

Home »Practice» Decisions of the CPDP for 2019 »Decision on appeals with registration № PPN-01-15 / 09.01.2018 and PPN-01-16 / 09.01.2018 Decision on appeals with registration» PPN -01-15 / 09.01.2018 and PPN-01-16 / 09.01.2018

DECISION № PPN-01-15 / 2018 Sofia, 28.01.2019 The Commission for Personal Data Protection (CPDP) in composition: Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 13.12.2018, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) 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 (Regulation / General Regulation), considered on the merits complaints № PPN-01-15 / 09.01.2018 and PPN-01-16 / 09.01.2018, filed by Yu.G. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint № PPN-01-15 / 09.01.2018, filed by Yu.G., through a lawyer ****, with allegations in the complaint for illegal processing of personal data of Mr. -n Yu.G. from Financial Institution AD (FI AD). The complaint contains information that in 2012 Mr. Yu.G. has concluded a loan agreement with the company - overdraft in the amount of BGN 750, pursuant to which he was issued a credit card. In addition, it is stated that after the expiration of the card it was not reissued, not used, and that Mr. Yu.G. has repaid all obligations under the loan agreement. Allegations have been made that on 19.12.2017 Mr. Yu.G. has received from financial institution EOOD (FI EOOD) notification ex. № *** for concluded between F.I. Ltd. and F.I. AD assignment agreement under which the claim of F.I. AD to Mr. Yu.G., arising from a loan agreement № *****, was assigned to F.I. EOOD and the latter were provided with the personal data of the complainant and all documents securing the claim. It is alleged that Mr. Yu.G. has no obligation to F.I. Ltd., and the actions of F.I. AD are in violation of his rights under the LPPD. The Commission for Personal Data Protection was seised and with a complaint Reg. PPN-01-16 / 09.01.2018 filed by Yu.G., through a lawyer ****, a factual situation identical to that indicated in the complaint PPN- 01-15 / 09.01.2018. The complaint is directed against F.I. EOOD and the actions of the company for processing personal data of the complainant in connection with the collection of the debt assigned to the company by F.I. AD, arising from a loan agreement № *****, concluded between Mr. Yu.G. if I. AD. It is alleged that F.I. EOOD processes the personal data of the complainant without legal grounds and in violation of his rights under the LPPD. Attached to the appeals is a certified copy of: attorney's power of attorney and a notification of cession addressed to the complainant ref. № *****, according to the description of F.I. EOOD and a notification attached to it under Art. 20 of the LPPD. 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 by F.I. AD and F.I. Ltd. for required opinions and relevant evidence. In response from F.I. AD has filed an opinion on the unfoundedness of the complaint. From F.I. AD inform that on 18.01.2016 between the company and F.I. EOOD a contract of assignment was concluded, with which F.I. AD in its capacity of assignor has transferred to the assignee under the contract - F.I. EOOD its receivables, including receivables arising from a loan agreement № *****, concluded between F.I. AD and M.G. They added that the applicant was not a party to the contract and differed from the text in the notification ex. № ****, according to the description of F.I. EOOD, alleging that between the applicant and F.I. AD a loan agreement has been concluded № *****. In the course of the proceedings by F.I. EOOD is committed to the opinion that the complaint is unfounded, together with written evidence attached to it. The company informs that on 11.12.2003 a contract for issuing a Euroline № ***** credit card was concluded between MG, in the capacity of a cardholder, and ***, AD, in the capacity of a card issuer, on the basis of which the company has provided to V.C. monetary amounts according to the agreed credit limit in the contract. They add that on March 26, 2005 the company was acquired by F.I. AD. They claim that the card recipient has not fulfilled his obligations under the contract, and F.I. AD has initiated a procedure for collection of its receivables by force. The company has obtained a writ of execution. An enforcement case № **** has been initiated according to the list of PEAs. They add that the debtor M.G. died in early 2012, in view of which and on the grounds of Art. 431, para. 3 of the Civil Procedure Code, the bailiff requested from the Sofia Municipality and the same in response and for the needs of the enforcement case presented a certificate of heirs, in which as legal heirs of the deceased debtor are indicated G.G. and Yu.G. They claim that the PEA made a reference for the heirs in GRAO to provide information about the civil status of the debtor, namely: marital status, three names, PIN, permanent and current address of the spouse and minors, three names and PIN of parents, siblings of the debtor. They added that this information was also available to the creditor, respectively the creditor in the enforcement case, as it was available on the cover of the case. From F.I. EOOD indicate that on 18.01.2016 between F.I. AD and the company has entered into an assignment agreement on the basis of which F.I. EOOD - assignee under the contract, the receivable of F.I. AD arising from specified credit card agreement. They add that in view of the succession that has occurred and on the grounds of Art. 429, para. 1 of the Civil Procedure Code, F.I. EOOD has been constituted as a creditor in enforcement case № ***** according to the list of PEAs. Inform that in fulfillment of its obligations under the contract and on the basis of authorization by F.I. AD, F.I. EOOD has sent to the complainant in his capacity as heir of the obligated person a notification for the performed cession, as

well as information under Art. 20 of the LPPD, a copy of which are attached to the complaint of Mr. Yu.G. to the CPDP. They alleged that no claim had been transferred to the company under the contract cited by the applicant between him and F.I. AD, circumstances which indicate that they notified Mr. Yu.G. with a letter ex. № ***** according to the inventory of the company. They consider that there has been no violation of the applicant's rights and that the processing of his personal data by F.I. EOOD find it correct and lawful in the presence of those specified in Art. 4, para. 1, items 3 and 7 of LPPD conditions for admissibility of processing. In this regard, I ask the Commission to dismiss the complaint as unfounded. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the Personal Data Protection Act and the General Regulation on Data Protection. . In order to exercise its powers, the Commission must be properly seised. The complaints shall contain the obligatory 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 they are regular. The appeals are procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest against competent parties F.I. AD and F.I. EOOD - administrators of personal data within the meaning of Art. 3, para. 1 of LPPD and Art. 4, para. 7 of the EU General Regulation 2016/679. They have as their subject illegal processing of the personal data of the complainant, through actions for their provision by F.I. AD of F.I. Ltd. and their processing by the latter to collect a debt arising from a contract for the issuance of a credit card *****.

Complaints are referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD / respectively Art. 55, § 1 of Regulation (EU) 2016/679, considers complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data, as there are no exceptions under Art. 2, § 2, letter "c" and "d" and Art. 55, § 1 of Regulation (EU) 2016/679, given that the case does not concern treatment activities carried out by a natural person in the course of purely personal or domestic activities, activities carried out by courts or activities carried out by competent authorities for prevention purposes, the investigation, detection or prosecution of criminal offenses or the execution of penalties imposed. In view of the fact that the rights and obligations of the parties derive from the same factual situation and are within the competence of the same administrative body - CPDP and pursuant to Art. 32 of the APC, with a decision of the CPDP of 07.11.2018, the complaints were combined for consideration in one administrative proceeding. The following have been constituted as parties in the proceedings: complainant - Yu.G. and respondent parties -

F.I. AD and F.I. Ltd. The parties were regularly notified of the scheduled open hearing to consider the merits of the complaint and were instructed to distribute the burden of proof in the process. In order to clarify the case on the legal and factual side of F.I. EOOD additional evidence is required, in response to which the company presents a Certificate ex. № ****, issued by PEA in connection with enforcement case № ****. At a meeting of the CPDP held on 13 December 2018, the complaint was considered on the merits. The applicant - regularly informed, did not appear, did not represent himself. The respondent F.I. AD - regularly notified, is represented by KP - Data Protection Officer, with a power of attorney presented at the meeting. Mr. K.P. disputes the complaint and asks the Commission to disregard it as unfounded on the grounds set out in a written statement lodged in the proceedings. The respondent F.I. EOOD - regularly notified, is represented by legal counsel P. according to the power of attorney presented at the meeting, which disputes the complaint. 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 Code of Administrative Procedure, requiring the existence of established facts, having regard to the written evidence gathered and the allegations made by the parties, the Commission accepts that considered on the merits of complaints № PPN-01-15 / 09.01.2018 and PPN-01-16 /09.01.2018 are unfounded.

In issuing the decision, the Commission shall take into account the change in the legal framework in the field of personal data protection in the period from the processing of personal data to the ruling on the merits of the request addressed to the administrative body. The provision of art. 142 of the APC and the fact that from 25.05.2018 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 free movement applies of such data, which has direct effect, as in comparison between LPPD and the Regulation it is established that the provision of Art. 4, para. 1 of LPPD corresponds to the provision of art. 6 (1) of the Regulation and does not contradict it.

From the evidence gathered in the file it was established that on 11.12.2003 between MG, in the capacity of a card recipient, and "****" AD, a card issuer, the last March 26, 2005 acquired by F.I. AD, a contract № ***** for the issuance of a Euroline credit card was concluded, evident from the content of which the complainant Yu.G. is not a party to it.

In connection with the collection of the obligation under the contract, against the card recipient M.G. Enforcement case № **** was initiated according to the list of PEAs, with a creditor in the case F.I. AD. The debtor M.G. died in early 2012, after the initiation of the enforcement case, in view of which the bailiff obtained a certificate of heirs № ***, in which the legal heirs of the

deceased debtor are his sons: the applicant - Yu.G. . and his brother. At the request of F.I. AD on 22.10.2014 in the enforcement case was joined a writ of execution dated 30.06.2014 in civil case **** of the SCC against the applicant and his brother.

It is not disputable, but also evident from the evidence gathered in the file on 18.01.2016 between F.I. AD and F.I. EOOD a contract of assignment was concluded, with which F.I. AD, in its capacity of assignor, has transferred to the assignee under the contract - F.I. EOOD its receivables, including receivables arising from a loan agreement № *****, concluded between FIAD and M.G. As can be seen from the evidence gathered and in particular Annex 1 to the conclusion between F.I. AD and F.I. EOOD contract for cession the data provided by the assignor to the assignee in connection with the transferred claim of F.I. AD arising from contract № ***** for issuing a credit card are the names and the unique civil number of the debtor - MG, as well as the amount of the obligation. In this connection, the allegations of the complainant that his personal data were provided by F.I. AD of F.I. EOOD for collection of a debt arising from a contract *****.

It should be noted that it is not disputed between the parties that the applicant was in a contractual relationship with F.I. AD on the occasion of a loan agreement concluded between the parties - overdraft, in connection with which the company processes his personal data. However, there is no evidence in the file to support the allegations made by the applicant that the personal data provided to F.I. AD for the purposes of the overdraft agreement are provided by F.I. AD to F.I. Ltd. to collect a debt under it. The allegations made by the applicant in this regard are disputed both by F.I. AD, as well as by F.I. Ltd. Moreover, the letter addressed to the applicant concerning the assigned claim explicitly states that it derives from a contract № *****. According to the contract cited in the notification, the complainant is not a party, a circumstance of which he was informed by letter ref. № *** according to the description of F.I. EOOD, which explicitly states that the notification received from you on 19.12.2017 for the transfer of receivables with ref. № **** You have been sent in your capacity as the heir of the debtor M.G. - a borrower under a loan agreement concluded on 11.12.2003. ".

In view of the evidence gathered, the Commission considers that the complaint is unfounded and in respect of F.I. Ltd. Based on the contract for cession concluded on 18.01.2016 between F.I. AD and F.I. Ltd., and filed by the assignee - F.I. EOOD deliberate request, the latter was constituted as a creditor under the lawsuit filed against the debtor M.G. enforcement case № ***, according to the list of PEAs

As can be seen from the evidence gathered and in particular notification № *** on the inventory of F.I. EOOD, the same

received by the complainant on 19.12.2017, F.I. EOOD has processed personal data of the complainant for the purposes of collecting debts under a contract № ***** concluded with M.G. the applicant's father. It is indisputable that the applicant is not a party to the contract, but given the succession by virtue of the inheritance is a party - a debtor in the case against M.G. enforcement case, the creditor of which after 18.01.2016 by virtue of the assignment is F.I. Ltd. In this regard and on the argument of Art. 4, para. 1, item 7 of LPPD, respectively Art. 6, §1, letter "e" of the General Data Protection Regulation and given its capacity as a creditor in the case of F.I. EOOD there is a condition of admissibility of the processing of personal data of the complainant, namely the legitimate interest of the company - personal data controller, to process the personal data of the complainant to collect the claim arising from the contract against him as heir to the debtor, the same priority over that of the natural person to whom the data relate.

In addition, it should be noted that in relation to the company there are also statutory obligations within the meaning of Art. 4, para. 1, item 1 of LPPD (the applicable norm as of the date of preparation - 11.12.2017, and receipt - 19.12.2017 of the notifications), respectively a legal obligation within the meaning of Art. 6, §1, letter "c" of the Regulation, for the processing of the personal data of the complainant for the purposes of the notification of the assignment and provision of the information under Art. 20 of the LPPD. The latter arising respectively from the CPA and the LPPD and the obligation imposed on them to notify the assignment, respectively to notify the person for processing of his personal data, when they have not been received by the natural person to whom they relate.

Guided by the above and on the grounds of Art. 38, para. 2, in connection with art. 10, para. 1, item 7 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679 of the European Parliament, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. On the grounds of art. 32 of the APC unites complaints PPN-01-15 / 09.01.2018 and PPN-01-16 / 09.01.2018 filed by Yu.G. against financial institution AD and financial institution EOOD for consideration in one administrative proceeding.
2. Dismisses the complaints 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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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