

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-286 / 30.06.2017 Decision on appeal with registration № Ж-286 / 30.06.2017 DECISION № Ж-286 / 2017 Sofia, 12.02.2018 The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva at a meeting held on 20.12.2017, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint № Ж-286 / 30.06.2017, filed by P.P.P. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection has been seised with a complaint filed by P.P.P. within the deadline for submitting an application for deletion of personal data. The complainant informed that on 02.06.2017 he visited the office of BTC EAD and bought a prepaid card for providing services with number ****, for which purpose he provided his personal data to the company and signed an application № **** for registration. on the prepaid card. He added that in connection with the application for registration and the clauses contained therein, with which he did not agree, he submitted on 05.06.2017 an application under Art. 29 of LPPD to "M. EAD, and in response by letter № 17_13065 / 06.06.2017 he was informed by the company that "his refusal was accepted and registered" and his personal data were not provided to third parties. Mr. P.P.P. claims that an employee of the company informed him that he had obligations in respect of "old contracts with customer numbers № **** from 2009 and № **** from 2011" and added that on this occasion on 20.06 .2017 submitted an application to a mobile operator for deletion of his personal data - three names, a unique civil number and address and termination of their processing and storage, arguing that he is not a customer or debtor of the company in which he refused to provide of his personal data to third parties and a request to the company to notify the third parties to whom his personal data have been disclosed. He added that in the application he also referred to the expired statute of limitations regarding receivables claimed by the company in respect of customer number № **** from 2009 and № ***** from 2011. Mr. P.P.P. considers that the company has not ruled on the application under the LPPD, as in response № 17_14341 / 22.06.2017 the term "probable" was used, which is only a guess "in relation to the processing of his personal data. In this regard, it asks the Commission to engage the administrative and criminal liability of BTC EAD for violation of its rights under the LPPD and failure to rule in time on the submitted application. Apart from that, he asks the Commission to sanction the company for violation of Art. 2, para. 2 of LPPD in connection with illegal processing of his personal data in the event of providing them to a third party without being notified of the assignment, as well as their storage by a mobile operator without legal grounds, as well as the processing of address data its not up to date. With regard to the latter, the applicant claims that the company stores and uses data on his address which

are out of date, and the replies to his applications were not sent to his permanent address *****, but were sent to address *****, which is his old address and living at the address "by chance" gave them to him. Relevant evidence is attached to the complaint. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case, BTC EAD has requested a written opinion. In response, BTC EAD expressed an opinion that the complaint was unfounded, with relevant evidence attached to it. They inform that the complainant was the holder of a contract for a telephone post with number **** and contracts for mobile services and has outstanding debts to the company under client number № ***** in the amount of BGN 170.16, reflected in monthly accounts for the period from 07.2009 to 09.2009 and liabilities under client number ***** in the amount of BGN 85.23, reflected in five monthly accounts for the period from 11.2010 to 03.2011. They add that the receivables are assigned to "S.G.G. "Ltd., and the relations between the companies are regulated by a contract of cession № **** / 17.05.2013 in respect of a client № ***** and a contract of cession № ***** / 31.05.2014. with regard to client № ***** and the assignor under the contract, the personal data of the complainant and all documents certifying the receivable were handed over. The company added that with regard to the contractual relations between BTC EAD and the complainant arising from the prepaid service, personal data of Mr. P.P.P. not provided to third parties. The company considers that the violations of the LPPD indicated by the complainant are not present and asks the Commission to disregard the complaint. In view of the allegations made by the mobile operator, from "S.G.G. "OOD is a required written statement and relevant evidence in the case. In the course of the proceedings by "S.G.G. "OOD expressed an opinion that the complaint was unfounded, together with relevant evidence attached to it, including a certified copy of an additional agreement signed on 24.03.2009 between the complainant and BTC EAD to a home post contract, subject to change of number, Additional agreement № **** signed on 21.07.2009 between the complainant and BTC AD, subject to change of the subscription plan for number ***** and the two additional agreements concerning client number ****. A certified copy of was also provided: Contract - Application Form 1A, concluded on 18.11.2006 between the complainant and BTC Mobile EOOD, with subject of provision of services on mobile number *****, Contract - Application 1 A, concluded on 01.12.2006 for provision of services on number *****, Contract - Application 1 A, concluded on 23.12.2006 for the provision of services on numbers ***** and ***** and invoices for liabilities. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing these data, as well as control over compliance with the LPPD. In order to exercise its powers,

the Commission must be properly seised. Complaint № G-286 / 30.06.2017 contains the obligatorily required requisites, specified in the provision of 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, the nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest. It deals with illegal processing, use and storage of the complainant's personal data, including those with regard to his address which are not current, by BTC EAD, as well as their provision by the company to a third party without notifying the complainant. The subject of the complaint is also failure to rule in time on the application submitted by the complainant to BTC EAD for deletion of his personal data, the same dated 20.06.2017. 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. The presence of a personal data controller is an absolute procedural prerequisite for the admissibility of the complaint. In the specific case and given the evidence gathered in the file and attached contracts for cession, it is necessary to conclude that the controllers of personal data are BTC EAD and "S.G.G. Ltd. An official reference in the Electronic Register of Personal Data Administrators and the registers kept by them established that the companies are registered as personal data controllers, respectively with an identity card. № 14414 and № 52178. At a meeting of the Commission held on 01.11.2017, the complaint was accepted as procedurally admissible and as parties to the proceedings were constituted: complainant - P.P.P. and respondent parties - BTC EAD and SGG Ltd. The open hearing scheduled for 13.12.2017 to consider the complaint was adjourned at the request of the complainant, and the parties were regularly informed that the complaint will be considered on 20.12.2017. At an open meeting held on 20.12.2017 of the Commission, the complaint has been examined on the merits. The applicant - regularly notified, appeared in person and with his procedural representative B.M. They support the complaint and ask the Commission to respect it and to sanction BTC EAD for processing the personal data of the complainant in violation of the LPPD. They claim a sanction in the maximum amount "in order to fulfill the educational function of the law" in relation to the company. BTC EAD - regularly notified, is represented by legal counsel R., who disputes the complaint and asks the Commission to disregard it as unfounded. „S.G.G. "Ltd. - regularly notified, not represented. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the APC, requiring the existence of established factual facts, given the collected written evidence and the allegations made by the parties, the Commission accepts that considered on the merits of the complaint № G-286 / 30.06.2017 is partially justified.

From the evidence gathered in the case file, it was indisputably established that the complainant had contractual relations with BTC EAD in connection with the provision of services on the numbers ****, *****, *****, *****, and * *****, on the occasion of which he had liquid and due monetary obligations to the company, which the applicant does not dispute, but claims to be repaid by prescription. It is evident from the content of the service contracts that they contain personal data of the complainant - three names, address - ***** and a single civil number, the same voluntarily provided by Mr. P.P.P. for the purposes of the contracts. It is not disputed that the claim of an operator to the applicant was assigned to SGG OOD and the latter was provided with personal data of the obligated person Mr. P.P.P., in a volume of three names, a single civil number and address, as well as information on the amount and grounds for the assigned receivable and the assignee are provided with all documents certifying the receivable. From the evidence gathered in the administrative file it is necessary to conclude that the processing of the personal data of the complainant, in his capacity as a debtor of the operator, in the case of their provision by BTC EAD to SGG OOD, is lawful, provided on the condition for admissibility of the processing referred to in Art. 4, para. 1, item 2 of the LPPD, namely the explicit consent of the natural person - Mr. PPP, to which the personal data refer, the same to be provided to third parties.

Although the issues of limitation are not within the competence of the CPDP, it should be noted that the existence of a liquid and due obligation of the person is grounds for processing of personal data by the personal data controller in the case of storage, use and provision of data for the collection of the debt, moreover, in the present case there is an explicit consent of the complainant to provide his personal data to third parties, objectified in the service contracts concluded between him and the company.

In this regard, the claims of the complainant for illegal provision of his personal data by BTC EAD to SGG OOD should be rejected as unfounded, given the existence of a condition for admissibility of processing.

The allegations of the complainant for violation of Art. 32, para. 4 and 5 of LPPD by BTC EAD, namely for failure to rule in time on an application under Art. 28 a of the LPPD.

As can be seen from the evidence gathered in the file through an application № 17_13341_20.06.2017 on the list of BTC EAD, the same meeting the requirements of Art. 30, para. 1 of LPPD, the complainant has duly exercised his rights under Art. 28 a, items 1 and 2 of LPPD, to which corresponds the obligation of the personal data controller to consider the request and rule on it within the statutory 14-day period and to notify the applicant of its decision, as well as to immediately notify third parties to

whom the data have been disclosed or motivated to refuse to notify them.

From the evidence gathered in the file and contrary to the allegations of the complainant, it was established that on 22.06.2017, ie two days after receiving the application, the controller of personal data has ruled on the application and notified the applicant of his decision, as motivated he refused the request of Mr. P.P.P. deletion of his personal data and termination of their processing, with arguments for the legality of their processing in connection with contractual relations between the parties on the occasion used by Mr. P.P.P. prepaid mobile service on number *****. In this connection, it is necessary to conclude that the allegations of the applicant's failure to pronounce in time on the application submitted by him are unfounded, given the fact that the administrator ruled on the application two days after its submission, ie within 14 days specified in law .

With regard to the applicant's claims concerning the term "likely" used in the company's reply, it should be noted that the allegations made by Mr P.P.P. application does not have the character of an application for access to personal data under Art. 28, para. 1, item 1 of LPPD and in the answer the administrator is not obliged to rule on issues related to the provision of personal data to third parties.

However, the allegations of the complainant that BTC EAD processes, uses data related to his address which are not up-to-date and accurate are well-founded.

It was established that in connection with the contractual relations between the parties on the occasion used by Mr. P.P.P. prepaid mobile service of number **** the same has provided the company with information about only its three names and a single civil number. In the applications submitted to the company for deletion of personal data, Mr. P.P.P. has indicated as a contact address *****, but it is evident from the answers of the administrator that they indicate another address to which they are sent, namely *****, an address which is provided to the company in respect of contractual relations between the parties on the offered fixed services, the receivables of which were assigned to SGG OOD in 2013 and 2014. In this regard and in view of the obligation of the administrator to process accurate and up-to-date personal data of the individual and in view of the inaccuracy in the processed data on the complainant's address, the Commission considers it appropriate to issue to BTC EAD a mandatory prescription to take the necessary technical and organizational measures and update the processed by the company, in case of use, data concerning the address of Mr. P.P.P., given explicitly indicated by the same contact address *****, considering that the same will have a preventive effect and will contribute to compliance by the company with the established legal order.

Having regard to the purpose of the penalty, namely its educational, deterrent and deterrent function, and not to create economic difficulties for the data controller who committed the infringement, the Commission considers that the rights of Mr P.P.P. will be protected and the purpose of the law will be achieved through the specifically issued mandatory prescription, and not through the application of administrative and criminal repression of the state and the imposition of property sanctions on the company. For these reasons, the Commission did not share the counter-allegations of the applicant's legal representative and disregarded his request to impose a pecuniary sanction on the company.

Guided by the above, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Declares a complaint reg.
2. On the grounds of art. 38, para. 2 of LPPD and for violation of Art. 23, para. 1 of the LPPD issues a mandatory prescription to BTC EAD to take the necessary technical and organizational measures and to correct and update the data processed by the company concerning the address of the complainant Mr. PPP, given explicitly indicated by the same contact address in the applications under 33ЛД *****.
3. Sets a deadline for the implementation of the mandatory prescription - one week from the entry into force of the decision, obliging the controller of personal data to notify and submit to the Commission evidence of its implementation.
4. Dismisses the remainder of the action as unfounded;

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 /

Maria Mateva / p /

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