

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-152 / 21.03.2017 Decision on appeal with registration № Ж-152 / 21.03.2017 DECISION № Ж-152 / 2017 Sofia, February 5, 2018. Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov, at a regular meeting held on January 10, 2017. , pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint with registration № G-152 / 21.03.2017, filed by A.T.B. against TB ("T.") EAD and "SGG" Ltd. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The applicant informed that almost 10 years ago she had been a subscriber of G. (now T. EAD), but had terminated her contract after having paid everything due to him, according to information from company employees. At the end of February 2017, she received a call in connection with an outstanding debt from 2009 from a person who turned out to be an employee of "SGG". Ltd. During this conversation, Ms. A.T.B. did not receive a response as to the origin of the obligation. After the conversation, the applicant visited T.'s office. EAD to get more information. Employees could not provide such for the amount due, date of occurrence, invoice on which it was due, nor present a copy of the contract, which has long been terminated. Ms. A.T.B. considered it less difficult to pay the amount and to request a written certificate that he did not owe any money to T. EAD, as well as to delete her personal data from the information systems. For these requests she filed an application to "T." EAD, to which a response has been received. The applicant referred the following infringements to the Commission: firstly, neither of her two requests for confirmation of non-obligation and the deletion of her personal data was granted or there was no reply. Secondly, that it had not been duly notified of the assignment, which means that it had not entered into force for it. Third, Ms A.T.B. claims that she was not informed and did not consent to the transfer of her personal data, asking the Commission to verify its legality. The complaint describes three appendices: a copy of the application to "T." EAD and the company's response to the request, a copy of the fiscal receipt dated 27.02.2017. They are not attached to the complaint. With a letter ex. № P-3887 / 06.06.2017, the complainant was given a seven-day deadline to submit the annexes described in the complaint. The letter was returned in its entirety marked "unsolicited". With a letter ex. № P-5077 / 12.07.2017, the submission of the annexes was again requested. The letter was received, but it was not attached. In the conditions of the official principle in the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, the respondent companies were required to submit written statements and relevant evidence. With a letter ex. № P-3882 / 06.06.2017 "T." EAD was notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to

express an opinion and present evidence. From "T." EAD commit opinion Reg. № C-354 / 19.06.2017 for unfoundedness of the complaint. The attorney informed that the applicant was a subscriber of the company, and after the termination of the contractual relationship she had outstanding obligations for used mobile services. With a contract for cession dated September 17, 2009, the mobile operator has assigned its claim to SGG Ltd., with the explicit authorization of the assignee to notify the debtor of the transfer. With a subsequent contract for collection of repayment installments on assigned receivables from 01.08.2010, "SGG" Ltd. has assigned to "T." EAD to collect on its own behalf, but at the expense of the assignor, repayment installments on the receivables ceded with the specified assignment agreement. In connection with the above, Ms. A.T.B. duly paid the amount due by her, which was transferred to the assignee. The Commissioner noted that the applicant was not a T subscriber. EAD and has no outstanding liabilities to the company. Attached to this statement is a certificate certifying that Ms A.T.B.'s personal data, stored on paper and electronic media, have been deleted. Attached to the opinion are: an assignment agreement between T. EAD and SGG Ltd. from 17.09.2009; agreement for collection of installments on assigned receivables between "T." EAD and SGG Ltd. from 01.08.2010; certificate that the applicant's personal data had been deleted. With a letter ex. № P-3883 / 06.06.2017 "SGG" Ltd. was notified on the basis of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion and present evidence. Opinion with registration № G-152 # 10 / 04.10.2017 for unfoundedness of the complaint was expressed by a procedural representative of the company. Informs that by virtue of a contract for cession concluded between the company represented by her and "T." EAD, the latter transferred to SGG receivables under contracts for mobile services against third parties - debtors. The applicant's outstanding debt to a mobile operator was transferred by the said assignment agreement, whereby S.G.G. Ltd. has entered into its right as a creditor. According to a notarized power of attorney, the assignor has authorized the assignee to notify the debtors of the transfer of receivables. A cession notification has been sent to the address specified in the contract for mobile services. Next, it is alleged that the complaint of Ms A.T.B. contains sufficient acknowledgments for information received by telephone from the personal data controller about the processing of personal data. In view of the above, the Commissioner considers that no violation of the complainant's rights has been established, as the provision of personal data and their processing by S.G.G. Ltd. is lawful in the hypothesis of Art. 4, para. 1, item 2, item 3 and item 7 of LPPD. From S.G.G. Ltd. ask the Commission to accept that this case is not a lack of cooperation, but the impossibility of timely implementation, as the obligation is repaid, the case is closed, the data is not processed, and they are stored in the archive only to prove legal interest in processing them in

the event of a dispute, as in the present case. Attached to the opinion are: contracts for mobile services and a contract for transfers of receivables (cession) dated 17.01.2009. № PPN-01-Ж-152/2017 # 11 / 19.10.2017 by "SGG" OOD was required to present an extract from Annex № 1 of the assignment agreement, concerning the transfer of the receivables to the applicant. With a letter reg. EAD, in which the complainant is indicated by the master code of the client. In order to exercise its powers, the Commission must be properly seised. Complaint № Ж-152 / 21.03.2017 contains the obligatory requisites, specified in Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, namely: there are data about the complainant, nature of the request, date and signature, in view of which it is regular. The appeal is partially admissible - two of the requests were submitted outside the term under Art. 38, para. 1 of the LPPD, and another request is within the specified period. It was submitted by a natural person with a legal interest and the subject-matter is an allegation of unlawful processing of the applicant's personal data. During the official inspection in the Register of personal data controllers and the registers kept by them by the Commission, it was established that the companies have fulfilled their obligation under Art. 17, para. 1 of LPPD and are registered as administrators of personal data with ident. № 28772 (T. EAD) and № 52178 (SGG OOD). The complaint was referred to a competent body to rule - the Commission for Personal Data Protection, which according to its powers under Art. 10, para. 1, item 7 of the LPPD considers complaints against acts and actions of the personal data controllers, which violate the rights of individuals under the LPPD. At a meeting of the Commission held on 13.12.2017, the complaint was declared procedurally admissible and as parties in the administrative proceedings were constituted: complainant - A.T.B. and respondent - "T.B." EAD and SGG Ltd. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for January 10, 2018. In order to clarify the case from a factual and legal point of view, from "T." EAD is required to submit an application with ent. № 587-3967426872 / 27.02.2017 and reply with № GB-1TSZR82 / 02.03.2017. The same are provided. Prior to the meeting, an additional opinion was received from SGG Ltd. Inform that Ms. A.T.B. has paid the debt in the amount of BGN 5.64 and the case has been closed due to repayment, and the available data have been destroyed. At present, the company does not have any information related to the complainant. Attached to the opinion are: a notification of assignment and a certificate of delivery. The applicant did not appear at the hearing on the merits. The respondent - for "SGG" Ltd. is not a representative. From "T." The SAD shall send a representative who maintains the opinion that the complaint is unfounded. In the factual situation thus established, the Commission examined the complaint on the merits, accepting the complaint as partially admissible and partially justified,

based on the following legal conclusions: The Personal Data Protection Act (PDPA) regulates the protection of individuals' rights. The purpose of the law is to guarantee the inviolability of the person and private life by ensuring the protection of individuals in the event of improper processing of related personal data in the process of free movement of data. The complaint contains two allegations of violation of the provisions of the LPPD. The first concerns the assignment. The applicant alleged that she had not consented to the transfer of her personal data or the claim itself. It should be noted that the issues related to the entry into force of the assignment and the consent to the transfer of the claim itself are of a civil nature and do not fall within the competence of the Commission. Regarding the provision of personal data in the course of transfer of the receivable, the collected evidence established that the assignment of the receivable was performed on 17.09.2009. The newly received evidence shows that the notification under Art. 20, para. 1 of the LPPD was carried out on 07.09.2010 and on 25.01.2011. The processing of the personal data of the complainant by providing them by "T." EAD of SGG Ltd., as well as the notification of this form of processing, was made more than five years before the filing of the complaint with the Commission, due to which the complaint is inadmissible in this part - pursuant to Art. 38, para 1 of the LPPD. The second allegation of violation of the provisions of the LPPD refers to the lack of ruling on an application submitted to "T." EAD, for deleting the personal data of the complainant from the company's systems.

According to the provision of art. 28a, item 1 of the LPPD, the natural person has the right to request from the controller to delete his personal data, the processing of which does not meet the requirements of the LPPD. Such a request was made by Ms. A.T.B. in the submitted application with № 587-3967426872 / 27.02.2017. The same was submitted as provided in Art. 29 of the LPPD order and contains the necessary requisites, specified in art. 30, para. 1 ZZLD.

Art. 32, para. 4 of the LPPD imposes on the personal data controller the obligation to take a decision and perform the necessary action or to refuse to perform it within 14 days of its receipt. The administrator should notify the applicant of the deletion or the motivated refusal to perform it within the specified period (Article 33 of LPPD). As can be seen from the response provided to the request, there is no ruling on the request for deletion of personal data. In the proceedings before the Commission by T. EAD was presented a certificate dated 15.06.2017, which testifies to the deletion of personal data of Ms. ATB, stored on paper and electronic media. The same was not brought to the applicant's attention.

By failing to rule on the request for deletion of personal data within the prescribed 14-day period, "T.B." EAD has violated the provision of Art. 32, para. 4 ZZLD.

With regard to the infringement found, the Commission, within its operational autonomy, has the power to: set a time limit for remedying the infringement, issue a binding prescription or impose an administrative penalty.

The violation is completed with the expiration of the statutory term for pronouncing, as a result of which the setting of a term for its elimination is inapplicable.

Given the fact that the submitted application contains other requests, in addition to the deletion of personal data, as well as the lack of explicit reference to provisions of the Personal Data Protection Act, a more effective measure to protect the public interest would be mandatory prescription of the administrator to rule within the term under Art. 32, para. 4 of LPPD and to duly notify the applicant according to the provision of art. 33 ZZLD.

The Commission for Personal Data Protection, taking into account the facts and circumstances presented in the present administrative proceedings, and on the grounds of Art. 38, para. 2 of the LPPD,

HAS DECIDED AS FOLLOWS:

1. On the grounds of art. 38, para. 1 of the LPPD announces a complaint with registration № Ж-152 / 21.03.2017, filed by A.T.B. against TB EAD and SGG Ltd., inadmissible in respect of "T.B." EAD and SGG Ltd. in the part regarding the provision of personal data by TB EAD of SGG Ltd. and notifying the applicant about this, due to the expiration of the preclusive five-year period from the transfer;
2. Announces a complaint with Reg. G-152 / 21.03.2017, filed by A.T.B. against TB EAD and SGG Ltd., as justified in relation to "T.B." EAD for violation of Art. 32, para. 4 of LPPD - failure to pronounce in time on an application for deletion of personal data under Art. 28a, item 1 of the LPPD;
3. On the grounds of art. 38, para. 2 of LPPD gives to the administrator "TB" EAD with UIC ****, with registered office and address of management: *****, mandatory prescription - within 14 days from the entry into force of this decision to rule on the application for deletion of personal data of A .T.B. with № 587-3967426872 / 27.02.2017 and to notify in writing the applicant in accordance with the provisions of Art. 33, para. 1 and 2 of the LPPD. The Commission for Personal Data Protection should also be notified about the implementation of the mandatory prescription.

The decision is subject to appeal within 14 days of its service, through the Commission for Personal Data Protection, before the Administrative Court Sofia - city.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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