Home »Practice» Decisions of the CPDP for 2019 »Decision on appeal with registration № Ж-249 / 07.06.2017 Decision on appeal with registration № Ж-249 / 07.06.2017 DECISION № Ж-249 / 2017 Sofia, March 26, 2019. Commission for Personal Data Protection (“Commission” / “CPDP”) composed of: members - Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a regular meeting held on November 21, 2018, on grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint with registration № G-249 / 07.06.2017, filed by D.D. against AR Ltd. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The applicant informed of a letter of notification received from the Pleven Administrative Court that he had signed a contract with a company with a salary of BGN 2,200. He stated that he had been in prison since 23 May 2003 and had not been released since. The complaint adds that 70% of prisoners do not have ID cards and go to prison without documents. The court checked with the National Revenue Agency that he had signed a salary contract, but did not pay attention to the fact that he had been in prison since 2003 and demanded a state fee to hear his case. The complainant asks the Commission to take the necessary measures to protect prisoners as all human beings. He states that he cannot have a registered employment contract without being released. There are no appendices to the complaint. The National Revenue Agency (NRA) has requested a reference from the registers for received notifications under Art. 62, para. 5 of the Labor Code (LC). A reply was received to the request that a notification had been submitted for the applicant by A.R. EOOD for an employment contract concluded on 01.08.2016. EOOD 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 relevant evidence. The letter sent by post was returned in its entirety to the Commission marked "unsolicited". On 23.10.2017 it was sent to the e-mail specified in the Commercial Register. No opinion was received. In order to exercise its powers, the Commission must be properly seised. The considered complaint contains the obligatorily 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. It is the subject of an allegation of unlawful processing of the complainant's personal data and is directed against a personal data controller. 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. At a meeting of the Commission

held on 02.05.2018, the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: complainant - D.D. and respondent - "AR" Ltd., as a controller of personal data. The parties have been regularly notified of the open meeting of the Commission for consideration of the complaint on the merits scheduled for 06.06.2018. From "AR" EOOD was again requested an opinion with relevant evidence in the case. The notification letter was sent simultaneously to the physical and electronic address of the company. Again, no response was received from the company. At the open session the consideration of the merits of the dispute was postponed in order to gather additional information from DG "Execution of Sentences", namely: period of serving the sentence of imprisonment, regime and place of serving the sentence as of 01.08.2016. and whether the applicant went on home leave with an identity document. After receiving the requested information, at a closed meeting held on 21.11.2018, the complaint was considered on the merits. In the factual situation thus established, the Commission examined the complaint on the merits, accepting it as well-founded on the basis of the following conclusions: In considering the specific case until the ruling on the merits of the request referred to the administrative body. It is agreed that 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 applies from 25.05.2018 (Regulation), which has direct effect. Given the lack of an explicit provision that existing relationships that are not pending and concern legal facts and the consequences arising from them, which occurred before the application of the Regulation, should be assessed according to the substantive law in force at the time of their occurrence. In this case, such are the substantive provisions set out in the LPPD in view of the fact that the legal facts and legal consequences related to data processing relate to the application of the Regulation. It is also acknowledged that the procedural norms contained in the Regulation, including the corrective powers of the supervisory bodies explicitly regulated in the Regulation, should be applied immediately, as of 25.05.2018, to all pending proceedings. The Personal Data Protection Act (PDPA) and Regulation 2016/679 regulate the protection of the rights of individuals in the processing of their personal data. The aim is to ensure the inviolability of the person and privacy 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 provision of art. 65, para. 3 of the Labor Code: "Within three days of concluding or amending the employment contract and within seven days of its termination, the employer or a person authorized by him is obliged to send a notification to the relevant territorial directorate of the National Revenue Agency." In para. 5 of the same provision stipulates that the data contained in the notification are determined by an ordinance of the

Minister of Labor and Social Policy - Ordinance № 5 of December 29, 2002 on the content and procedure for sending the notification under Art. 62, para. 5 of the Labor Code (Ordinance). Pursuant to Art. 5, item 2 of the Ordinance, the notification of the employer shall indicate the three names and a single civil number of the employee. In Annex № 1 to Art. 1, para. 1 of the Ordinance is an approved model of the notification. Personal data is any information relating to an individual who is identified or can be identified directly or indirectly by an identification number or by one or more specific features. The names and the unique civil number of the natural person undoubtedly have the quality of personal data in accordance with the said provision. From the evidence gathered in the course of the administrative proceedings, it was established that "AR" EOOD has processed the personal data of the complainant in the amount of three names and a unique civil number, having submitted to the NRA a notification on the grounds of Art. 62, para. 5 of the Labor Code for an employment contract concluded on 01.08.2016 with the complainant, which was terminated on 01.07.2017. The allegations of the complainant that his personal data were processed by the administrator without his knowledge and consent for the purposes of registration contract have not been challenged by the respondent and no evidence of the actual conclusion of the contract has been presented. The conclusions about the lack of a concluded contract are also confirmed by the report submitted by the General Directorate for Execution of Sentences that at the time of notifying the NRA the applicant had served a prison sentence, was not released on home leave and was not provided with an identity document. during his stay in the prison in the town of Belene. In Art. 4, para. 1 of the LPPD, applicable at the time of the alleged violation, the conditions under which the processing of personal data is admissible are determined. The legislator has accepted that the processing of personal data of individuals should be carried out in the presence of at least one of these conditions, which is a prerequisite for the lawfulness of the processing. Taking into account Art. 142, para. 1 of the APC, the conditions for admissibility of the processing under Art. 4, para. 1 of LPPD are identical to those under Art. 6 (1) of Regulation 2016/679, which are applicable at the time of the decision of the supervisory authority. In this sense, the responsibility of the controller to process the personal data of individuals in the presence of grounds is not removed. In view of the circumstance that no evidence has been presented for the actual existence of the employment contract registered with the NRA, it is necessary to conclude that there is no consent as a condition for admissibility of the processing of personal data under Art. 4, para. 1, item 2 of the LPPD. The one indicated in Art. 4, para. 1, item 1 of LPPD normatively established under Art. 63, para. 3 LC obligation for the company-employer, which quality in this case has not been proven to have "AR" Ltd. in respect of Mr. D.D. None of the other conditions for admissibility of the

processing, specified in Art. 4, para. 1, items 3, 4, 5, 6 and 7 of LPPD. Accordingly, the grounds specified in Art. 6 (1) of Regulation 2016/679. In the event of such an infringement, the complaint must be upheld. The Commission has operational independence, assessing which of its corrective powers under Art. 58, para. 2 of Regulation 2016/679 to implement. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be adopted that fully protects the public interest. The powers under Art. 58, para. 2, without the one under letter "i", have the character of coercive administrative measures, the purpose of which is to prevent the commission of a violation or, if the commission has started - to stop it, thus objectifying the conduct required by law. The administrative penalty "fine" or "property sanction" under Art. 58 par. 2, letter "i" has a sanction character. On the application of the appropriate corrective measure under Article 58, para. Article 2 of the Regulation should take into account the nature, gravity and consequences of the infringement, assessing all the facts of the case. The assessment of what measures are effective, proportionate and dissuasive in each case will have to reflect the objective pursued measure, i.e. restoration of compliance with the rules, sanctioning of illegal behavior or both (as provided for in Article 58, paragraph 2, letter "i").In the present case, the Commission finds that in view of the nature and gravity of the violation, it is most appropriate to impose a pecuniary sanction on the administrator "AR". Ltd. in an amount close to the minimum. The considerations for this in accordance with Art. 83 (2) of the Regulation are the following:

Aggravating circumstances - one data subject was affected by the violation, but specific damages were caused to him - the person was not exempted from the state fee in a case filed in the Pleven Administrative Court, as he has a registered employment contract under which he receives income. The violation itself lasted for 11 months and the national identification number (PIN), which is subject to special protection, was also affected. The Authority was aware of the infringement by the complainant and the administrator did not assist the Commission in exercising its control powers, which made it impossible to assess the technical and organizational measures taken by the company.

As mitigating circumstances, it is assumed that the administrator has taken action to eliminate the violation before being notified of the proceedings instituted before the CPDP. No previous violations by AR have been identified. EOOD, respectively no corrective powers have been imposed under Art. 58 (2) of the Regulation.

Circumstances that are not relevant to the present case: whether the violation was committed intentionally or negligently - the administrator is a legal entity that does not form a fault. There are no approved codes of conduct at the time of processing.

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. 58 (2) of Regulation 2016/679,

HAS DECIDED AS FOLLOWS:

1. Declares a well-founded complaint reg. № Ж-249 / 07.06.2017, filed by D.D. against AR EOOD;

2. On the grounds of art. 58, paragraph 2, letter “i” in connection with Art. 83, paragraph 5, letter "a" of Regulation 2016/679 imposes on the personal data controller "AR" EOOD with UIC *****, with registered office and address of management *****, administrative penalty property sanction in the amount of 10 000 (ten thousand) BGN, for violation of Art. 6 (1) of Regulation 2016/679.

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.

After the entry into force of the decision, the amount of the imposed penalty to be transferred by bank transfer:

Bank of the BNB - Central Office

IBAN: BG18BNBG96613000158601 BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

In case the sanction is not paid within 14 days from the entry into force of the decision, actions will be taken for its forced collection.

MEMBERS:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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