Decision on appeal with registration № PPN-01-229 / 05.03.2019 DECISION» PPN-01-229 / 2019 Sofia, 21.02.2020 Personal Data Protection Commission (“Commission” / “CPDP”) composed of: Chairman - Ventsislav Karadzhov and members - Maria Mateva and Veselin Tselkov, held on 12.12. 2019 meeting, based on Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, paragraph 1, letter “e” of Regulation 2016/679 considered on the merits a complaint Reg. № PPN-01-229 / 05.03.2019, filed by M.M. against ET "S.Ch. “. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). On 28.02.2019 the complainant made a reference with the ARC code through the electronic services of the National Revenue Agency and established that he had a registered employment contract on 27.02.2019 with the employer ET “S.Ch. “. Mr. M.M. states that he did not apply to start working in this company, nor did he receive a referral letter from the Labor Office. The applicant requested that an inspection be ordered of the trader as to where, how and why he had decided to misuse his personal data. Attached to the complaint is a reference for the current status of the employment contracts dated 28.02.2019. 26 of the APC, the person against whom the complaint is directed has been notified for the commencement of the proceedings. The opportunity under Art. 34, para. 3 of the APC for expressing an opinion with relevant evidence on the allegations presented in the complaint. The Commission received a response from ET "S.Ch. “. The sole trader states that Mr. M.M. was unemployed, so he invited him to start working in his company. He accepted and provided his PIN and three names in order to prepare his employment contract. The contract was drawn up on the same day and the applicant was invited to the company's office to sign it, but he was not serious and did not leave. In the meantime, without Mr. Ch. Expecting that the applicant would not go, he submitted information to the TD of the NRA, required under Art. 62, para. 5 of the LC. After the expiration of the legal term, the employee did not appear for the conclusion of the employment contract, did not appear to start work, due to which the sole trader was forced to delete the information submitted to the NRA. Mr. Ch. Stated that he would not have taken the personal data from anywhere if the person had not provided them. In addition, there is no interest in hiring him without his knowledge and consent, as as an employer he will owe him wages and insurance without prejudice to work. In view of the stated allegations, the NRA has requested a reference for submitted notifications under Art. 62, para. 5 of the LC. The information indicates that there is a notification under Art. 62, para. 5 of the Labor Code, submitted by ET "S.Ch." on 27.02.2019 and notification of deletion of 05.03.2019. In order to exercise its powers, the Commission should be validly referred. 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 (revised SG No. 10 of 2016), namely: there are data about the complainant, nature of the request, date and signature, in view of which it 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 was referred to a competent body to rule - the Commission for Personal Data Protection, which according to its powers under Art. 10, para. 1 LPPD in connection with Art. 57, paragraph 1, letter “e” of Regulation 2016/679 and Art. 38, para. 1 of the LPPD considers complaints filed by data subjects in violation of their rights under Regulation 2016/679 and LPPD. At a closed meeting of the Commission held on 23 October 2019, the complaint was declared admissible and the parties to the proceedings were constituted: complainant M.M. and respondent ET "S.Ch.". An open meeting on the merits of the dispute is scheduled for November 27, 2019, which has been rescheduled for December 12, 2019, of which the parties have been regularly notified. The parties did not appear at the meeting, they did not represent themselves. In view of the above, the Commission examined the complaint on the merits, accepting it as well-founded on the basis of the following: Regulation 2016/679 and the Personal Data Protection Act (PDPA) lays down rules regarding the protection of individuals with regard to the processing of personal data. their data. The aim is to protect the fundamental rights and freedoms of individuals, in particular their right to protection of personal data. Art. 62, para. 3 of the Labor Code stipulates that: "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). According to Art. 5, item 2 of the Ordinance, the notification of the employer shall indicate three names and a unique civil number of the employee. In Annex № 1 to Art. 1, para. 1 of the Ordinance, a model of the notification has been approved. Personal data means any information related to an identified natural person or an identifiable natural person (Article 4, item 1 of Regulation 2016/679). The names and the unique civil number of the natural person have the quality of "personal data" in accordance with the said provision, as through them the person can be indisputably identified. From the reference requested by the National Revenue Agency in the course of the administrative proceedings, it was established that the administrator of ET S.Ch. NRA notification on the grounds of art. 62, para. 3 and 5 of

the Labor Code for an employment contract, and a few days later - on 05.03.2019, has submitted a notification for its deletion, which is the processing of personal data within the meaning of Art. 4, item 2 of Regulation 2016/679. In Art. 6 (1) of Regulation 2016/679 sets out the conditions under which the processing of personal data is permissible. 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. In Art. 62, para. 1 of the Labor Code provides for a written form for the validity of the employment contract. In view of the fact that no evidence has been presented for the conclusion of the employment contract registered with the NRA - ie. signed by the employer and the employee, it is necessary to conclude that there is no consent as a condition for admissibility of the processing of personal data under Art. 6, paragraph 1, letter "a" of Regulation 2016/679 and the need for processing to perform an obligation under a contract to which the individual is a party within the meaning of Art. 6 (1) (b) of Regulation 2016/679. The ground under Art. 6, paragraph 1, letter “c” of Regulation 2016/679 - for compliance with the legal obligation under Art. 62, para. 3 of the Labor Code, which applies to the employer, as such a quality has not been proven to have the administrator in relation to the complainant. The term for submitting the notification starts from the conclusion or amendment of the employment contract, which requires its signing by both parties - employer and employee. The other grounds under Art. 6 (1), letters "d" - "e" are also not present - processing is not necessary to protect the vital interests of the data subject or another natural person; the processing is not necessary for the performance of a task in the public interest or in the exercise of official powers conferred on the administrator; the processing is not necessary for the purposes of the legitimate interests of the controller or of a third party with priority over the interests or fundamental rights and freedoms of the data subject. In view of the above, personal data have been processed without justification - violation of Art. 6 (1) of Regulation 2016/679. In the event of such an infringement, the complaint must be upheld. The Commission has operational independence and, in accordance with the functions assigned to it, assesses which of the corrective powers under Art. 58, para. 2 of Regulation 2016/679 to exercise. The assessment is based on the considerations of expediency and effectiveness of the decision, taking into account the specifics of each case and the degree of impact on the interests of the individual - data subject, as well as 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 or stop the commission of an infringement, thus achieving the due behavior in the field of personal data protection. The administrative penalty "fine" or "property sanction" under Art. 58 par. 2, letter "i" has a sanction character. In applying the appropriate corrective action under

Article 58, para. 2 of the Regulation shall take into account the nature, gravity and consequences of the infringement, as well as all mitigating and aggravating circumstances. The assessment of what measures are effective, proportionate and dissuasive in each case reflects the goal pursued by the chosen corrective measure - prevention or cessation of the violation, sanctioning of illegal behavior or both, as provided in Art. 58, para. 2, letter "i" of Regulation 2016/679. The established violation is the first for the administrator, which is a mitigating circumstance. In addition, the notification of cancellation of the employment contract was sent to the NRA only 6 days after the notification of conclusion, which confirms the statement in the opinion. nature.Given the above mitigating circumstances, the controller of personal data should be corrective action under Art. 58, para. 2, letter "b" of Regulation 2016/679 - official warning for the committed violations, which aims to prevent future violations by indicating to the administrator what is the due behavior - first the employment contract is signed by the employer and the employee, and then sends the notification to the NRA.

Thus motivated and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection

HAS DECIDED AS FOLLOWS:

1. Announces a complaint reg. № PPN-01-229 / 05.03.2019, filed by M.M. against ET "S.Ch.", as well-founded;

2. On the grounds of art. 58 (2) (b) of Regulation 2016/679 issues an official warning to the personal data controller ET "S.Ch." for an operation for processing personal data, which has violated Art. 6 (1) of Regulation 2016/679.

The decision can be challenged within 14 days of its service, through the Commission for Personal Data Protection, before the Administrative Court - Smolyan.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Maria Mateva / p /

Veselin Tselkov / p /

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