THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 30

January

2020

DECISION

ZKE.440.24.2019

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), art. 60, art. 160 sec. 1 and 2 of the Act of 10 May 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. 28, 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, p. 1 and Journal of Laws UE L 127 of May 23, 2018, p. 2), after conducting administrative proceedings regarding the complaint of Ms OM, for the processing of her personal data by P. Sp. z o.o., 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 Ms O. M. (hereinafter also: "the Complainant") about the unauthorized processing of her personal data by D. Spółka z o.o. Spółka Komandytowo-Akcyjna (currently: P. Sp.z o.o.). (hereinafter also: "the Company"), in connection with the unauthorized debt enforcement against A. Sp. z o.o. The complainant indicated that the debt owed to A. Sp. z o.o. has expired. In view of the above, the complainant requested that, by way of an administrative decision, be restored to the lawful state by ceasing to process her data by P. Sp. z o.o.

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

On the basis of the debt sale agreement of [...] June 2014, A. Sp. z o.o. made a transfer of debtors' cash receivables resulting

from concluded contracts for the sale of products to D. Spółka z o.o. Spółka Komandytowo-Akcyjna, including the claim concerning the complainant, pursuant to art. 509 § 1 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145, as amended).

On [...] October 2014, D. Spółka z o.o. Spółka Komandytowo-Akcyjna was transformed into De. Sp. z o.o. S.K.A.

Under the debt assignment agreement of [...] April 2019, De. Sp. z o.o. S.K.A. there was a transfer of a debt portfolio from De. Sp. z o.o. S.K.A. na H., hereinafter also the "Fund", represented by C. S.A ..

P. Sp. z o.o. (hereinafter also: "the Company") is a licensed entity managing a part of the debt portfolio of the "Fund" (permission from the Polish Financial Supervision Authority No. [...]).

Pursuant to the agreement of [...] October 2016 for the management of the part of the portfolio including securitized receivables of the Fund, concluded between the Company and H., P. Sp. z o. o., as an entity authorized by the Polish Financial Supervision Authority (KNF) to manage receivables (KNF permit No. [...]), the processing of personal data of the Fund's debtors, including personal data of Ms OM Annex No. . the agreement regulates in detail the rights and obligations of both the Fund as a data controller and the Company as a processor. The agreement was concluded on the basis of Art. 46 sec. 2a, art. 45a paragraph. 1 in conjunction joke. 192 of the Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws of 2018, item 1355 as amended).

The scope of data processed by the Company includes: name and surname, PESEL number, home address, telephone number and information on debt.

The objection that the claim is time-barred by the applicant has no bearing on the existence of the claim. The company has purchased a payable claim against Ms O. M. and, as the current owner, is taking actions to settle the claim amicably, making attempts to contact the debtor, persuading for voluntary repayment.

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 the Regulation of the European Parliament and of the Council (EU) 2016/679 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 on 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).

From May 25, 2018, the provision entitling 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. Pursuant to the provisions of Regulation 2016/679, data processing is permissible 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 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 De. Sp. z o.o. S.K.A. (transformed from D. Spółka z o.o. Spółka Komandytowo-Akcyjna) of the debt assignment agreement of [...] April 2019. The above 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 A. Sp. z o.o. a claim against the applicant. The assignment of receivables is associated with the right to provide the buyer with 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 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, 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 law - art. 509 of the Civil Code. 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) Regulation 2016/679.

On the other hand, under the agreement of [...] October 2016 for the management of a part of the portfolio including securitized receivables of the Fund, concluded between H. and P. Sp. z o.o., the Company has been entrusted with the processing of personal data of the Fund's debtors, including the personal data of Mrs. O. M. The basis for entrusting the processing of the above-mentioned personal data until 25 May 2018 was art. 31 of the Act on the Protection of Personal Data of 1997 and from May 25, 2018, it is art. 28 sec. 3 of the Regulation 2016/679. At this point, it should be emphasized that on the basis of the above-mentioned provisions, the processor does not need to have a separate legal basis for data processing, in this case the personal data of the Fund's debtors. Thus, the premise legalizing the processing of the complainant's personal data by the Fund, and then by the Company, is currently Art. 28 sec. 3 of Regulation 2016/679, according to which the processing by the processor takes place on the basis of a contract or other legal instrument that binds the processor and the controller, specifies the subject and duration of processing, the nature and purpose of processing, the type of personal data and the categories of persons whose the data relate to and the obligations and rights of the controller.

In summary, the processing of the Complainant's data by the Company was justified both in the provisions of the Act on the Protection of Personal Data 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. Therefore, there are no grounds for issuing an administrative decision ordering the removal of the Complainant's personal data by the Company.

Referring to the complaint of the Complainant regarding the limitation of pursuing a claim, the President of the Personal Data

Protection Office would like to explain that the issue of the statute of limitations for pursuing a claim is beyond the scope 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.

Notwithstanding the foregoing, I would like to inform you that if, in the opinion of the complainant, by conducting debt collection activities against her, her personal rights were violated, e.g. in the form of a breach of her right to privacy, she may pursue her claims in this respect by means of a civil action brought before the locally competent common court the data administrator, i.e. the Fund. According to the content of Art. 24 § 1 and 2 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2018, item 1025) of the above-mentioned of the act, the person whose personal interest is threatened by someone else's action, may demand that such action be discontinued, unless it is not unlawful.

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.

2021-02-19