THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 07

May

2019

DECISION

ZSPR. 440.301.2018

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. 160 sec. 1 and 2 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000, as amended), after conducting administrative proceedings regarding the complaint of Mr. N. I., residing in in Ś., for the disclosure of his personal data by T. S.A with its seat in S., whose legal successor is T.U. S.A with its seat in S., for P. with its seat in W., President of the Personal Data Protection Office

refuses to accept the request.

Justification

Mr N. I., residing in in Ś., hereinafter referred to as the Complainant, for the disclosure of his personal data by T. S.A with its seat in S., currently T. U. S.A with its seat in S., for K. S.A. based in W.

In the content of the complaint, the Complainant indicated that, in his opinion, his personal data had been disclosed by T. U. S.A. to the following: "(...) law firms (...) debt collection companies (...)" in connection with the purchase of a car [...] with a valid third party liability policy and the liability of T.U. THERE ARE. towards the applicant. At the same time, he indicated that the quotation: "(...) I must also inform you that I did not consent to the processing of my personal data by T. S.A. even in the field of service, not to mention that they should apply for permission to sell "debt" which de facto does not exist (...) "

The complainant, in a letter to the Inspector General for Personal Data Protection (delivered on [...] September 2016), specified that he was lodging a complaint against T. S.A based in S. and quoted: "his current legal successor given in the letter from K S.A." as well as on K. S.A. and its legal successor.

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

The complainant's personal data was obtained by T. S.A. on the basis of the vendor's notification delivered [...] .04.2012 on the

purchase of the vehicle [...] reg. no. [...] by the Complainant in accordance with Art. 32 section 1 of the Act of May 22, 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Office of Motor Insurers (Journal of Laws of 2018, item 473, as amended), hereinafter referred to as the UFG Act, and additionally supplemented by a letter from The applicant, served on […] .05.2012, TSA obtained the following categories of the Complainant's personal data: name, surname, PESEL registration number, address details, date of obtaining a driving license and the amount of the Complainant's discounts. The purpose of obtaining the data was to perform by T. S.A. obligations arising from the concluded third party liability insurance contract of the vehicle owner, in accordance with art. 31 of the Insurance Guarantee Fund Act.

The legal successor of T. S.A. in connection with the acquisition of the company on the terms set out in Art. 492 § 1 point 1 of the Act of September 15, 2000, Code of Commercial Companies (i.e. Journal of Laws of 2019, item 505), hereinafter referred to as the Commercial Companies Code, became T.U. THERE ARE..

The applicant did not turn to T.U. THERE ARE. to stop sharing his personal data with third parties.

T. S.A. disclosed the personal data of the Complainant P., hereinafter referred to as the Fund, on the basis of an agreement concluded on [...] December 2013 between T. S.A. and the Fund, the subject of which was the assignment of receivables resulting from the insurance premium not paid by the Complainant. The scope of the data that was provided was limited to the data necessary for the proper recovery of claims, i.e. name, surname, PESEL identification number, address data.

The entity managing and representing the Fund from [...] October 2011 was GUT with its seat in W. The basis for the processing of the Complainant's personal data by GUT was an agreement on management of the Fund's securitized receivables concluded on [...] .10.2011, concluded between PG and CSA with its seat in W., representing the Fund.

The basis for the processing of the complainant's personal data by K. S.A. is an annex of [...] April 2016 to the agreement concluded on [...] October 2011 for the management of the Fund's securitized receivables, concluded between P. G. and C. S.A. and the Fund, then amended by annexes of [...] .04.2016 on the management of the Fund's securitized receivables, pursuant to which K. S.A. took over from P. G. all rights and obligations arising from the management contract.

K. S.A. did not disclose the Complainant's personal data to third parties in connection with the pursuit of claims.

In this factual state, the President of the Personal Data Protection Office considered the following.

On May 25, 2018, with the entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2018, item 1000, as amended), hereinafter referred to as uodo 2018, General Office The Personal Data Protection Inspector

has become the Office for Personal Data Protection. Proceedings conducted by the Inspector General for Personal Data Protection, initiated and not completed before May 25, 2018, are conducted by the President of the Personal Data Protection Office, pursuant to the Act of August 29, 1997 on the Protection of Personal Data (Journal of Laws of 2016, item 922, as amended), hereinafter referred to as the PDA in 1997, in accordance with the principles set out in the Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended), hereinafter referred to as Kpa. All actions taken by the Inspector General for Personal Data Protection before May 25, 2018 remain effective (Article 160 (1) and (2) of the Act on Personal Data Protection Act 2018).

It should be noted that the President of the Personal Data Protection Office, on the basis of the evidence gathered in this case, assessed the processing of the Complainant's personal data in the context of the then binding provisions of the Personal Data Protection Act 1997, but did not examine the issue of the existence or non-existence of the claim, or its amount. Such cases are civil matters within the meaning of Art. 1 of the Act of 23 April 1964 of the Civil Code (Journal of Laws of 2018, item 1025, as amended), hereinafter referred to as the Civil Code, and should be considered in proceedings conducted by common courts. In particular, pursuant to Art. 189 of the Act of November 17, 1964, the Code of Civil Procedure (Journal of Laws of 2018, item 1360, as amended), hereinafter referred to as the Code of Civil Procedure), the claimant may request the court to establish the existence or non-existence of a legal relationship or right, if including legal interest. Thus, the President of the Personal Data Protection Office has no authority to consider the complainant's allegation as to the existence of a debt under the contract, and the existence of the contract itself with T. S.A. or its legal successor, T.U. THERE ARE..

The provisions of the Personal Data Protection Act, 1997, until May 25, 2018, defined the rules of conduct in the processing of personal data by natural persons and legal persons as well as organizational units that are not legal persons, if they processed personal data in connection with commercial or professional activities or for the implementation of statutory purposes. In order for the processing of personal data to be lawful, the administrator was obliged to process personal data on the basis of the premises specified in art. 23 sec. 1 pt 1 - 5 uodo 1997. According to this provision, data processing was allowed only if:

the data subject consents to it, unless it concerns the deletion of data relating to him;

it is necessary to exercise an entitlement or fulfill an obligation resulting from a legal provision;

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 at the request of the data subject;

it is necessary to perform tasks specified by law for the public good;

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 data subject.

Referring the above to the facts established in the case, it should be noted that T. S.A. obtained the Complainant's personal data on the basis of the notification delivered to [...] .04.2012 on the vendor's purchase of the vehicle [...] registration number [...] by the Complainant in accordance with Art. 32 (1) of the Insurance Guarantee Fund Act. This provision stipulates that the owner of a motor vehicle who has transferred ownership of the vehicle is obliged to provide the owner to whom the ownership of the vehicle has been transferred confirmation of the conclusion of the third party liability insurance contract for motor vehicle owners and to notify the insurance company in writing, within 14 days from the date of transfer of ownership of the vehicle, about the transfer of ownership of the vehicle and the data of the owner to whom the ownership of the vehicle was transferred. Moreover, pursuant to Art. 31 sec. 1 of the UFG Act, in the event of the transfer or transfer of ownership of a motor vehicle, the owner of which has concluded a third party liability insurance contract for motor vehicle owners, the rights and obligations of the previous owner under this contract shall pass to the owner of the vehicle to which the ownership title was transferred or transferred. The third party liability insurance contract is terminated upon the expiry of the period for which it was concluded, unless the holder to whom the ownership title was transferred or transferred terminates it in writing. Whereas T.U. THERE ARE. obtained the complainant's personal data as the legal successor of TSA, because pursuant to 492 § 1 point 1 of the Commercial Companies Code, the merger of companies may be effected by transferring all assets of the (acquired) company to another (acquiring) company for shares or stocks issued by the acquiring company to the shareholders of the acquired company (merger by acquisition).

Thus, in the case at hand, the premise of the legal acquisition and processing of the Complainant's personal data by T. S.A., and then by T.U. S.A., resulting from the Act on Personal Data Protection Act 1997. Namely, in accordance with Art. 23 sec. 1 point 2 and 3 of the Personal Data Protection Act, the processing of personal data was permissible when it was necessary to exercise the right or fulfill an obligation resulting from a legal provision and it was necessary for the performance of the contract, when the data subject was a party to it. The consent of the complainant was not required in this case

Pursuant to Art. 31 sec. 1 uodo 1997, in force before May 25, 2018, the data controller could entrust another entity, under a written contract, with the processing of data. The entity referred to in paragraph 1. 1, could process data only to the extent and

for the purpose provided for in the contract (section 2). In addition, the entity referred to in para. 1, was obliged to take measures to secure the data set, referred to in art. 36-39, and meet the requirements set out in the provisions referred to in Art. 39a. The entity was responsible for compliance with these provisions as the data controller (paragraph 3). In the cases referred to in para. 1-3, the responsibility for compliance with the provisions of this Act rested with the data controller, which did not exclude the responsibility of the entity that concluded the contract for data processing inconsistent with the contract (paragraph 4). For the control of the compliance of data processing by the entity referred to in para. 1, with the provisions on the protection of personal data, the provisions of art. 14-19 of the same act (section 5).

The Fund obtained the complainant's personal data in connection with with the conclusion of T.U. THERE ARE. of the debt assignment agreement of [...] December 2013. 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 act, a contractual reservation or the property of the obligation. It follows from § 4 point 7 of this agreement entitled Performance of the Agreement (in the case files) that it is also an agreement for the transfer of a collection of personal data of debtors. Seller, i.e. T.U. S.A., provided a set of personal data within the meaning of the general data protection regulation, and the buyer, i.e. the Fund, became the administrator of this set. Therefore, it should be pointed out that the premise legalizing the obtaining of the Complainant's personal data by the Fund was the provision of Art. 23 sec. 1 point 5 of the Act on Personal Data Protection Act 1997, according to which the processing of data was permissible when it was necessary to fulfill legally justified purposes carried out by data administrators or data recipients, and the processing did not violate the rights and freedoms of the data subject. This provision was closely correlated with Art. 23 sec. 4 of the Act, which specified what the PDPO 1997 understood as a legally justified purpose of the data controller or data recipients. According to Art. 23 sec. 4 point 2 of the Act on Personal Data Protection Act 1997, for the legally justified purpose referred to in para. 1 point 5, it was considered in particular to pursue claims for business activity. At this point, one should also mention the position of the adjudicating panel of 7 judges of the Supreme Administrative Court, who in the judgment of June 6, 2005 (file reference number I OPS 2/05) stated that the legally justified purpose of the data controller referred to in Art. . 23 sec. 1 point 5 of the Act, may be based on the provisions of civil law. In the opinion of the Supreme Administrative Court, the act itself recognizes the pursuit of claims for business activity as such a legally justified purpose (Article 23 (4) (2) of the Act on the Protection of Personal Data).

It should be noted that at the time of the assignment of receivables, the Fund became the administrator of personal data, within the meaning of art. 7 point 4 uodo 1997, i.e. the entity deciding on the purposes and means of data processing.

When analyzing the issue of the processing of personal data by the KSA, it should be emphasized that the Personal Data Protection Act 1997 allowed the data controller (in this case it is the Fund) to entrust another entity, by way of a written agreement, with the processing of data (Article 31 (1)), stipulating only that the entity to whom the data was entrusted could process them only to the extent and for the purpose provided for in the contract (Article 31 (1) and (2) of the Act on Personal Data Protection Act 1997). In the opinion of the President of the Personal Data Protection Office, joining K. S.A. and the Fund an agreement to take over the rights and obligations under the Fund's Securitized Receivables management agreement of [...] April 2016 in connection with the Securitization Fund's Securitized Receivables Management Agreement of [...] October 2011 between C. and the Fund and PG both in terms of its form and content, it complied with the requirements set out in Art. 31 uodo 1997. Therefore, the activities of K S.A. related to the processing of the complainant's personal data were authorized.

In the opinion of the President of the Personal Data Protection Office, also joining K. S.A. and the Fund an agreement to take over the rights and obligations under the Fund's Securitized Receivables management agreement of [...] April 2016 in connection with the Securitization Fund's Securitized Receivables Management Agreement of [...] October 2011 between C. and the Fund and PG both in terms of its form and content, it complies with the requirements set out in Art. 31 uodo 1997. Therefore, the actions of K. S.A. related to the processing of the complainant's personal data were authorized.

As the proceedings showed, neither K. S.A. nor T.U. THERE ARE. they did not disclose the Complainant's personal data to any other third parties.

In conclusion, in the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that the Complainant's personal data were processed by T.U. THERE ARE. and K. S.A. in a manner inconsistent with the provisions on data protection, therefore, the necessary condition for the President of the Office for Personal Data Protection to issue a decision ordering the restoration of the lawful state did not exist.

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

2019-05-28