THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 09

January

2020

DECISION

ZKE.440.41.2019

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), art. 60, art. 160 sec. 1 and 2, art. 28 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781) in connection with joke. 12 point 2, art. 22, art. 31 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. 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 (general regulation on protection of personal data) (Journal of Laws UE L 119 of May 4, 2016, page 1 and Journal of Laws UE L 127 of May 23, 2018, page 2), after conducting administrative proceedings regarding the complaint of Mr. JK, for the processing of his personal data by GSA , 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 Personal Data Protection Office) received a complaint from Mr. J. K. (hereinafter also: "the Complainant") about the processing of his personal data by G. S.A. (hereinafter also: "the Company"). The complainant indicated that the Company processed his personal data without any legal basis. In the content of his complaint, the Complainant alleged that the Company unlawfully acquired his personal data by purchasing it from P. Sp. z o. o. because this entity withdrew the claim, waiving the claim and in accordance with the judgment of the District Court in B. of [...] November 2012, ref. no. acts [...] of these data could not be made available, and their sale by the Company was inconsistent with Art. 23 sec. 1 of the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter also: "Act on the Protection of Personal Data of 2019".

In view of the above, the Complainant requested that, by way of an administrative decision, be restored to the lawful state by

deleting his data by G. S.A.

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

1. The Company processes the Complainant's personal data by carrying out activities related to the management of the securitized debt portfolio for E. (hereinafter also referred to as: the "Fund" or "Administrator"), managed by N. S.A. (hereinafter also referred to as: "the Society").

2. On the basis of agreement No. […] of […] June 2013 to the framework agreement for the assignment of receivables of […] May 2013, concluded with P. Sp. z oo, the Fund acquired the Complainant's obligations and thus entered into the creditor's rights with regard to the claim relating to the Complainant (assignment of claims pursuant to Article 509 et seq. of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145 as amended).

3. An agreement was concluded between the Fund managed by the Company and the Company of [...] June 2015 for the management of the entire investment portfolio of E. including securitized receivables and pursuant to Art. 31 of the Act on the Protection of Personal Data of 1997, an agreement for entrusting the processing of personal data was concluded on [...] May 2018.

4. The Company processes the complainant's personal data in the following scope: name and surname, address of residence, correspondence address, PESEL number, telephone number, date of birth, amount of debt, bank account number for debt repayment.

5. According to the Company's statement, on [...] July 2013, a letter was sent to the Complainant, "a notice of transfer of receivables". It was the first letter and thus the first contact with the Complainant. The content of this letter indicated who is the data controller of the Complainant, the purpose of processing personal data, the rights under Art. 32-35 and other data resulting from art. 25 sec. 1 of the Personal Data Protection Act.

6. The letter containing the information indicated in point 5 was sent by ordinary mail.

7. According to the Complainant's declaration, he did not receive the letter-post item in question.

8. The Company is aware of the decision of the District Court B. of […] November 2014 to discontinue the claim due to the withdrawal of the claim for payment in the case between the Fund and the Complainant (file reference […]). The proceedings were discontinued due to the fact that the Fund withdrew the claim instituting this case without waiving the claim. The company

also indicated that the discontinuation of the court proceedings due to the withdrawal of the statement of claim without the claimant waiving the claim does not mean that the debtor recognizes the debt that the liability is not due.

After reviewing all the evidence gathered in the case, the Inspector General for Personal Data Protection weighed the following.

Pursuant to Art. 57 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 personal 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 referred to as "Regulation 2016/679", without prejudice to other tasks determined pursuant to this regulation, each supervisory authority on its territory monitors and enforces the application of this regulation (point a) and deals with complaints brought by the data subject or by a data subject empowered 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).

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 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 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).

The Regulation 2016/679, in force since 25 May 2018, lays down provisions on the protection of individuals with regard to the processing of personal data and provisions on the free flow of personal data (Article 1 (1)). Pursuant to Art. 2 clause 1 of Regulation 2016/679, the regulation applies to the processing of personal data in a fully or partially automated manner and to the processing of personal data in a non-automated manner that forms part of a data set or is to be part of a data set. Data processing is operations or a set of operations performed on personal data or sets of personal data in an automated or non-automated manner, such as collecting, recording, organizing, organizing, storing, adapting or modifying, downloading, viewing, using, disclosing by sending, distributing or otherwise the type of sharing, matching or combining, limiting, deleting or destroying (Article 4 point 2). However, personal data in accordance with art. 4 pts 1 of Regulation 2016/679 is all information about an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be directly or indirectly identified, in particular on the basis of an identifier such as name and surname, identification number, location data, internet identifier or one or more specific physical, physiological, genetic, mental factors, the economic, cultural or social identity of a natural person.

The provision authorizing the administrator to process the data of natural persons is Art. 6 of Regulation 2016/679, which legalizes the processing of data when at least one of the conditions enumerated therein is met. As a consequence, the Fund may process the complainant's personal data showing that at least one exhaustively indicated condition is met. The consent of the data subject will not be the only basis for the lawfulness of the processing of personal data. Under the provisions of Regulation 2016/679, data processing is allowed when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of Regulation 2016/679, but also when it is necessary for purposes resulting from legally justified 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 where the data subject is a child (Article 6 (1) (f) of Regulation 2016/679).

When quoting recital 47 of Regulation 2016/679, it should be indicated that the legal basis for 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 relationship 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 a legitimate interest and in this sense overriding the rights and freedoms of the data subject, because redress does not constitute a disproportionate restriction of these rights and freedoms.

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 the conclusion by the Fund with P. Sp. z o.o. of Agreement No […] of […] June 2013 to the framework agreement for the assignment of claims of […] May 2013. This is based on the substitution of 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), unless this would be contrary to the law, a contractual reservation or the property of the obligation. Under the above agreement, the Fund acquired from P. Sp. z o.o. a claim against the Complainant. 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 action to recover the debt. 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, 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, which should be considered up-to-date in relation to the case at hand.

In view of the above, the Fund, on the basis of the above agreement, became the administrator of the transferred data, processing them for the purpose of collecting 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 Fund before May 25, 2018, the legal basis 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 of Regulation 2016/679.

On the other hand, on the basis of the contract of [...] June 2015, ordering the management of the entire investment portfolio of E. including securitized receivables and the contract for entrusting the processing of personal data of [...] May 2018, the Company was entrusted with the management of the securitized receivables belonging to the Fund. Thus, the premise legalizing the processing of the complainant's personal data by the Fund, and then by the Company, is Art. 28 sec. 3 GDPR, according to which the processing by the processor takes place on the basis of a contract or other legal instrument binding the processor and the controller, specifies the subject and duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects and administrator duties and rights.

To sum up, the processing of the Complainant's data by the Company was justified both in the provisions of the Personal Data Protection Act of 1997 and in the currently applicable Regulation 2016/679, because it acts on the basis of a contract on behalf of and for the legitimate interest of the Fund (Data Administrator) . Thus, the allegation that this activity is unlawful from the point of view of the provisions of Regulation 2016/679 should be considered unfounded.

In the opinion of the President of the Personal Data Protection Office, in the established factual and legal status of the case, disclosure (disclosure) of the Complainant's personal data cannot be assessed as violating its rights and freedoms. The complainant as a debtor must take into account the fact that, in delaying the fulfillment of an obligation, his 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.

Therefore, there are no grounds for issuing an administrative decision ordering the removal of the Complainant's personal data by the Company. In this situation, it is not possible to attribute to the Company and the Fund a breach of the provisions of Regulation 2016/679 in this respect and it is not justified to issue any of the orders referred to in art. 58 GDPR.

Referring to the complainant's allegation that the Fund withdrew the claim for payment in the case between the Fund and the

Complainant, the Company explained that by the decision of the District Court in B. of [...] November 2014, the claim was discontinued due to the withdrawal of the claim for payment in the case between the Fund and the Complainant (file reference [...]). The proceedings were discontinued due to the fact that the Fund withdrew the claim instituting this case without waiving the claim. Discontinuation of court proceedings due to the withdrawal of the statement of claim without the claimant renouncing the claim does not mean that the debt creditor recognizes the liability as undue. The very withdrawal of a statement of claim has only procedural effect and only means that the party resigns from pursuing a claim in a given proceeding. On the other hand, if the withdrawal of the statement of claim is combined with the waiver of the claim, it also has an effect on the future - by waiving the claim, the claimant deprives him of the possibility of its effective pursuit at all.

However, the President of the Personal Data Protection Office would like to clarify that the issue of the discontinuance of the action in connection with the withdrawal of the action remains beyond the scope of the competence of the President of the Personal Data Protection Office, as it is a civil matter within the meaning of Art. 1 of the Act of November 17, 1964, Code of Civil Procedure (Journal of Laws of 2019, item 1460, as amended), and may be considered only in proceedings conducted by a common court. The President of the Personal Data Protection Office is not, however, the competent authority to investigate the existence of the legal basis for the claim. It is not a body that controls or supervises the correct application of substantive and procedural law in cases falling within the competence of other authorities, services or courts, the decisions of which are subject to review in the course of the instance, or otherwise determined by relevant procedures (cf. judgment of the Supreme Administrative Court of March 2, 2001, file reference number II SA 401/00).

Therefore, in the present proceedings, only the legality of the processing of the complainant's personal data by the entities questioned in the complaint was assessed.

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 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 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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