. The scope of the information provided about the Complainant was limited to the data necessary for the proper recovery of claims and included: name, surname, PESEL identification number, address and telephone data.

Due to the ineffectiveness of D.'s actions, the Bank withdrew on […] July 2014 the debt collection order granted to the company regarding the Complainant's debt. Pursuant to the provisions of specific agreements [...], D. was obliged to destroy the paper data relating to the Bank's clients within 30 days from the last day of the month in which the case was handled (§ 4 point 6.) Moreover, after 6 months from the last day the month in which the case was returned, D. was obliged to completely delete the customer's data, saved in the electronic version (§ 4 point 7). Therefore, at the end of January 2015, D. completely deleted all personal data relating to the Complainant and currently does not process them in any form.

Subsequently, on [...] November 2014, the Bank provided the complainant's personal data and servicing its obligations to Kancelaria Prawnicza M. Sp. k. The transfer was made on the basis of an agreement [...] of [...] June 2015, the subject of which was the provision of legal services by the Law Firm to the Bank, including, inter alia, on drawing up and sending to debtors (in cases referred to the injunction proceedings or in other matters agreed with the Bank) requests for voluntary payment of receivables or conducting negotiations with debtors, signing settlements with them, repayment plans and supervising the implementation of their provisions. The legal basis for the transfer of the complainant's personal data to the Law Firm, as in the case of D., was Art. 6a sec. 1 point 1 lit. l) the Act of August 29, 1997 Banking Law and Art. 31 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data. The Law Firm, acting as a processor, was authorized by the Bank to process the Complainant's personal data only to the extent and for the purpose provided for in the contract (§ 9 point 1). The scope of the data provided to the Law Firm included: the complainant's name and surname, PESEL number, ID card number, date of birth, contact details, place of employment and data related to the case (i.e. debt history, types and grounds for the claim, amount of liability, file number, date related to the claim, the number and details of the contract concluded by the Complainant with Bank HSA

By the agreement for the assignment of receivables of [...] November 2018, concluded between the Bank and H., the Bank sold the receivables under the Credit Card agreement of [...] of [...] October 2003. In connection with the above, the Bank is

currently processing data the Complainant's personal data resulting from the above-mentioned contracts pursuant to Art. 6 sec. 1 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 and art. 118 of the Act of 23 April 1964 Civil Code, for purposes resulting from the legitimate interests pursued by the administrator, i.e. to assert and defend against the complainant's claims.

Kancelaria Prawnicza M. Sp. k. is currently processing the complainant's personal data collected in connection with an investigation for Bank H. S.A. return of the debt resulting from the Credit Card Agreement [...] pursuant to Art. 6 sec. 1 lit. c) Regulation 2016/679 in connection with art. 5c paragraph. 1 point 2 lit. c) the act of 6 July 1982 on legal advisers in order to fulfill the legal obligation of the Law Firm to store personal data processed by legal advisers as part of their profession for a period of 10 years from the end of the year in which the proceedings ended, in which the personal data has been collected. The complainant's personal data is stored by the law office only in archival form in electronic form, the law office does not perform any other processing operations on them.

In this factual state, the President of the Personal Data Protection Office (hereinafter also referred to as the "President of the Personal Data Protection Office") weighed as follows.

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

Pursuant to Art. 160 sec. 1-3 of the Personal Data Protection 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 of August 29, 1997 on the Protection of Personal Data (Journal U. of 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 2020, item 256). At the same time, the activities performed in the proceedings initiated and not completed before the effective date of the provisions of the Act on From May 25, 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95 / 46 / WE (EU Official Journal L 119 of 04.05.2016, p. 1 as amended and EU Official Journal L 127 of 23.05.2018, p. 2), hereinafter referred to as "Regulation 2016/679".

Pursuant to Art. 57 sec. 1 of Regulation 2016/679, without prejudice to other tasks specified under it, each supervisory authority on its territory monitors and enforces the application of this regulation (letter a) and considers complaints brought by the data subject or by an authorized by him - in accordance with Art. 80 by 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).

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 (analogous to Article 23 (1) (1) of the Act of 1997);

processing is necessary for the performance of a contract to which the data subject is a party, or to take action at the request of the data subject prior to entering into a contract (similarly in Article 23 (1) (3) of the Act 1997);

processing is necessary to fulfill the legal obligation incumbent on the controller (similarly in Article 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 apply to all forms of data processing, including their disclosure. These conditions are also equal to each other, which means that for the legality of the data processing process, it is sufficient to meet one of them.

Referring to the subject matter of this case, it should be clarified that the legal act containing detailed regulations regarding the processing of personal data of bank customers is primarily the Act of August 29, 1997 - Banking Law (Journal of Laws of 2019, item 2357) , hereinafter referred to as: "Banking Law".

Pursuant to the wording of Art. 105a paragraph. 1 above of a legal act, the processing of information constituting banking secrecy by banks with regard to natural persons may be performed, subject to Art. 104, art. 105 and art. 106-106d, for the purpose of creditworthiness assessment and credit risk analysis. Obtaining the information referred to in the aforementioned legal provision is to serve the purpose of fulfilling by banks, as public trust institutions, their statutory obligations related to the need to exercise special care in ensuring the safety of stored funds, as well as the necessity to properly examine the creditworthiness from which the existence of the bank makes granting a loan conditional. Creditworthiness testing, which includes the ability to repay obligations and creditworthiness, is an extremely important element of the bank's operations, aimed at reducing the risk of granting difficult loans.

At the same time, pursuant to Art. 104 sec. 1 of the Banking Law, the bank, its employees and the persons through whom the bank performs banking activities are obliged to keep banking secrecy, which includes all information regarding banking activities obtained during negotiations, during the conclusion and performance of the agreement under which the bank performs this action. The obligation referred to in paragraph 1. 1, does not apply to cases in which information covered by banking secrecy is disclosed to entrepreneurs or foreign entrepreneurs to whom the bank, pursuant to art. 6a sec. 1 entrusted the performance, on a permanent or periodic basis, of activities related to banking activities - to the extent necessary for the proper performance of these activities (Article 104 (2) (2) (a) of the Banking Law). It should be clarified in this context that, in accordance with the right granted by the legislator, the bank may, by way of a written agreement, entrust an entrepreneur or foreign entrepreneur with intermediation in banking activities on behalf and for the benefit of the bank, consisting, inter alia, in on debt collection of the bank (Article 6a (1) (1) (l) of the Banking Law).

Referring the above considerations to the material circumstances of the case established in the course of the proceedings, it

should be noted that the Bank obtained the Complainant's personal data in connection with the conclusion of the Credit Card Agreement [...] of [...] October 2003. Thus, the basis for the processing of the Complainant's data by the Bank was the date of filing a complaint, Art. 23 sec. 1 point 2 and 3 of the previously applicable Act of August 29, 1997 on the protection of personal data. The Bank processed the Complainant's personal data on the basis of the provisions of law, demonstrating the necessity of processing to fulfill the legal obligation incumbent on the administrator (creditworthiness assessment and credit risk analysis) and the performance of the contract to which the Complainant was a party.

At present, however, due to the fact that the Bank sells the receivables under the Credit Card agreement [...] of [...] October 2003 to H., the Bank processes the Complainant's personal data resulting from the above-mentioned contracts pursuant to Art. 6 sec. 1 lit. f) Regulation 2016/679 of 27 April 2016 and art. 118 of the Act of 23 April 1964 Civil Code, only for the purposes of the legitimate interests pursued by the administrator, i.e. to assert and defend against the complainant's claims.

Regarding the allegation of unlawful disclosure of his personal data to D. and the Law Firm, it should be clarified that the processing of personal data was entrusted in accordance with the provisions on the protection of personal data, based on the norm resulting from Art. 31 of the 1997 Act. It allowed the data controller (which in the present case was the Bank) to entrust another entity, under a written agreement, with the processing of data (Article 31 (1)), stipulating only that the entity entrusted with the data could process only to the extent and for the purpose provided for in the contract (Article 31 (1) and (2) of the Act 1997). In turn, from May 25, 2018, entrusting data processing is authorized in art. 28 of Regulation 2016/679, according to which the controller may entrust another entity by means of a concluded contract or other legal instrument, which are subject to European Union law or the law of a Member State and are binding on the processor and the controller, and define the subject and duration of processing, the nature and purpose of processing , type of personal data and categories of data subjects, obligations and rights of the controller. The processor is obliged to provide sufficient guarantees for the implementation of appropriate technical and organizational measures so that the processing meets the requirements of Regulation 2016/679 and protects the rights of the data subjects.

As it results from the established facts, the Bank, exercising the right provided for in the previously quoted Art. 6a sec. 1 point 1 lit. l of the banking law and based on the norm of art. 31 of the Act 1997, entrusted D. and the Law Firm with intermediation in the field of banking activities on behalf of and for the benefit of the Bank, consisting in the recovery of the Bank's receivables against the Complainant. The parties standardized the rules of intermediation, as well as the transfer of personal data of the

Bank's clients, by concluding relevant agreements - in the scope of the Bank's cooperation with D. these were: contract [...], contract [...] and contract [...] concluded on [...] May 2010 and in the scope of cooperation between the Bank and the Law Firm, the legal aid contract of [...] June 2015. In the opinion of the President of the Personal Data Protection Office, the above-mentioned contracts, both due to their form and content, corresponded to the requirements set out in Art. . 31 of the 1997 Act, therefore the actions of the indicated debt collection companies related to the processing of the complainant's personal data should be considered authorized. Both D. and the Law Firm, acting under the express authorization of the Bank, processed the Complainant's personal data only to the extent and for the purpose specified in the agreements concluded with the Bank in order to recover the amounts due.

At the same time, it should be noted that as at the date of this decision, D. is no longer processing the Complainant's personal data, which (pursuant to the provisions of the contracts binding it) was obliged to permanently remove it due to the Bank's withdrawal of the recovery order concerning the Complainant's debt. The Law Firm, in turn, is currently processing the complainant's personal data pursuant to art. 6 sec. 1 lit. c) Regulation 2016/679 in connection with art. 5c paragraph. 1 point 2 lit. c) the act of 6 July 1982 on legal advisers in order to fulfill the legal obligation of the Law Firm to store personal data processed by legal advisers as part of their profession for a period of 10 years from the end of the year in which the proceedings ended, in which the personal data has been collected. The complainant's personal data is stored by the law office only in archival form, the law office does not perform any other processing operations.

In conclusion, in the opinion of the President of the Personal Data Protection Office, there are no grounds to state that the Complainant's personal data had been provided by the Bank to D. or the Law Firm in a manner inconsistent with the provisions on data protection, so there was no prerequisite in the case for issuing a decision ordering the restoration of the state of compliance. with the law.

On the other hand, the President of the Personal Data Protection Office points out that the possible regulation on the grounds that the Complainant may seek legal protection and pursue his claims is the Civil Code of 23 April 1964 (Journal of Laws of 2019, item 1145), hereinafter referred to as "the Civil Code ". According to the content of Art. 23 of the Civil Code Regardless of the protection provided for in other regulations, personal rights of a person, including the right to privacy, remain under the protection of civil law. The provision of Art. 24 of the Civil Code guarantees the person whose personal rights has been endangered with the right to request to refrain from acting violating the personal rights, and in the event of an already

committed violation of the request, that the person who committed the infringement will complete the actions necessary to remove its effects. At the same time, pursuant to Art. 448 of the Civil Code, in the event of infringement of a personal interest, the court may award an appropriate amount to the person whose interest has been infringed as compensation for the harm suffered, or, upon his request, order an appropriate amount of money for the social purpose indicated by it, regardless of other measures needed to remove the effects of the infringement. Therefore, if, in the Complainant's opinion, there was a breach of his personal rights by making his personal data available to companies undertaking debt collection actions on behalf of the Bank, the intensification of which was to deteriorate the Complainant's health condition, he may pursue his claims in this respect in a civil action brought before the locally competent common court.

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

Based on Article. 127 § 3 of the Code of Civil Procedure of the decision, the party has the right 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, 00-193 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.

2021-03-30