

DECISION № 284 Sofia, 15.01.2021 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 52 panel, in a public session on 16.12.2020 in the following panel: JUDGE: Silvia Dimitrova with the participation of the Secretary Albena Ilieva, considering case number 815 on the inventory for 2020 reported by the judge, and to rule took into account the following: The proceedings are under Article 145 et seq. APC, supra Article 38, paragraph 7 of the Protection of personal data. It was formed on the basis of a complaint sent by the CPDP by [company], [settlement], filed through an attorney. MM by SAC against Decision № PPN-02-775 / 2018 of 19.11.2019 of the CPDP in the part in which it is accepted that the complaint reg. № PPN-02-775 / 30.10.2018, filed by A. G. D. v. [company], [settlement] is well-founded and on the grounds of Art. 58, para 2, b. "D" of Regulation 2016/679 ordered him to take action to comply with the operations of personal data processing for the purposes of debt collection only if there are grounds under Article 6, paragraph 1 of Regulation 2016/679. It is alleged that the decision is incorrect in the appealed part, as considerations are set out in additional objections presented in s.z. The defendant, the Commission for Personal Data Protectionq, expressed a written opinion that the complaint was unfounded. He claims that the legitimate interest of the applicant company has no advantage over that of the entity, insofar as the administrator has not taken out-of-court actions to notify the debtor and collect his receivables, but has directly disclosed the data to third parties. It is requested that a decision be issued rejecting the challenge as unfounded. An objection is raised for the excessiveness of the lawyer's remuneration. The interested party, personally and through a special representative, expresses an opinion that the complaint is unfounded. Written evidence was collected in the case, contained in the file attached to the CPD attached in a certified copy. In the course of the court proceedings new evidence was presented - Opinion of the Working Group on Personal Data Protection under Article 29 on the concept of legitimate interests of a personal data controller under Article 7 of Directive 95/46 / EC, as well as Decision of The Court of Justice on the conditions for the application of Article 6 (1) (f) of the General Data Protection Regulation adopted by the Court. Administrative Court - Sofia-city, in the present panel of judges, considering the evidence gathered in the case, separately and in their entirety, in connection with the arguments and allegations of the parties, considers the following established by the factual complaint with registration № PPN-02-775 / 30.10.2018 of Mrs. AD from [settlement] against NET1 E., containing allegations of illegal processing of her personal data. The complaint states that on October 22, 2018 on the front door where she lives, a note was pasted on the outside of the company EX DEBT AD for its obligations to NET1 E. with written on the note the three names and number of the apartment in which lived. Another note with identical content and details was also left at Ms D.'s permanent address (another

address). She claims that she was not provided with a document with which she would explicitly give her written consent for the processing or provision of personal data. She states that she was not informed that NET1 E. had provided her data to EX DEBT for the processing of her data for the purpose of debt collection. She asked the CPDP to conduct an inspection of both NET1 and EKS DEBT and after the violation is established to impose a corresponding penalty on the perpetrators. The CPDP notified both NET1 and EKS DEBT about the received complaint and provided an opportunity for an opinion on it. These were received on 28.11.2018 by NET1 and on 04.12.2018 by EX DEBT, and in both statements it is stated that the personal data of the person have been processed lawfully and in good faith. For collection of the receivables of Ms. AD, as a client of electronic communications services (internet access and delivery of television programs), provided by NET1 E., according to a contract concluded on 19.04.2017 with a term valid for 18 months, namely until November 1, 2018 and in view of her identification as a client, there was a legal basis for processing her personal data. Pursuant to Article 10, paragraph 1 of the Personal Data Act, in connection with Article 57, paragraph 1, letter "e" of Regulation 2016/679, with a decision of the Commission for Personal Data Protection from a meeting held on 19.11. 2019, objectified in protocol №42, the complaint was accepted as regular and admissible. On October 23, 2019, a regular meeting was held, of which the parties were regularly notified. The CPDP, after discussing the views of the parties in the context of the evidence gathered in the file, ruled in the contested decision that Ms. D.'s complaint was well-founded in violation of Article 6 (1) of Regulation 2016/679. In the grounds of the decision it is accepted that NET1 processed the personal data of the disputant without the explicit written consent of her neither in the contract for electronic communications services nor in any other separate document. It has been established that Ms. D. has due and unpaid debts to NET1, according to the invoices provided by the latter. It has also been established and is not disputed by the parties that between NET1 and EX DEBT there is a signed contract for out-of-court collection of unpaid (overdue) debts of NET1 subscribers. In its decision the CPDP has accepted that a violation of Art. 6 (1) of Regulation 2016/679 by both NET1 and EKS DEBT, for which, pursuant to Article 58, paragraph 2, letter "d" of Regulation 2016/679, it ordered both companies to take actions for compliance of the operations on personal data processing with the requirements of the Regulation. The Commission's decision has entered into force with regard to the EKS DEBT. The disputed company was notified of the Commission's decision on 2 December 2019, as evidenced by the attached copy of the delivery notice. The appeal was sent through a courier company on 16.12.2019. In the factual situation thus established, the court made the following legal conclusions: in which case it is procedurally ADMISSIBLE. Considered on the merits, the current panel of

judges finds it UNFOUNDED. The court should assess the legality of the contested decision on all grounds specified in Article 168, paragraph 1, in conjunction with Article 146 of the APC, namely: whether it was issued by a competent administrative body and in the prescribed form, whether the administrative procedure rules are observed and the substantive provisions for its issuance, whether it is consistent with the purpose of the law. In making this assessment, the court considers that the contested decision in the present proceedings was issued by a competent administrative body - CPDP, in accordance with its powers under Article 38, paragraph 1 and paragraph 2 of the LPPD, in conjunction with Article 10, paragraph .1, item 7 of the LPPD. Pursuant to Art. 10, para 1, item 7 of the LPPD, the CPDP considers complaints against acts and actions of the administrators, which violate the rights of individuals under this law, as well as complaints of third parties in connection with their rights under this law. . Upon referral under Article 38, paragraph 1 of the LPPD, proceedings are initiated before the CPDP, the results of which are objectified in the decision under Article 38, paragraph 3 of the LPPD. The CPDP is competent to rule on the procedure - "an independent state body that protects individuals in the processing of their personal data and in accessing this data, as well as control over compliance with this law." Pursuant to Article 9, paragraph 4 of the LPPD, the decisions of the commission are taken by a majority of the total number of its members at an open meeting. As can be seen from the minutes № 42 / 23.10.2019, four members of the Commission plus the chairman were present at the meeting - open in nature. The latter signed the contested decision, taken by the required majority. In view of this, the court considers that the act was issued by a competent authority and there is no ground for revocation under Article 146, item 1 of the APC. The court considers that due to the lack of an explicit provision in the LPPD regarding the form and content of the decision, Art. 59, para. 2 of the APC. The act contains the requisites obligatory under Art. 59, para 2 of the APC, as well as the signatures of the persons who participated in the voting. Moreover, there are no grounds for its revocation within the meaning of Article 168, paragraph 1, in conjunction with Article 146, item 2 of the APC. No violations of the administrative procedure rules were committed during the enactment of the administrative act. The complaint, on the basis of which the proceedings were instituted, was filed on 30.10.2018 - within the period provided for in Article 38, paragraph 1 of the LPPD from learning of the violation, which occurred on 22.10.2018. meeting and was adopted unanimously by the four members of the administrative body present. The administrative body has also correctly constituted the parties in the proceedings before it. The administrative act was also issued in the form prescribed by law - a decision stating the reasons - factual and legal grounds, due to which the complaint of AD was accepted as well-founded. The requirement of the CPDP to collect evidence, to request

additional information, as well as to perform other actions in the proceedings under Section II "Consideration of complaints by individuals" under the APC. The parties to the proceedings were given the opportunity to acquaint themselves with the evidence attached to the file and to express an opinion. In deciding on the merits of the dispute, the written evidence presented in the file was discussed, as well as the opinions expressed on the allegations made in the complaint. administrative proceedings, and the latter was conducted in accordance with the special provisions of LPPD, art. 34 et seq. of the APC and the principles of

process - the principles of truthfulness, equality, accessibility, publicity and transparency

/ art. 7, Art. 8 and Art. 12 of the APC /. In view of this, the court finds that there are no prerequisites for

revocation of the attacked IAA within the meaning of Article 168, paragraph 1 in connection with Article 146, item 3 of the APC.

The present court also finds that the procedural decision is

ruled in accordance with the applicable substantive provisions and

the arguments put forward in that regard by the applicant are unlawful

unfounded. In the present case, the only question is how much

the legitimate interest of NET1 takes precedence over the rights of Ms D.

The principles set out in Article 6, § 1 of Regulation (EU) 2016/679 regulate that

personal data are processed lawfully, in good faith and in a transparent manner

with respect to the data subject and relevant, related to and limited to

necessary in relation to the purposes for which the data are processed / "reduction to

According to the same provision, processing is lawful only if and

in so far as at least one of the following conditions is applicable: (a) the data subject has given

consent to the processing of his personal data for one or more specific purposes; b)

processing is necessary for the performance of a contract under which the subject of

data is a party, or to take steps at the request of the data subject

before concluding a contract; (c) processing is necessary to comply with

a legal obligation that applies to the administrator; (d) processing is

necessary to protect the vital interests of the data subject

or another natural person; (e) processing is necessary for the implementation of a task in the public interest or in the exercise of official authority, which are provided to the administrator; (f) the processing is necessary for the purposes the legitimate interests of the administrator or a third party, except when before such interests take precedence over the interests or fundamental rights and freedoms of the data subject who requires the protection of personal data, in particular when the data subject is a child.

In this case the processing of personal data by NET1, in his capacity of "administrator of personal data" in the sense of §1, item 2 of the RD of LPPD, in connection with art. 4, item 7 of Regulation 2016/679, was carried out on the basis of Article 4, item 2 of Regulation 2016/679, as in art. 6, paragraph 1 of the same normative document the conditions for legality of processing. In compliance with the cited provision the present court finds that in the present case they were not present the conditions under letters "a" and "e" in the processing of personal data of AD, namely: there is no duly signed consent for the processing of personal data. As is customary in c Decision № 11875 / 14.08.2019 of the Supreme Administrative Court, Fifth Department, ruled under Adm. 9285 / 2018, regardless of the wording in the General Terms and Conditions, in order to have the consent of the natural person in the sense of §1, item 13 of the RD of LPPD is necessary the expression of consent for the processing of personal data to be freely expressed, specifically and informed. Evidence in this regard has not been presented in the case. The present court instance accepts that according to art. 28.4 of the GTC (sheet 47 of the case) the contract between NET1 and Ms. D. was terminated due to non-payment of the price of the monthly subscription fee, due to which the reference to a contract within the meaning of Article 4, paragraph 1, item 3 of the LPPD is unfounded. There is no ground under Article 6, § 1, b. "E" of the Regulation - processing should be necessary for the legitimate interests of the administrator or a third party

country. Legitimate (legitimate) is that interest, which is born and aimed at satisfaction of a certain human need is recognized as admissible by law, i.e. for him they are provided legal remedies for exercise (subjective rights), and where such are not explicitly - they are permissible in view of the general principles of law. IN

In this case, there is no dispute that NET1 has an interest in collecting and processing personal data of natural persons related to the implementation of the contract for electronic communications services. Once an individual contract is signed, for the company as controller of personal data this interest has become legitimate in meaning of the regulation. However, this interest exists in a validly signed and valid one contract. As noted above, at the time of the violation was not there was one, i.e. at the time of signing the contract for awarding processing of personal data between NET1 and EX DEBT, the individual contract between NET1 and Ms. E. was no longer active. Therefore, there was no legitimacy against HET1 interest in processing the personal data of its client by transmitting them to processing the data on its behalf.

In view of the above, the present court finds that so filed the appeal is unfounded and as such should be rejected.

In this outcome of the dispute, due to lack of requests made by the defendant for awarding costs the court is not obliged to rule on this issue.

We are guided by the above and on the basis of Article 172, paragraph 2 of the APC Administrative Court - S.-grad, II department, 52nd composition

HAS DECIDED AS FOLLOWS:

DISMISSES the appeal of [company], [settlement] against Decision [PPN-02-775 / 2018 of 19.11.2019 of the CPDP in the part in which it is accepted that the complaint reg. ПППН-02-775 / 30.10.2018, filed by A. G. D. against [company], [settlement] is reasonable and on the grounds of Article 58, paragraph 2, b. "D" of Regulation 2016/679 is

ordered to take action to comply with processing operations

of personal data for the purposes of debt collection only if there are grounds

under Article 6, paragraph 1 of Regulation 2016/679.

The decision is subject to appeal before the SAC within 14 days of notification to

the parties to whom on the grounds of art. 138, para 3 of the APC to send a copy of the same.

JUDGE: