

Decision on appeal with registration № PPN-01-163 / 15.11.2017 DECISION» PPN-01-163 / 2017 Sofia, 01.08.2018 Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 06.06. 2018, based on Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint № PPN-01-163 / 15.11.2017, filed by M.B.P. 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 filed by MBP, with allegations of illegal processing of his personal data by "K.K.Y.P.S.B. "EOD and abuse of them by D.T. - employee of the company. The applicant alleged that his personal data - "full names, identity card number, PIN and address" - had been used by Ms D.T. - employee of the company in position *****, in the capacity of a natural person "for serving her personal interests on the occasion of filing a complaint with № ****, filed on 08.11.2017 in the First Regional Police Department of the Ministry of Interior and provided ex officio to the Fifth Regional Police Department of the Ministry of Interior. He added that on 14 November 2017, after getting acquainted with the complaint filed against him, he established that his personal data were indicated in it and the same were used by Ms. D.T. to discredit him and to tarnish his good name. He claims that Ms. DT, taking advantage of her official position, "acquired" his personal data from K.K.Y.P.S.B. EOD, in which he was an employee until 08.12.2017. It declares that it has provided its personal data to the company in connection with the employment relationship between the parties and has not given its consent for the same to be processed for other purposes. Asks the Commission to investigate the case and issue mandatory instructions to the company in case of violations of its rights under the LPPD regarding the administration of his personal data by the company and its employee. No evidence was 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, from "K.K.Y.P.S.B. "EOD is a required written statement. In response, an opinion was expressed that the complaint was unfounded, with relevant evidence attached to it. The procedural representatives of the company inform that the complainant is a former employee of "K.K.Y.P.S.B. "EOD, held position ****, and the relations between the parties are regulated by an employment contract dated 02.05.2017, which as of 09.11.2017 has been terminated by the company. Inform that D.T. is an employee of "K.K.Y.P.S.B. "EOD holding office ***** during the whole period in which Mr. M.B.P. was employed by the company and added that Ms. D.T. was the leader of the team of which the applicant was a

part. They claim that in connection with the proceedings instituted in the Commission an official inspection was carried out in the company, which did not establish the violations of the LPPD indicated by the complainant, which they categorically deny. It is alleged that Mr M.B.P. has provided his personal data to Ms. D.T. personally during the training period 05.06.2017 - 01.09.2017 in Berlin, Germany, "in order to assist in the group booking of airline tickets." They alleged that the company had processed the applicant's personal data lawfully and had not provided it to Ms D.T. With regard to the application of Ms D.T. a complaint to the police indicated that it had been lodged with Ms D.T. in a personal capacity due to threats from Mr. M.B.P. to her, made her feel threatened for her own safety and the safety of her child. Relevant evidence was attached to the opinion, including written explanations in the case of D.T. and L.P. In addition, a certified copy of the employment contract concluded between the complainant and the company was attached by letter PPN-01-163 # 5 / 21.02.2018. In order to clarify the case from a legal and factual point of view, a certified copy of the file filed by Ms. D.T. complaint with № **** on the list of the First Regional Police Department of the Ministry of Interior. In response, the Sofia District Prosecutor's Office provided a certified copy of the requested document and clarified that in the case was formed etc. № **** the same ended with a final prosecutor's act - refusal to initiate pre-trial proceedings, arguing that it is a crime under Art. 144, para. 1 of the Penal Code, which is initiated on the complaint of the victim before the court of first instance. 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 № PPN-01-163 / 15.11.2017 contains the required details 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, the nature of the request, date and signature, in view of which the complaint is regular. The appeal was filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest. The same has as its subject illegal processing of the personal data of the complainant by "K.K.Y.P.S.B. "EOD through their access by D.T. - an employee of the company without legal grounds and their use by the latter for filed by her against Mr. M.B.P. complaint with № **** on the list of the First Regional Police Department of the Ministry of Interior. The complaint was referred to a competent body to rule - the CPDP, 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. 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 allegations made by the parties

and the evidence gathered, it is necessary to conclude that the controller of personal data is "K.K.Y.P.S.B. "Ltd. An official reference in the Electronic Register of Personal Data Administrators and the registers kept by them established that the company is registered as a personal data administrator with an identity card. № 373362. It is not disputed between the parties, and from the presented job descriptions it was established that D.T. is an employee of the company in position *****. In this regard and given the fact that the applicability of LPPD is related to the protection of individuals in connection with the processing of their personal data by persons having the capacity of controllers of personal data within the meaning of the legal definition of Art. 3 of it it is necessary to conclude that the complaint in its part addressed to the employee Mrs. D.T. is procedurally inadmissible, as there is no passive procedural legitimacy of Ms. D.T. and it does not have the capacity of controller of personal data. Apart from that and in view of the evidence gathered in the file and in particular the content of the file submitted by Ms. D.T. complaint to the bodies of the Ministry of Interior it is necessary to conclude that with regard to the use of the personal data of the complainant by Ms. D.T. the provision of art. 1, para. 9 of the LPPD, according to which the LPPD does not apply to the processing of personal data carried out by individuals for their personal purposes, in this case for referral to the competent authorities for investigation of a crime against the person. At a meeting of the Commission held on 02.05.2018, the complaint was accepted as partially admissible. Pursuant to Art. 27, para. 2, item 6 of the APC in connection with Art. 10, para. 1, item 7 and Art. 1, para. 9 of the LPPD, the appeal was declared inadmissible, in its part directed against D.T. , given the lack of a passively legitimized party - controller of personal data and processing of data by an individual for personal purposes. The remainder of the action against K.K.Y.P.S.B. "EOOD has been accepted as procedurally admissible. The following have been constituted as parties in the proceedings: complainant - M.B.P. and respondent - "K.K.Y.P.S.B. EOOD, in its capacity of personal data administrator. The parties were instructed to distribute the burden of proof in the process, they were given the opportunity to express an opinion on the evidence gathered, they were informed about the possibility to make requests and / or objections to the evidence. At a meeting of the CPDP held on 06.06.2018, the complaint was considered on the merits. The applicant - regularly informed, did not appear, did not represent himself. The respondent - "K.K.Y.P.S.B. "EOOD, regularly notified, is represented by lawyers H.H. and M.Ya. from the Sofia Bar Association. The company's legal representatives disputed the complaint and asked the Commission to disregard it as unfounded, with arguments developed in detail at the open hearing, which corresponded to the written opinion expressed by them in the course of the proceedings. They claim in favor of their client expenses in the amount of BGN 2,111.30 (two thousand one hundred

and twelve levs and thirty stotinki), representing attorney's fees for representing the company in the proceedings before the Commission, for payment of which they present as evidence a certified copy of: payment order, invoice and contract for legal services. 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, given the written evidence gathered and the allegations made by the parties, the Commission considers that considered on the merits complaint № PPN-01-163 / 15.11.2017 in the part directed against .K.Ю.П.С.Б. "EOD is unfounded. From the evidence gathered in the file it was established, and between the parties it is not disputed that the applicant is a former employee of the company, held the position *****, and relations between the parties are settled by employment contract № *** concluded on 02.05. 2017, which as of 09.11.2017 is terminated. It is undisputed that in connection with the contractual relations between the parties the company has processed, in the case of collection, storage and use for contract purposes, personal data of the complainant in volume of three names, unified civil number, address and ID card number. It is also undisputed between the parties that Ms D.T. is an employee of "K.K.Y.P.S.B." EOD holding a position ***** throughout the period in which Mr. M.B.P. was employed by the company and was the team leader, of which the applicant was part. The file established that D.T. - in her personal capacity has filed up to 01 RPD of SDVR complaint / notification for established act against M.B.P. filed with reg. № ****. Contrary to the applicant's allegations and evident from the content of the communication, it contained three names and an identity card number of Mr MBP, but did not contain a single civil number and / or address. The allegations of Ms D.T. the existence of a conflict between her and Mr MBP, who provoked her to lodge a complaint with the prosecutor's office, was not disputed by the applicant. The applicant's allegations of unlawful processing of his personal data by the company through their access by Ms D.T. and their use for personal purposes, namely for a complaint filed against him before the Ministry of the Interior, were challenged both by the company and by Ms. D.T. . They have not been proved by the applicant, and no evidence is available in the case file in support of the allegations made by Mr M.B.P. allegations of unauthorized access to his personal data processed by the company. Contrary to the allegations of the applicant, it was established, as from the written explanations given by Ms. D.T. , as well as from written explanations of L.P. - an employee of the company, that the complainant had provided his personal data himself - three names, date of birth and ID card number, to D.T. for the purposes of her personal bookings of airline tickets and hotels in

the period 05.06.2017 - 01.09.2017, when the training of the team, part of which is the complainant, continued in Germany.

Given the above and the distribution of the burden of proof in the process, it is necessary to conclude that the alleged by the applicant illegal access to his personal data processed by the company is unfounded and unproven.

In view of the outcome of the dispute, the personal appearance of the procedural representatives of the respondent party in the open hearing and the timely request for costs, the Commission considers that the prerequisites of Art. 47, para. 2, sentence two of the APC and recognizes the costs incurred by KKYUPSB EOOD for procedural representation in the minimum provided in Ordinance № 1 for the minimum amounts of attorneys' fees, namely in the amount of BGN 300 (three hundred levs), considering that the rest of the claim is excessive in view of the complexity of the dispute and the involvement of the parties.

Guided by the above and on the grounds of Art. 38, para. 2 in connection with 10, para. 1, item 7 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. On the grounds of art. 27, para. 2, item 6 of the APC in connection with Art. 10, para. 1, item 7 and Art. 1, para. 9 of the LPPD accepts complaint PPN-01-163 / 15.11.2017 as inadmissible, in its part directed against D.T. given the fact that the data have been processed for personal purposes by a natural person who is not a controller of personal data.
2. Disregards as unfounded the complaint in its remaining part directed against K.K.Y.P.S.B. EOOD.
3. On the grounds of art. 47, para. 2, assoc. 2 of the APC in connection with Art. 7, para. 1, item 4 of Ordinance № 1 on the minimum amounts of attorneys' fees, respects the request and acknowledges the expenses incurred by KKYUPSB EOOD for attorney's fees in the amount of BGN 300 (three hundred), to be paid to the company by the applicant M.B.P.

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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