THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, 23

of December

2019

DECISION

ZKE.440.73.2019

Based on Article. 104 of the Act of June 14, 1960, Code of Administrative Procedure (Journal of Laws of 2018, item 2096, as amended) and pursuant to Art. 160 sec. 1 and 2 of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781) in connection with joke. 22, art. 23 sec. 1 and 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. 57 sec. 1 lit. a) and f), art. 28 and art. 29 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 (Journal UE L 119 of 04/05/2016, p. 1 and Journal of Laws UE L 127 of 23/05/2018, p. 2, as amended), after conducting administrative proceedings regarding the complaint of Mr. ZK and Mrs. WK, for the processing of their personal data by Kancelaria Prawna H. Sp. k., 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 Mr. Z. and Mrs. W. K., hereinafter referred to as "Complainants", represented by legal counsel W.R. z Kancelaria Radców Prawnych W. s.c., hereinafter referred to as the "Plenipotentiary", for the processing of their personal data by Kancelaria Prawna H. Sp.k., hereinafter referred to as the "Law Firm". In the content of the complaint, the Plenipotentiary requested that the deficiencies in the processing of personal data be removed by:

Cessation of the processing of the complainants' personal data by the Law Firm,

Removal of the Complainants' personal data from the Law Firm's personal database,

Control in the scope of checking whether the Complainants' personal data has been removed from the database.

In the justification to the complaint, the attorney indicated that the Law Firm, on behalf of the Fund P., hereinafter referred to as

the "Fund", is seeking on the basis of the writ of execution with reference number act [...], pecuniary claims after the deceased M. K. under the loan agreement number [...] concluded with S., hereinafter referred to as "S.". In the opinion of the Representative, the Law Firm is the administrator of the Complainants' personal data, because it stores the data and decides on the purposes and means of their processing. Moreover, none of the conditions under Art. 23 of 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 "1997 Act", does not entitle the Law Firm to process the Complainant's data. It is not particularly art. 23 sec. 1 point 5 of this act (legally justified purpose), i.e. conducting inheritance proceedings and claiming the return of the due benefit under the contract of business activity after the deceased M. K. resulting from the above-mentioned the writ of execution. In the opinion of the Plenipotentiary, further enforcement of the receivables by the Law Firm should not take place, because the Applicants notarized the inheritance. The Plenipotentiary emphasized that further processing of data without the Complainants' consent violated their rights and freedoms, including the right to legal protection of private and family life, honor and good name, and that sending further information letters was an attempt of persistent harassment.

On the basis of the evidence collected in the case, the President of the Office for Personal Data Protection established the following facts:

The Fund sent a letter to Z. K. fulfilling the information obligation provided for in Art. 25 of the 1997 Act in relation to the minor W.K. The letter fulfilling the disclosure obligation was also sent on [...] May 2017 to Z. K. In the letters, the Fund informed that, inter alia, under the contract for the assignment of claims, S. provided him with the personal data of the Complainants, which will be processed in order to identify the heirs of the deceased MK, in order to be able to then pursue claims from the debtor's heirs due to the business activity conducted by the Fund (evidence: a copy of the letter of [...] April 2017, reference number: [...]; a copy of the letter of [...] May 2017, reference number: [...]).

In response, the Plenipotentiary sent a letter of [...] May 2017 and a letter of [...] May 2017, in which he demanded to cease processing personal data of ZK and WK and to conduct further debt collection actions against them (evidence: letter from […] May 2017; letter of […] May 2017).

The law firm replied to the above-mentioned letters of […] May 2017 and […] June 2017, respectively (proof: letter of […] May 2017, ref .: […]; letter of […] June 2017, ref .: […]) .

The Law Firm's explanations show that the Complainants' personal data were obtained from S. on the basis of a contract for

the provision of legal services of [...] December 2002. Under the contract, the Law Firm undertook to provide legal services in the field of debt recovery from S. debtors in court and enforcement proceedings, and S. entrusted the Law Firm, pursuant to Art. 31 of 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 "Act of 1997", processing of personal data (proof: agreement on cooperation with [...] December 2002). As indicated by the Law Firm, in 2001 S. transferred to her the case of pursuing a debt due to S. under a loan agreement of [...] March 2010 concluded with M. K. the debtor, as a result of which S. obtained an enforceable title in the form of an order for payment in the electronic writ of payment proceedings of [...] March 2011 (evidence: a claim for payment of [...] February 2011; payment order in the writ of payment proceedings of [...] March 2011 - file reference number [...], decision of the District Court L. of [...] May 2011 on issuing an enforcement clause - file reference number [...]). The debtor died on [...] April 2014, and therefore it became necessary to establish the circle of the deceased's heirs in order to satisfy S.'s claims (proof: a copy of an abridged death certificate). On behalf of S., the law office sent [...] in March 2015 to the District Court in B. a request for information and documents regarding the inheritance proceedings after the deceased MK (evidence: the Law Firm's application of [...] March 2015 to the District Court in B . - sign: […]). In reply, the Court informed that declarations about the rejection of the inheritance had been submitted. On [...] March 2015, the Law Firm received a notarial deed (extract) of [...] August 2015 on the rejection of the inheritance by ZK and EK on behalf of the minor daughter of WK - Repertory A number [...], and [...] August 2015 . notarial deed (extract) of [...] March 2015 on the rejection of the inheritance by, inter alia, ZK, PK - Repertory A number [...] (evidence: copy of the notarial deed (extract) of [...] August 2015 on the rejection of the inheritance - Rep. A number [...]; copy of the notarial deed (extract) of [...] March 2015 on the rejection of inheritance - Repertory A number [...]). The scope of data processed by the Law Firm results from the content of the above-mentioned of notarial deeds and includes: the first and last names of the Complainants, the first names of the Complainants' parents, the series and number of the Complainant's ID card, the Complainant's PESEL number and the home address of the Complainants. The complainants' personal data was obtained by S. pursuant to art. 23 sec. 1 point 5 in connection with joke. 23 sec. 4 point 2 of the Act of 1997, and then entrusted to the Law Firm pursuant to Art. 31 of this act. In the explanations, the Law Firm also indicated that on [...] December 2016, S. transferred to the Fund a claim resulting from the loan agreement concluded with M. K. (evidence: a copy of the debt transfer agreement of [...] December 2016). On the same day, the Law Firm, on the basis of a concluded legal service contract, accepted an order to represent the Fund in court, enforcement and administrative proceedings regarding

receivables purchased by the Fund. Under this agreement, the Fund, as a data controller, entrusted the Law Firm with the processing of the Complainants' personal data (proof: a copy of the legal service agreement of [...] December 2016). The Law Firm indicated that due to the fact that it is not the administrator of the Complainants' personal data, but an entity processing data at the request of the Fund, it is exempt from the information obligation referred to in Art. 24 and art. 25 of the 1997 Act, the Law Firm emphasized that the quotation quoted: “(...) despite the applicants' rejection of the inheritance, which has never been denied, there is still a legal justification for the processing of their personal data, despite the fact that, for obvious reasons, the creditor will not he was claiming a debt. The personal data of the Complainants, who belong to the circle of statutory heirs after M. K., are necessary to show that they are inherited by persons belonging to a further circle of statutory heirs. The fact that the inheritance is rejected does not mean that the creditor does not have a legitimate purpose for processing personal data. This goal is valid until the heirs are established, the debt is paid or the creditor decides not to pursue the claim. In the process of inheritance determinations, the creditor must have the data of all persons who are included in the circle of statutory heirs under the testator, including those who rejected the inheritance, because they are treated as if they did not survive the opening of the inheritance (Article 1020 of the Civil Code), which means that their heirs take their place. Until the inheritance arrangements and heirs are completed, it will be necessary, inter alia, referring to the fact that the minor's inheritance has been rejected by the minor and her statutory representative, who also rejected the debtor's inheritance. It is therefore necessary to further process their personal data. '

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

On the date of entry into force of the Act of May 10, 2018 on the protection of personal data (Journal of Laws of 2019, item 1781), i.e. on May 25, 2018, the Office of the Inspector General for Personal Data Protection became 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), in accordance with the principles set out in the Act of 14 June 1960, 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) - 3 of the Act of May 10, 2018 on the protection of personal data).

Pursuant to Art. 57 sec. 1 letter f) of the Regulation of the European Parliament and 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 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 "GDPR", without prejudice to other tasks specified pursuant to of this Regulation, each supervisory authority on its territory shall deal with complaints lodged by a data subject or by a body, organization or body in accordance with Art. 80, to the extent appropriate, conducts proceedings on these complaints and informs the complainant about the progress and the results of these proceedings within a reasonable time, in particular if it is necessary to pursue further proceedings or coordinate actions with another supervisory authority.

The President of the Personal Data Protection Office, when issuing an administrative decision, is obliged to decide on the basis of the facts existing 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 a 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).

At the time when the complaint was received by the Inspector General for Personal Data Protection, the Act of 1997 was in force, therefore, the President of the Office, on the basis of the collected evidence, assessed the controller's behavior in the context of the above Act. It should be emphasized that this assessment concerned only the processing of the Complainants' personal data, while the issues related to inheritance, and in particular the order of inheritance, were not taken into account by the President of the Office for Personal Data Protection. Such cases are civil matters 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 are considered in proceedings conducted by common courts.

The President of the Office established that in the case in question, the legal basis for the Law Firm's operation is Art. 31 of the Act of 1997 (under the provisions of the GDPR, its counterpart is currently Art. 28 and Art. 29). This provision stipulates that

the controller may entrust another entity, by way of a written contract, with the processing of data (paragraph 1), while the entity referred to in paragraph 1, may process data only to the extent and for the purpose provided for in the contract (section 2), and prior to the commencement of data processing, it is obliged to take measures securing 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 is responsible for compliance with these provisions as the data controller (paragraph 3). The transfer of the Complainants' personal data took place on the basis of a legal service contract concluded between the Fund and the Law Firm of [...] December 2016. With § 7 sec. 19 in connection with § 2 sec. 1 of this agreement shows that the Law Firm processes the personal data of the Complainants in order to quote “taking actions aimed at securing, investigating or enforcing claims arising from receivables”. A characteristic feature of the entrustment agreement is that the data controller does not have to personally perform activities related to the processing of personal data. For this purpose, it may use the services of specialized external entities, commissioning them to perform either the entire process of personal data processing, or only certain activities, e.g. the collection or storage itself. In the event of the transfer of personal data, we are dealing with data processing on behalf of the administrator, within the limits indicated in the data processing agreement and not for the processor's own purposes, but for the purposes of the data administrator. Importantly, when entrusting the processing of personal data, their administrator does not change. The Fund remains the administrator of the Complainants' personal data, and the Law Firm performs activities commissioned on behalf of and on behalf of the Fund under a cooperation agreement concluded with the Fund.

Considering the above provisions of law, the President of the Office found the objection of the Complainants' Representative, that the Law Firm had to fulfill its information obligations, to be inaccurate. The law firm, as an entity that is not the administrator of personal data, but an entity that processes data at the request of the Fund, is exempt from the obligations provided for in art. 24 and art. 25 of the 1997 Act. Such obligations are borne solely by the data controller. The law firm is responsible for data processing only for the purpose and scope provided for in the contract, and in addition - before starting data processing - for taking measures to secure the data set referred to in art. 36-39, including for meeting the requirements specified in Art. 39a. Only the data controller is responsible for compliance with these provisions.

It should also be added that the Plenipotentiary's statements that the quotation "further processing of personal data (...) without their consent violates their rights and freedoms, including the right to legal protection of private and family life, honor and good name" and that quoted " sending further information letters is an attempt of persistent harassment ”, they were not justified in

the collected evidence of the case. Entrusting the Complainants with the processing of personal data by the Fund did not require the Law Firm to obtain their consent, because the Fund's operation was based on applicable law, i.e. based on the aforementioned Art. 31 of the 1997 Act. Moreover, as the Law Firm rightly pointed out in its explanations, the letter of [...] April 2017 and the letter of [...] May 2017 addressed to the Complainants constituted "only the performance of information obligations" imposed on the Fund . In the opinion of the President of the Office, the processing of the complainants' personal data by the Office is right also because “further arrangements are being made regarding the heirs of M. K.”. Nevertheless, it should be noted that this issue cannot be the subject of these proceedings, as the Plenipotentiary's request only concerned the processing of personal data by the Law Firm. By the way, it should be added that the rights mentioned by the Complainant, i.e. the right to legal protection of private and family life, honor and good name, belong to personal rights protected under the provisions of civil law. Whether in a specific case there has been a breach, the competent common and local courts decide. Article 23 of the Act of 23 April 1964 Civil Code (Journal of Laws of 2019, item 1145, as amended), hereinafter referred to as "the Civil Code", specifies that a person's personal rights, including surname , image remain under the protection of civil law, regardless of the protection provided for in other regulations. On the other hand, pursuant to Art. 24 of the Civil Code, 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 the event of an infringement, he may also request the person who committed the infringement to perform the actions necessary to remove its effects, in particular to submit a declaration of appropriate content and in an appropriate form. Under the rules provided for in the Civil Code, he may also demand monetary compensation or payment of an appropriate sum of money for a given social purpose. In addition, if as a result of the breach of personal interest, property damage was caused, the aggrieved party may demand that it be remedied on general principles.

Regarding the request for the removal of the complainants' personal data by the Law Firm, it should be noted that it cannot take place in the present case. As already mentioned, the Law Firm is not the administrator of the Complainants' personal data, but the entity to which the Fund commissioned their processing under a legal service contract of [...] December 2016 (Article 31 of the 1997 Act). The Law Firm processes data only on the basis and for the purposes indicated in the above-mentioned contract. From § 7 sec. 23 of this contract, it follows that the Law Firm is obliged to permanently delete data only in the event of no need to further process them, in particular in the event of termination of the contract with the Fund. The Law Firm may not delete data at the request of the Complainant, because it is not the Office that decides about the purposes

and means of their further processing. The purposes and means of data processing are decided by the Fund, to which the Complainants may request the deletion of their data. Nevertheless, the President of the Office draws attention to the Law Firm's explanations, which indicate the necessity to process the complainants' personal data, despite their rejection of the inheritance. The above is justified by the fact that the Fund, being their administrator, carries out the quotation "further arrangements regarding the heirs of M. K.". As indicated by the Law Firm quoting: "The personal data of the Complainants who belong to the circle of statutory heirs from MK are necessary to prove that they are inherited by persons belonging to the further circle of statutory heirs" - and further - "As soon as they are established by way of a decision on confirming the acquisition of an inheritance, or when the data controller - the creditor decides to resign from pursuing claims against persons inheriting the inheritance, the Complainants' personal data will be immediately deleted. " At this point, the judgment of the Supreme Administrative Court of June 6, 2005 (file reference number I OPS 2/05) should be cited, where the legitimate purpose of the data controller referred to in Art. 23 sec. 1 point 5 of the Act, the mere fact of pursuing claims for business activity was recognized.

With regard to the request of the Complainants 'Representative to carry out "checks to verify whether the Complainants' personal data have been removed from the database", it should be noted that the control of the compliance of data processing with the provisions of the Personal Data Protection Act (currently compliance with the provisions of the GDPR) belongs to the autonomous competences The President of the Personal Data Protection Office, and therefore it is not carried out at the request of the person concerned. In the present case, the authority did not find any infringement that would become a reason for initiating ex officio proceedings. If, in the opinion of the Complainants, a prohibited act was committed to their detriment, they may apply directly to the law enforcement authorities with an appropriate notification about the possibility of committing a crime and seek protection of their rights through proceedings before law enforcement authorities and then before a common court.

The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 58 sec. 2 GDPR, aimed at restoring a legal state in the process of data processing - so it is justified and necessary only insofar as there are irregularities in the processing of personal data.

In the opinion of the President of the Office for Personal Data Protection, there are no grounds to conclude that the

Complainants' personal data are processed by the Law Firm in a manner inconsistent with the provisions on the protection of personal data, and therefore there was no prerequisite for the President of the Office to issue a decision ordering the restoration of the lawful state, i.e. deletion of the Complainant's personal data.

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 Administrative Procedure, the party has the right to submit an application for reconsideration of the case within 14 days from the date of delivery of the decision 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.

2021-02-17