THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 04

January

2019

DECISION

ZSPR.440.631.2018

Based on Article. 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) and Art. 60 of the Personal Data Protection Act of May 10, 2018 (Journal of Laws of 2018, item 1000, as amended) in connection with Art. 6 sec. 1 lit. f of the Regulation of the European Parliament and of the EU Council 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 after conducting administrative proceedings regarding a complaint by Mrs. N.W. on irregularities in the processing of her personal data by E. [...] Sp. z o. o. with headquarters in W. [...] and F. S.A. based in P. [...], President of the Personal Data Protection Office

refuses to accept the request.

Justification

On [...] July 2018, the Office for Personal Data Protection received a request from Ms N.W. [...] (hereinafter referred to as the "Complainant"), irregularities in the processing of her personal data by E. [...] Sp. z o.o. with its seat in W. [...] (hereinafter referred to as: "E. [...] Sp. z o. o.") and F. S.A. based in P. [...] (hereinafter referred to as: "F. S.A.").

In the content of the complaint, the complainant alleged that her personal data had been breached due to the disclosure by E. [...] Sp. z o.o. with its registered office in W. her name, surname and previous address, i.e. [...] on the website [...], which is managed by F. S.A. with its seat in P. The complainant indicated that she did not recall the fact of concluding any agreement with E. [...] Sp. z o. o. or F. S.A. Moreover, the complainant argued that on the above page, next to her personal data, there is an information that the debt is time-barred, and in accordance with Art. 117 of the Civil Code, if the debt is time-barred, you cannot pursue it before the Court, let alone trade it on the website.

In connection with the above, the complainant requested that, by way of an administrative decision, be restored to the lawful state by removing her personal data from the party and imposing a financial penalty for the dissemination of her personal data,

both E. [...] Sp. z o. o. and F. S.A.

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

At the address: https: // www. [...] there is an offer for the sale of receivables, in which the complainant's personal data was provided in the form of the first and last name, address data in the form of an indication of the city (...) and street name ([...]), without indicating the building and premises numbers. In addition, the gross debt value ([…]), the offered sale amount ([…]) and information about the overdue windiness ([…]) are also provided.

From the explanations of E. [...] Sp. z oo of ([...] September 2018, it follows that E. [...] Sp. z oo acts as the attorney of the current creditor - E. [...] Sp. z oo 1 Fundusz [...] with its seat in W. [...] (hereinafter: the "Fund"), and the complainant's personal data was obtained for processing on the basis of the debt management agreement of [...] January 2012 concluded with the Fund. .

On the basis of the agreement of [...] October 2013 concluded with the Bank [...], the Fund acquired the claimant's liability and thus entered into the creditor's rights with regard to the claim relating to the claimant (assignment of claims pursuant to Art. 509 et seq. Of the Civil Code).

The scope of the services acquired by E. […] Sp. z o. o. the complainant's personal data included: name, surname, PESEL registration number, series and number of ID card, registered and correspondence address, telephone numbers, e-mail address, employers' data, date of conclusion of the contract, date of termination of the contract, information on the basis of the claim, broken down on financial components, i.e. the principal amount, interest and the bank account number dedicated to debt repayment.

On [...] January 2017, E. [...] Sp. z o. o. concluded with F. S.A. an agreement for the use of the Internatowa Giełda Długów (public platform of receivables sale announcements). Under the agreement, E. […] Sp. z o. o. entrusted F. S.A. on [...] March 2017, personal data for the purpose of posting on the Internet Debt Exchange a proposal to sell the claim relating to the complainant, which is carried out in order to fulfill the legitimate interest of the administrator. The scope of the entrusted data included: name and surname, address, PESEL identification number, and also specified the gross value of the liability and the proposed amount of the sale of receivables.

From the explanations of F. S.A. of [...] August 2018 it also follows that the above-mentioned the contract of [...] January 2017

was amended by Annex No. [...] of [...] May 2018, adjusting the provisions of the contract to the requirements of the GDPR. As part of the concluded contract, E. […] Sp. z o. o. on [...] March 2017 posted on the website of F. S.A. a proposal to sell the receivables of E. [...] Sp. z o. o. against the complainant.

Company F. S.A. is currently processing the complainant's personal data in order to perform the above-mentioned contract of [...] January 2017, and these data are processed in the debtors' database.

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

In the Regulation of the European Parliament and of the EU Council 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, effective from May 25, 2018 (Journal of Laws EU L.2016.119) .1) (hereinafter: "GDPR"), 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)) were established. Pursuant to Art. 2 clause 1 GDPR, the regulation applies to the processing of personal data in a fully or partially automated manner and to the non-automated processing of personal data that are part of a data set or are 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 (2) of the GDPR). However, personal data in accordance with art. 4 pts 1 GDPR is any information relating to 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 entitling the administrator to process the data of natural persons is Art. 6 of the GDPR, 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 the GDPR, data processing is allowed when it is necessary to fulfill the legal obligation incumbent on the administrator (Article 6 (1) (c) of the

GDPR), but also when it 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 where the data subject is a child (Art. 1 letter 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 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 E. [...] Sp. z o. o. obtained the complainant's personal data in connection with the conclusion by the Fund with the Bank of [...] a debt sale agreement of [...] October 2013. The above is based on the substitution of 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. Pursuant to the above agreement, the Fund purchased from the Bank […] a claim against the applicant. 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 actions aimed at recovering the receivables. 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 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 Act on the Protection of Personal Data, and currently it is Art. 6 sec. 1 lit. f GDPR.

On the other hand, pursuant to § 2 of the Agreement for the management of Securitized Receivables of [...] January 2012, E. [...] Sp. z o. o. management of the Securitized receivables belonging to the Fund. Thus, the premise legalizing the processing of the complainant's personal data by E. [...] Sp. z o. o., and then by F. S.A. 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 E. [...] Sp. z o. o. was justified both in 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 current GDPR, because it acts on the basis of a contract on behalf of and for the legitimate interest of the Fund (data controller). Thus, the allegation that this action is unlawful from the point of view of the provisions of the General Regulation on the Protection of Personal Data should be considered unfounded.

Referring to the disclosure by E. [...] Sp. z o. o. the complainant's personal data on the Internet Debt Exchange, it should be indicated that such action is legally justified in the provisions of the GDPR, i.e. in art. 28 sec. 3 in connection with Art. 6 sec. 1 lit. f. The element that determines the assessment of the application of this provision in a specific situation related to the processing of personal data is the existence of legitimate interests pursued by the administrator or by a third party.

Bearing in mind the above-mentioned the premise regarding the legal interest of the administrator, it should be emphasized that it is to be a legally justified interest, and therefore one that is justified in specific legal provisions. Taking into account the circumstances of the case, the provision of Art. 66 of the Civil Code and Art. 4 of the Act of April 9, 2010 on the provision of economic information and exchange of economic data (Journal of Laws of 2018, item 470, i.e.). In accordance with the above-mentioned art. 66 § 1 of the Civil Code, the declaration of the other party's will to conclude a contract constitutes an offer if it defines essential provisions of this contract. Therefore, in the case of a declaration of will to conclude a contract for the sale of receivables, it is indisputable that this receivable (subject of the contract) should be specified. In the analyzed case

- as has already been mentioned above - such a specification of the claim was made by indicating the complainant's personal data in the form of her name and address - however, what is important, without indicating the number of the building and the apartment. It should be emphasized that E. [...] Sp. z o. o., acting for and on behalf of the Fund pursuant to Art. 28 sec. 3 GDPR did not disclose all the data it had in relation to the complainant, but only the scope of such data that was necessary to specify the claim. Therefore, this justifies the conclusion that in the analyzed case, the disclosure of data on the website was made to the extent necessary to fulfill the legally justified purpose of the data controller, in a manner not going beyond that purpose, and in compliance with the principle of data minimization (Article 5 (1) (c)). GDPR).

Supplementing this discussion, it must also be stated that, pursuant to Art. 4 of the Act on the provision of economic information and exchange of economic data, disclosure of economic information to third parties unmarked at the time of declaring this information for disclosure takes place only through the economic information bureau, unless the law provides for a different mode of sharing data. The prohibition of providing by entrepreneurs who do not have the status of an economic information bureau - by way of public announcement - information on the personal data of the debtor (consumer) resulting from the quoted provision is not an absolute prohibition and thus allows the application of the aforementioned Art. 6 sec. 1 lit. f GDPR.

In the opinion of the President of the Personal Data Protection Office, in the established factual and legal status of the case, disclosure of the complainant's personal data 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.

To sum up, in the case at hand, disclosing the complainant's personal data on the website in terms of her first and last name as well as street and town names (as elements of the address of residence) is justified by the legitimate aim of the administrator. This goal should be understood as taking actions aimed at concluding a contract for the sale of receivables. Thus, the disclosure in question was made to the extent necessary to achieve that aim and, as such, did not infringe the

applicant's rights and freedoms.

Therefore, there are no grounds for issuing an administrative decision ordering the removal of the complainant's personal data from the website. In this situation, E. […] Sp. z o. o. and F. S.A. violation of the provisions of the general regulation on the protection of personal data 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 objection that the claim is time-barred, the President of the Office for Personal Data Protection would like to explain that this issue is beyond the scope of competence of the President of the Office for Personal Data Protection, 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 2018, item 1360, i.e.), 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.

The decision is final. Based on Article. 7 sec. 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) in connection with Art. 13 § 2, art. 53 § 1 and article. 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, within 30 days from this decision. the day of its delivery to the side. The complaint is lodged through the President of the Personal Data Protection Office. The fee for the complaint is PLN 200. The party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right to aid may be granted upon the application of a party submitted before the initiation of the proceedings or in the course of the proceedings. This application is free of court fees.

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