

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-329 / 27.07.2017 Decision on appeal with registration № Ж-329 / 27.07.2017 DECISION № Ж-329 / 2017 Sofia, January 22, 2018 Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a regular meeting held on 13.12.2017 , pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint with registration № G-329 / 27.07.2017, filed by P.M.V. against BTC EAD (BTC) and SGG Ltd. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The complaint is directed against S.G.G. Ltd., who threatened the applicant that he would be tried for unpaid old bills to "B." (name of the trademark of BTC EAD). The complainant does not deny that he has any debts, but finds the amount significantly overstated and expects account details at his e-mail address. Disagrees SGG Ltd. to use his personal data for anything. There are no appendices to the complaint. In the conditions of the official principle 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. № PPN-01-Ж-329 # 5 / 08.09.2017 BTC 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 with evidence. BTC EAD expresses an alternative opinion on: irregularity, inadmissibility or unfoundedness of the complaint. The representative of the company claims that the complaint does not meet the requirements of Art. 30, para. 1, item 4 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, as it must contain the date of the alleged violation, which has not been complied with. He states that the very initiation of administrative proceedings, before the elimination of irregularities, is a significant violation of the rules of administrative procedure. With regard to the facts, he informed that Mr. P.M.V. was a party to a contract for mobile services № *** / 25.01.2013, contract № *** / 12.02.2014 and additional agreement № *** / 20.11.2014. Under the concluded contracts for the complainant liquid and due liabilities in the total amount of BGN 170.52 between BTC EAD and SGG Ltd. a contract for cession was concluded № 39405 / 22.04.2016, by virtue of which the receivables of BTC EAD were transferred to SGG Ltd. and the latter is a creditor in terms of liabilities. Pursuant to Art. 99, para. 3, proposed 2 of the CPA the personal data of Mr. P.M.V. are provided to the assignee, for which the consent of the debtor is not required. The legal fact that makes the processing of personal data admissible is the transfer of the claim, not the notification. This is because the assignee receives the debtor's personal data under the assignment agreement. From that moment on, there is a legitimate interest in it, which allows the processing of data in connection with the collection of the debt -

Art. 4, para. 1, item 7 of the LPPD. Attached to the opinion are: contract for mobile services № *** / 25.01.2013, contract № *** / 12.02.2014, supplementary agreement № *** / 20.11.2014, contract for cession № 39405 /22.04.2016 with an extract from Annex № 1 to it. With a letter ex. № PPN-01-Ж-329 # 6 / 08.09.2017 "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. From S.G.G. Ltd. express an opinion that the complaint is unfounded. They inform that the subject of activity of the company includes the organization by all lawful means of the collection of debts of debtors assigned to them under assignment agreements. By virtue of such contracts, SGG Ltd. enters into the rights of the previous creditor with respect to the personal data of the debtors. Pursuant to a contract for cession dated 22.04.2016, concluded between BTC EAD and SGG Ltd., a claim of a mobile operator for consumed and unpaid mobile services, generated by the subscriber P.M.V., was purchased by SGG Ltd. The company is authorized by BTC EAD to notify the debtors whose receivables are the subject of the contract. The proxy considers that within the meaning of Art. 4, para. 1, item 3 of the LPPD, the processing of personal data is allowed, in case it is necessary for fulfillment of an obligation under a contract to which the natural person to whom the data relate is a party. As a subscriber of a cellular telecommunication network, Mr. P.M.V. has voluntarily provided his personal data to a mobile operator. In the presence of the General Terms and Conditions of the mobile operator for relations with the users of mobile services, the user is considered informed about the same, which are publicly available from the date of their publication and the complainant is considered bound by them. As can be seen from item 11.3 of the General Terms and Conditions, the subscriber has agreed to provide his personal data to third parties when this is necessary for the realization of his rights and interests or for the realization of the rights and interests of BTC EAD, including for collection of receivables . It is in this connection that the mobile operator has admissible and lawfully provided the personal data. For its part, SGG Ltd. validly and lawfully operates with the personal data of the complainant on the basis of the assignment agreement. There are two of the hypotheses provided in Art. 4, para. 1 of the LPPD for admissibility of the processing: under item 2 - Mr. P.M.V. has voluntarily provided his / her personal data as a customer of a mobile operator and has given his / her consent to be provided to third parties in connection with the realization of his / her rights and interests or those of a mobile operator, including for collection of overdue debts. The second hypothesis is under item 7 - the processing is admissible for the realization of legitimate interests of the controller of personal data or of a third party to whom the data are disclosed. S.G.G. Ltd. has a valid basis for processing the personal data of the complainant - the specified assignment agreement. In order to exercise its powers, the Commission must be properly seised.

Complaint reg. № G-329 / 27.07.2017 contains the obligatory required 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 the complaint 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. 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 against which the complaint is directed have fulfilled their obligation under Art. 17, para. 1 of LPPD and are registered as administrators of personal data with ident. № 14414 (BTC EAD) and № 52178 (SGG OOD). The complaint is addressed 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. Regarding the allegations in the opinion of BTC EAD for irregularity and inadmissibility of the complaint, it should be borne in mind that Art. 30, para. 1, item 4 of the PDKZLDNA refers to the dating of the complaint itself, and not to the date of the alleged violation. In this case the dating is considered the receipt of the complaint on the e-mail address of the CPDP - on 27.07.2017. The evidence gathered showed that the complainant was notified of the assignment on 10.11.2016 - in this sense the complaint was filed before the expiration of one year of learning of the violation or five years of its commission and there are no grounds for inadmissibility. At a meeting of the Commission held on 08.11.2017, the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: complainant - P.M.V. and respondent - BTC EAD and SGG Ltd., as administrators of personal data. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for 13.12.2017. The applicant - did not appear, did not represent herself. The respondent - "SGG" does not send a representative. BTC EAD sent a representative who upheld the company's opinion that the complaint was unfounded. In the factual situation thus established, the Commission examined the complaint on the merits, accepting the complaint as unfounded on the basis of the following conclusions: The Personal Data Protection Act regulates the protection of the rights of individuals in the processing of personal data. 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. According to the legal definition given in Art. 2, para. 1 of the LPPD, personal data are any information relating to a natural person who is identified or can be

identified directly or indirectly by an identification number or by one or more specific features. From the evidence gathered in the file, it was established that two service contracts and an additional agreement to one had been concluded between the complainant and BTC EAD. The data of the complainant contained in the said contracts - three names, a single civil number, an identity card number, an address and a telephone number undoubtedly have the quality of personal data about the person within the meaning of Art. 2, para. 1 of the LPPD. In Art. 4, para. 1 of the LPPD sets out the conditions under which the processing of personal data of individuals is permissible. The legislator has accepted that the processing of personal data should be carried out in the presence of at least one of these conditions, which is a prerequisite for the lawfulness of the processing. for their processing, referred to in Art. 2, para. 2 of the LPPD. BTC EAD has processed the personal data of the complainant on the grounds of Art. 4, para. 1, item 2 of LPPD - on the basis of an explicit consent of Mr. P.M.V., objectified in both contracts and the supplementary agreement. At the same time, personal data are processed on the basis of Art. 4, para. 1, item 3 of LPPD - for fulfillment of an obligation under a contract to which the natural person is a party.

As can be seen from the evidence gathered, on the basis of a contract for transfer of receivables (cession) № 39405 / 22.04.2016, BTC EAD has assigned its receivables to Mr. P.M.V. of S.G.G. Ltd. The obligations under the contracts are indisputable, as the applicant confirms their existence.

The transfer of receivables is carried out according to the special rules of art. 99 et seq. Of the Law on Obligations and Contracts (LOAC). In Art. 99, para. 3 of the CPA stipulates that the previous creditor is obliged to hand over to the new one the documents in his possession, which establish the claim. When transmitting these documents, the personal data of the complainant contained in them shall be provided as necessary. In the sense of § 1, item 1 of the Additional Provisions of the LPPD, the "provision" of personal data is an action for their processing. According to the provisions of the CPA, when concluding a contract of assignment there is no legal requirement for consent of the debtor. The provisions of the CPA are special in relation to the LPPD, from which it follows that the consent of the debtor under the LPPD is not required for the provision of his personal data to the assignee.

After the transfer, the assignee - "SGG" Ltd. has entered into the rights of a creditor in respect of the obligations of Mr. P.M.V. There is no change in the very purpose of the processing - collection of outstanding debt under service contracts. From the moment of the transfer, the assigning company lawfully processes the personal data of the complainant on the grounds of Art. 4, para. 1, item 7 of LPPD - for realization of the indicated legal interests of the administrator, in which the interests of the

natural person do not have an advantage over those of the administrator.

It should be noted that in the contracts and the supplementary agreement for the provision of mobile services, Mr. P.M.V. has expressly agreed that the mobile operator may provide his personal data to third parties for the purpose of debt collection. This is also a condition for admissibility of the processing under Art. 4, para. 1, item 2 of the LPPD.

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:

Disregards the complaint with registration № Ж-329 / 27.07.2017, filed by P.M.V. against BTC EAD and SGG Ltd., as unfounded.

The decision to be communicated to the interested persons by the order of the APC.

This 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:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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