

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 08

October

2019

DECISION

ZSPU.440.296.2019

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) in connection with joke. 57 sec. 1 points a and f, art. 58 sec. 2 lit. b, art. 32, art. 6 sec. 1 lit. c and art. 5 lit. d and f of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Mr. in K. on irregularities in the processing of his personal data by the Court Bailiff at the District Court for W. F. in W., Ms A. B., running a bailiff's office in W., represented by Mr. A. P. running the Law Firm based in Ł, President of the Office for Personal Data Protection reminds the Court Bailiff at the District Court for WF in W., Mrs. AB, running a bailiff's office in W. for violation of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with with the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on data protection) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and EU Journal of Laws L 127) of 23/05/2018 p. 2), consisting in the unlawful acquisition of personal data of Mr. ZG, residing in in K. and on their further processing as the debtor's data in enforcement proceedings, ref. no. (...), in violation of the principle of correctness and confidentiality of data.

JUSTIFICATION

The Office for Personal Data Protection received a complaint from Mr. Z. G. (hereinafter: the Complainant), residing in in K. on irregularities in the processing of his personal data by the Court Bailiff at the District Court for W. F. in W., Ms A. B., running the bailiff's office in W. (hereinafter: Bailiff), represented by Mr. A. P. running the Law Firm based in Ł.

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following

facts:

The bailiff, at the request of the creditor, P. based in W., instituted enforcement proceedings against Mr. T. G. pursuant to enforcement titles of SR L. Z. in L of (...) September 2012 and (...) November 2012, file ref. files (...) with an enforcement clause on (...) November 2012

In the application, the creditor indicated the complainant's PESEL number. The bailiff, by entering this number into the Pesel-Net system, obtained from it the complainant's personal data in the scope of his name, surname and address. The correctness of the data from the system has not been verified with the application.

The complainant's personal data in the above-mentioned to the extent they were attached to the files of the enforcement proceedings conducted by the Bailiff against Mr. T. G. These data will be processed for archival purposes due to the inability to remove them from the files of the enforcement case (...), for a period of 5 years from the discontinuation of the enforcement proceedings.

After reviewing all the evidence gathered in the case, the President of the Office for Personal Data Protection considered the following.

In the explanations, the attorney of the bailiff did not indicate on what basis the complainant's personal data are processed, but pointed out that the personal data in the files of enforcement proceedings are processed pursuant to Art. 6 sec. 1 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 (general regulation on the protection of data) (Journal of Laws UE L 119 of May 4, 2016, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2) (hereinafter: GDPR) which states that processing is lawful only in cases when - and to the extent that - processing is necessary to fulfill the legal obligation incumbent on the controller (point c); 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 (letter e). While the above premises are based on specific provisions regulating the activity of bailiffs, in the present case the personal data of the Complainant was obtained without any legal basis, as a result of an error by the bailiff.

First of all, it should be pointed out that the bailiff is a public officer who, in the performance of his tasks, is obliged to be guided by the good of the administration of justice and the public interest. The performance of this function has consequences in terms of compliance with certain disciplinary and ethical rules and standards, as well as criminal and civil liability. The

profession of a Bailiff is a profession of public trust, and therefore has a special obligation to comply with the law and to be accurate in his activities. The bailiff is obliged to keep the circumstances of the case secret. This obligation applies to all the circumstances of the case conducted by the bailiff, about which he learned in connection with enforcement activities. The bailiff's obligation of secrecy is aimed, in particular, at protecting the interests of the participants in enforcement proceedings (especially the debtor) against the negative consequences of disclosing confidential data to unauthorized persons. The main duty of the bailiff is to act in accordance with the law, the oath taken and the rules of professional ethics.

In connection with the above, it should be stated that, after obtaining the case from the creditor, the bailiff is not obliged to investigate whether there is actually a basis for initiating enforcement (this task belongs to the court). However, it should be noted that he should always verify the identity of the debtor. The evidence collected in these proceedings shows that the bailiff did not fulfill this obligation, i.e. he did not verify the debtor, which resulted in the unlawful acquisition of the complainant's personal data and their further processing as the debtor's data in enforcement proceedings.

Pursuant to Art. 5 GDPR, personal data must be: processed lawfully, fairly and in a transparent manner for the data subject ("lawfulness, fairness and transparency") (point a), collected for specific, explicit and legitimate purposes and not further processed in a manner inconsistent with these purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is not recognized in accordance with Art. 89 paragraph. 1 as incompatible with the original purposes ("purpose limitation") (letter b), adequate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") (point c), correct and in updated as necessary; all reasonable steps must be taken to ensure that personal data that are incorrect in view of the purposes of their processing are immediately deleted or rectified ("correctness") (point d), stored in a form which permits identification of the data subject for no longer, than it is necessary for the purposes for which the data are processed; personal data may be stored for a longer period as long as they are processed exclusively for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes pursuant to Art. 89 paragraph. 1, provided that appropriate technical and organizational measures required by this Regulation are implemented to protect the rights and freedoms of data subjects ("storage limitation") (point e), processed in a manner that ensures adequate security of personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, by appropriate technical or organizational measures ("integrity and confidentiality") (point f).

In addition, the controller is responsible for compliance with the provisions of para. 1 and must be able to demonstrate compliance with them ("accountability"). By processing personal data, as defined in art. 4 point 2 of the GDPR, it also means obtaining data.

In enforcement proceedings, the lead authority obtains the debtor's data from the creditor. In the present case, as is clear from the explanations of the bailiff, the creditor provided an incorrect PESEL number, which resulted in an incorrect determination of the debtor. It should be noted, however, that the PESEL number is not the only data provided by the creditor to the enforcement authority, in particular the name and surname of the debtor are also provided. PESEL is a number that strictly identifies a given person and it is not possible for two people to use the same number. When obtaining data from the ICT system, the bailiff should have verified their correctness with the creditor's application and, if in doubt, contact the creditor for confirmation.

In these proceedings, the bailiff showed a lack of diligence in determining the debtor's data. As a public officer, the bailiff has a special responsibility. It is his responsibility to check the correctness of the creditor's application (the bailiff is not bound by what the creditor communicated to him, his duty is to verify the information provided by the creditor). The bailiff, as an enforcement authority, is bound by the application to initiate enforcement, but examines both the application and the enforcement order in formal terms.

In view of the above, it should be stated that the bailiff violated the principle of correctness and confidentiality (Article 5 (1) (d) and (f) of the GDPR). It is worth emphasizing that the principle of correctness imposes an obligation on the data controller to ensure the substantive value of the information processed by him. The GDPR emphasizes that personal data must be correct, i.e. reliably verified as to its truthfulness, which was not the case here.

Art. 32 sec. 1 GDPR provides that, taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risk of violating the rights or freedoms of natural persons with different probability and severity, the controller and the processor implement appropriate technical and organizational measures to ensure the degree of security corresponding to this risk. Bailiffs' activities, such as the attachment of an account or remuneration for work, or an auction of property, have a particularly significant impact on the person against whom they are directed. They have a direct impact on its financial situation and, subsequently, on other spheres of life, therefore unambiguous and correct identification of the debtor is a key element of any enforcement proceedings.

The evidence collected in this case shows that the bailiff violated the principle of correctness and confidentiality of the data in the processing of the complainant's personal data.

Currently, the bailiff is processing the complainant's personal data pursuant to art. 6 sec. 1 lit. c GDPR due to the statutory obligation to keep documentation of enforcement proceedings. At the same time, it should be noted that pursuant to Art. 164 paragraph 1 of the Act of March 22, 1918 on court bailiffs, the files of the case in which the proceedings have been completed are kept by the National Council of Bailiffs for the period necessary due to the type and nature of the case, limitation periods, interests of persons participating in the proceedings and the significance of the materials contained in files as a source of information. At the same time, as indicated in §10 para. 4 of the Regulation of the Minister of Justice of December 14, 2018 on the storage and destruction of files of bailiffs and closed recording devices, the bailiff is obliged to submit the files of cases to the National Council of Bailiffs no later than three years after the end of the proceedings.

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

This decision is final. Based on Article. 13 § 2 and art. 53 § 1 and 54 § 1 of the Act of August 30, 2002, Law on proceedings before administrative courts (Journal of Laws of 2018, item 1302), the party has the right to lodge a complaint with the Provincial Administrative Court in Warsaw against this decision. within 30 days from the date of delivery of this decision via the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200.

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