

DECISION No. 284 Sofia, 15/01/2021 IN THE NAME OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-GRAD, Second Department 52 panel, in public session on 12/16/2020 in the following panel: JUDGE: Silvia Dimitrova with the participation of secretary Albena Ilieva, considering case number 815 according to the inventory for the year 2020 reported by the judge, and in order to rule he took into account the following: The proceedings are under art. 145 et seq. 7 of the Personal Data Protection Act. It was formed on the basis of a complaint sent by the CPLD by [company], [town], filed through attorney. M. M. of the SAC against Decision No. PPN-02-775/2018 of 19.11.2019 of the CPLD in the part in which it was accepted that appeal reg. No. PPN-02-775/30.10.2018, filed by A. G. D. against [company], [town] is well-founded and on the basis of Art. 58, par. 2, b. "d" of Regulation 2016/679 is ordered to take actions to comply with the operations of processing personal data for the purposes of collecting receivables only if there is a basis under Art. 6, par. 1 of Regulation 2016/679. It is claimed that the decision is incorrect in the appealed part, as considerations are also presented in additional objections presented in the s.z. The defendant, the Commission for the Protection of Personal Data, expresses a written opinion on the groundlessness of the complaint. He claims that the legitimate interest of the applicant company has no priority over that of the entity, insofar as the administrator did not take extrajudicial actions to notify the debtor and collect his claims, but directly proceeded to disclose the data to third parties. A decision is sought to dismiss the challenge as unfounded. Makes the attorney's fee. The interested party, personally and through a special representative, expresses an opinion about the excessiveness of the objection and the unfoundedness of the complaint. Written evidence has been collected in the case, contained in the attached certified copy of the file filed before the CPC. In the course of the court proceedings, new evidence was also presented - Opinion of a working group for the protection of personal data under Art. 29 regarding the concept of legitimate interests of a personal data controller in accordance with Art. 7 of Directive 95/46/EC, as well as Decision of The Court of the EU regarding the conditions for applying Article 6, paragraph 1, letter "f" of the General Regulation for the protection of personal data, which the court accepts. Administrative Court - Sofia-city, in the present court composition, having evaluated the evidence gathered in the case, individually and in their totality, in connection with the arguments and statements of the parties, accepts the following as established from a factual point of view: The proceedings before the CPLD were initiated on the basis of complaint with reg. No. PPN-02-775/ 30.10.2018 of Mrs. A. D. from [town] against NET1 E., containing allegations of illegal processing of her personal data. In the complaint, it is stated that on 22.10.2018, on the outside of the front door where he lives, a note of the company EKS DEBT AD was stuck on its obligations to NET1 E. with the three names and number of the apartment written on

the note lived. Another note was also left at Mrs. D.'s permanent address (another address) with identical content and data.

She claims that she was not provided with a document with which she expressly gave her written consent to the processing or provision of personal data. She states that she was not informed that NET1 E. provided her data to EKS DEBT for processing her data for the purpose of debt collection. She asked the CPLD to carry out an inspection of both NET1 and EKS DEBT and, once the violation is established, to impose a corresponding punishment on the guilty persons. CPLD notified both NET1 and EKS DEBT about the received complaint and gave them the opportunity to comment on it. These were received on 28.11.2018 by NET1 and on 04.12.2018 by EX DEBT, and in both opinions it is stated that the person's personal data were processed lawfully and in good faith. To collect the receivables of Mrs. A. D., as a customer of electronic communication services (internet access and delivery of television programs), provided by NET1 E., according to a contract concluded on 19.04.2017 with a term effective for 18 months, namely until 01.11.2018, and in order to identify her as a client, there was a legal basis for processing her personal data. On the basis of Article 10, paragraph 1 of the Personal Data Act, in connection with Article 57, paragraph 1, letter "e" of Regulation 2016/679, with the Decision of the Commission for the Protection of Personal Data from a meeting held on 19.11. 2019, objectified in protocol No. 42, the complaint was accepted as regular and admissible. On 23.10.2019, a regular meeting was held, for which the parties were regularly notified. CPLD, after discussing the views of the parties in the context of the evidence collected in the file, ruled in the contested decision in the present proceedings that Mrs. D.'s complaint was justified for a violation of Article 6, paragraph 1 of Regulation 2016/679. In the reasons for the decision, it was accepted that NET1 processed the personal data of the disputant without her express written consent either in the contract for electronic communication services or in any other separate document. It was established that Mrs. D. has outstanding and outstanding debts to NET1, according to the invoices provided by the latter. It has also been established and is not contested by the parties that there is a signed contract between NET1 and EKS DEBT for the assignment of out-of-court collection of unpaid (overdue) debts of NET1 subscribers. In its decision, the CPLD accepted that there had been a violation of Art. 6, paragraph 1 of Regulation 2016/679 both on the part of NET1 and on the part of EKS DEBT, for which, on the basis of Article 58, paragraph 2, letter "d" of Regulation 2016/679, the two companies issued orders to undertake actions to comply with the personal data processing operations with the requirements of the Regulation. The Commission's decision entered into force in relation to EKS DEBT. The disputing company was notified of the Commission's decision on 02.12.2019, as can be seen from the attached copy of the delivery notice. The complaint was sent via a courier company on 16.12.2019. Given the

established factual situation, the court makes the following legal conclusions: The complaint was filed in accordance with the legal provisions of art. 38, para. 7 of the Labor Code of Ukraine within a 14-day period by the proper party, the addressee of the contested decision, whereby the same is procedurally ADMISSIBLE. Considered on its merits, the current court panel finds it UNFOUNDED. The court should assess the legality of the contested decision on all the grounds specified in Art. 168, para. 1, cf. Art. 146 of the APC, namely: whether it was issued by a competent administrative body and in the established form, whether the rules of administrative procedure were followed and the substantive legal provisions on its issuance, is it consistent with the purpose of the law. With the assessment made in this way, the court considers that the contested decision in the present proceedings was issued by a competent administrative body - the CPLD, in accordance with the powers granted to it under Article 38, paragraph 1 and paragraph 2 of the CPLD, in conjunction with Article 10, paragraph .1, item 7 ZZLD. On the basis of Art. 10, para. 1, item 7 of the WPLD, the WPDP examines complaints against acts and actions of administrators that violate the rights of natural persons under this law, as well as complaints of third parties in connection with their rights under this law . In the case of a referral under Article 38, paragraph 1 of the PPE, proceedings are initiated before the PPE, the results of which are objectified in the decision under Article 38, paragraph 3 of the PPE. The administrative body competent to rule on the procedure is the CPLD - "an independent state body that carries out the protection of individuals in the processing of their personal data and in the implementation of access to this data, as well as the control of compliance with this law". On the basis of Article 9, Paragraph 4 of the LLDP, 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 protocol No. 42/23.10.2019, four members of the Commission plus the chairman were present at the meeting - open in nature. The latter have put their signatures under the disputed decision, taken with the required majority. In view of this, the court considers that the act was issued by a competent authority and there is no grounds for annulment under Art. 146, item 1 of the APC. The court considers that, due to the lack of an express provision in the Civil Code regarding the form and content of the decision, Art. 59, para. 2 of the APC. The act contains the required details under Article 59, paragraph 2 of the APC, as well as the signatures of the persons who participated in the voting. At the same time, there is no basis for its cancellation in the sense of art. 168, para. 1, cf. art. 146, item 2 of the APC. When issuing the administrative act, there were no violations of the administrative procedure rules. The complaint, on the basis of which the proceedings were initiated, was submitted on 30.10.2018 - within the period of knowledge of the violation, which occurred on 22.10.2018, provided for in Article 38, Paragraph 1 of the Labor Code, which took place on 22.10.2018. meeting and was

unanimously accepted by the four members of the administrative body present. The administrative body also correctly constituted the parties in the proceeding before it. The administrative act was issued in the form prescribed by law - a decision, c

stating the reasons - factual and legal grounds for which the complaint is filed

of A. D. is accepted as well-founded. The requirement that CPLD collect was also met

evidence, to request additional information, as well as to carry out other

actions in the proceedings under section II "Examination of complaints from natural persons" under

the order of the APC. The parties to the proceedings are given the opportunity to

familiarize themselves with the evidence attached to the file and express an opinion. At

ruling on the merits of the dispute, the submissions on the file have been discussed

written evidence, as well as the opinions expressed in the complaint

statements. The right to protection of the participants in the proceedings, regularly notified

for the open meetings before the CPLD is not limited, as theirs is guaranteed

participation in the administrative proceedings, and the latter was conducted in accordance

with the special provisions of the LLDP, Art. 34 et seq. of the APC and the principles of

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

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

cancellation of the attacked IAA in the sense of art. 168, para. 1 in connection with art. 146, item 3 of the APC.

The present court also finds that the procedural decision is

enacted and in accordance with the applicable substantive law provisions and

the arguments of illegality given in this sense by the applicant appear

groundless. In the trial case, only the question of how much is disputed

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

The principles laid down in Article 6, §1 of Regulation (EU) 2016/679 stipulate that

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

in relation to the data subject and relevant, related to and limited to

necessary in connection with the purposes for which they are processed / "reducing the data to minimum"/. According to the same provision, the processing is lawful only if and insofar 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) the 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 the conclusion of a contract; c) the processing is necessary for compliance with a legal obligation that applies to the controller; d) processing is necessary to protect the vital interests of the data subject or to another natural person; e) the processing is necessary for the execution of task of public interest or in the exercise of official powers, 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 pre 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 its capacity as "administrator of personal data" in the sense of §1, item 2 of the DR of LLDP, 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 Article 6, paragraph 1 of the same regulatory document, the conditions for legality of processing. In compliance with the cited provision the present court finds that they were not present in the trial case the conditions under letters "a" and "f" in the processing of AD's personal data, namely: there is no duly signed consent for the processing of personal data. As accepted in Decision No. 11875/ 14.08.2019 of the Supreme Court of Appeal, fifth department, issued pursuant to Adm.d. 9285/ 2018, notwithstanding the wording in the General Terms and Conditions, in order for there to be consent of

the natural person within the meaning of §1, item 13 of the DR of the LLLD is necessary

the declaration of consent for the processing of personal data is freely expressed,

specific and informed. Evidence in this direction was not presented in the case.

The current court accepts that according to Art. 28.4 of the OU (sheet 47 of the case)

the contract between NET1 and Mrs. D. was terminated due to non-payment of the price of

the monthly subscription fee, therefore the reference to a contract within the meaning of

Article 4, paragraph 1, item 3 of the LLPA is unfounded.

The basis under Art. 6, §.1, b is also not present. "e" of the Regulation - the processing is

necessary for the purposes of the legitimate interests of the administrator or a third party

country. Legal (legitimate) is that interest, which as born and aimed at satisfaction

of a certain human need, is recognized as permissible by law, i.e. they are for him

provided legal means for implementation (subjective rights), and where

they are expressly not such - they are admissible in view of the general principles of law. IN

case, there is no dispute that NET1 has an interest in collecting and processing personal data of

natural persons related to the performance of the contract for electronic communications

services. Once an individual contract has been signed, for the company as

controller of personal data, this interest has become legitimate in the sense

of the regulation. However, this interest is present when validly signed and in effect

contract. As stated above, at the time of the offense it was not

there was one, i.e. at the time of signing the processing contract

personal data between NET1 and EX DEBT, the individual contract between NET1 and mrs

D. was no longer active. Therefore, it was not legitimate in relation to NET1

interest in processing its client's personal data by transferring it to

processing the data on its behalf.

In view of the above, the current court finds that the so filed

complaint is unfounded and as such should be rejected.

to the defendant for an award of costs, the court owes no ruling on this matter.

We are led by the above and on the basis of art. 172, para. 2 APC Administrative Court -

S.-city, 2nd ward, 52nd ward

In this outcome of the dispute, due to lack of requests made by

RESOLVE:

DISMISSES the appeal of [company], [town] against Decision no

PPN-02-775/2018 of 19.11.2019 of the CPLD in the part in which it was accepted that complaint reg.

No.PPN-02-775/30.10.2018, filed by A. G. D. against [company], [town] is

justified and based on Art. 58, par. 2, b. "d" of Regulation 2016/679 is

ordered to take action to comply with processing operations

of personal data for debt collection purposes only if there is a reason

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

according to Art. 6, Par. 1 of Regulation 2016/679.

the parties to whom, on the basis of Article 138, paragraph 3 of the APC, a copy of the same should be sent.

JUDGE: