Decision on appeal with registration № PPN-01-607 / 23.07.06.2018 DECISION» PPN-01-607 / 2018 Sofia, 23.07.2019 The Commission for Personal Data Protection (CPDP, the Commission) composed of members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 08.05 .2019 and objectified in protocol № 20 / 08.05.2019, on the grounds of art. 10, para. 1 of the Personal Data Protection Act (PDPA) in conjunction with Art. 57, § 1, b. "E" of Regulation (EU) 2016/679, considered on the merits a complaint with reg. № PPN-01-607 / 23.07.06.2018, filed by J.C.N. The administrative proceedings are by the order of art. 38 of the LPPD. The Commission for Personal Data Protection was seised with a complaint Reg. № PPN-01-607 / 23.07.2018, in which allegations of illegal processing of personal data of Mr. J.C.N. from the Municipal Enterprise "KD", town of K. The complainant alleges that he did not authorize the director of OP "KD", town of K. to keep correspondence on his behalf, to receive his personal data from previous employers , with "which to use at its discretion and without the consent" of Mr. J.C.N. The applicant requested that an assessment be made of the lawfulness of the acts. Evidence is attached to the complaint: a letter from the director of OP KD, town of K. to the director of ZS-K AD. With a letter ex. № PPN-01-607 # 2 / 29.06.2018 Zavodski Stroezhi AD has been notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion and present evidence. An opinion was filed, registered with Reg. № PPN-01-607 # 6 / 03.09.2018, stating that J.C.N. was appointed to the position of "El. welder ”in a company for the period from 01.09.1977 to 08.03.1978, in connection with which an obligation within the meaning of Art. 12, para. 1 of the Accounting Act to keep the payroll of the applicant for a period of 50 years. Within the meaning of Art. 8, para. 1 of the Ordinance on the employment record book and length of service, the employer has an obligation to keep the workbooks, diaries and copies of the certificates not issued by the employees for a period of 50 years. AD has a legal basis (within the meaning of Article 6, paragraph 1, letter "c" of Regulation 2016/679) to store the personal data of the complainant related to an existing employment relationship. They indicate that within the meaning of Art. 1 of the Ordinance on pensions and length of service, legitimized to submit an application for a pension to one person - employee is his last insurer. In this case, this is the respondent party filed by J.C.N. complaint - OP "KD", K. Also, within the meaning of Art. 2, item 1 of the Ordinance on pensions and length of service, documents for insurance (length of service) shall be submitted with the application for granting a personal pension for length of service and age, as well as the type of certificate requested by OP KD. K. consider that the provision of these personal data, representing information about the work and insurance experience of the

individual, is lawful, because on the one hand ZS-K. AD has grounds to process this personal data, and on the other hand - OP "KD", d. K. is entitled to receive this type of personal data. In this sense, due to the existence of legal obligations for storage and transfer of personal data, the consent of the person is not required. They indicate that the person has the right to be informed of the ways in which his personal data are processed by the controller and of the recipients of such personal data and that the complainant has exercised this right and Z.S.-K. AD is provided an answer, objectified in a letter with ref. № 328 / 07.07.2017. With a letter ex. № PPN-01-607 # 3 / 23.08.2018 the mayor of the municipality of K. was notified on the grounds of art. 26 of the APC for the initiated administrative proceedings. The letter was sent with a copy to OP "KD", K. The opportunity was given to express an opinion and present evidence. In response, an opinion was filed with registration № PPN-01-607 # 9 / 03.09.2018, stating that the complaint by Mr. J.C.N. is not directed against the mayor of the municipality of K., and that the applicant does not have any legal relationship with him. They consider the complaint inadmissible in respect of the mayor of the municipality of K. They state that the municipality of K. did not process the personal data of the complainant. They point out that the employer of Mr. J.C.N. was OP "KD", K. They ask the proceedings against the mayor of the municipality K. to be terminated as inadmissible. They ask for an award of costs, including attorney's fees. An opinion was filed by OP “KD”, town of K., filed with registration number PPN-01-607 # / 03.09.2018. of termination of his employment contract due to the acquisition of the right to a pension for length of service and age. Consider that with regard to the application for the issuance of PM - 3, the personal data processed by OP "KD" are the three names and PIN of the complainant in the letters to "Z.S.-K." AD and " A. EAD and are provided by the employee himself, upon entering the work both in the Municipal Enterprise and with his previous employers, in accordance with Art. 66, para. 1 of the Labor Code. i.e. all the mentioned companies have the cited data on legal grounds. They consider that the behavior of the Municipal Enterprise is lawful, as it is in accordance with the requirements for admissibility of processing, objectified in Art. 4, para. 1 of the Personal Data Protection Act, as well as respectively - Art. 6 (1) of Regulation (EU) 2016/679 (General Data Protection Regulation). They point out that it is not necessary to seek the consent of the complainant and that his complaints in this regard are unfounded as there are other grounds for processing his personal data - for the purposes of employment. In these cases, the employee has no real free choice and is unable to refuse or withdraw his consent. In addition, the relationship between the data subject and his or her employer, including with regard to the processing of personal data, is comprehensively governed by labor law and the individual employment contract. In these circumstances, the condition for the lawfulness of the processing of personal data is a legal obligation and the performance of

a contract. It is stated that the provision of Art. 5, para. 7 of the Social Insurance Code, an obligation has been created for the insurer, upon request, to issue free of charge within 14 days the necessary documents for insurance length of service and insurance income. The documents through which insurance length of service can be established are specified in Art. 40 - 42 of the Ordinance on pensions and length of service, work book, service book, insurance book, book, document, approved model, issued by the insurer - certificate of retirement form UP-3 and others. The issuance of a certificate form УП-3 is also necessary in the cases when the entries in the employment record book have not been made in accordance with the requirements of the Ordinance on the employment record book and the length of service and Art. 40, para. 4 of the NPE. If it is not entered in the employment record book that "the insurance length of service is equal to the credited length of service", the length of service shall be established by a document approved by the manager of the National Social Security Institute, issued by the insurer, namely: 3. The refusal or the delay in the issuance of the necessary certificate leads to the engagement of the responsibility of the employer under art. 226, para. 1, vol. 1 in conjunction with para. 3 of the Labor Code. Therefore, every insurer is obliged, by law, to perform the actions for which the complaint was filed. They consider that the complainant's complaint that the Municipal Enterprise kept correspondence on his behalf without a power of attorney is unfounded. The entire process communication is only on behalf of our trustee, signed by the director of the Municipal Enterprise, in his capacity as a representative. The municipal enterprise did not present itself as a proxy of Mr. J.C.N. They ask that the complaint be dismissed as unfounded. The complaint of J.C.N. is fully compliant with the requirements for regularity, according to Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature. The norm of art. 38, para. 1 of the LPPD provides for a limitation period for referral to the Commission - within one year of learning of the violation, but not later than five years from its commission. The provisions of Art. 38, para. 1 of LPPD deadlines are met, given the provision of para. 44, para. 2 of the Transitional and Final Provisions to the Law on Amendments to the LPPD. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "E" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act considers complaints against acts and actions of personal data controllers, which violate the rights of individuals under Regulation 679/2016 and LPPD. In Art. 27, para. 2 of the APC, the legislator binds the assessment of the admissibility of the request with the presence of the requirements specified in the text. The applicability of the Personal Data Protection Act is related to the

protection of individuals in connection with the processing of their personal data by persons having the status of "personal data controllers". This requirement is an absolute procedural prerequisite, in the light of which the admissibility of the action must be assessed. In order to have a personal data controller, he must meet the conditions described in the provision of Art. 3 (revoked) of LPPD, respectively of Art. 4, item 7 of Regulation (EU) 2016/679. According to the regulations for the structure and activity of the Municipal Enterprise “K.D. (OP "KD"), OP "KD", has no status of a legal entity and operates on behalf of the municipality of K. OP "KD" is a specialized unit of the municipality of K., under the direct supervision of the mayor, whereby the administrator of personal data is the municipality of K., represented by the mayor. It follows from the above that the municipality of K., in whose structural unit is the municipal enterprise "Communal Activity", "Z.S.-K." AD and "A." AD undoubtedly have the qualities of personal data controllers. The appeal was declared admissible. The administrative body acts ex officio to clarify relevant facts and circumstances. The competence of the CPDP is the observance of the LPPD (of the provision of art. 12 of the LPPD). To rule after referral by natural persons indicates the inapplicability of the dispositive principle in the implementation of the Commission's activities. The specification of the subject of the violation is within the competence of the body in view of the evidence gathered in the file. In the present case, the complaint filed by J.C.N. is directed against a passively legitimized party - the director of OP “K.D. “. Pursuant to the principle of ex officio and in view of the evidence gathered in the administrative file, the body was ex officio constituted as parties in the administrative proceedings, the applicant, J.C.N. and respondent parties - the municipality of K., in whose structural unit is the municipal enterprise “Communal activity” and interested parties: “Z.S. – K.” AD and “A. “AD. The parties have been regularly notified of the open meeting of the CPDP scheduled for 08.05.2019. When considering the complaint, it should be noted that the processing was performed before the application of Regulation (EU) 2016/679 - 25.05.2018, but also the obligation to comply with the individual administrative act with substantive law at the time of its issuance - Art. 142, para. 1 APC. In this case, there is a similarity between the provisions of the LPPD and the Regulation. According to the legal definition given in Art. 2, para. 1 (as amended by SG No. 91/2006) of the LPPD, personal data are any information relating to a natural person who has been identified or may be identified directly or indirectly by an identification number or by one or more specific features. . The scope of the concept of personal data is further developed in Art. 4, para. 1, item 1 of Regulation (EU) 2016/679 - "personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data,

online identifier or one or more features specific to the natural, the physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. Considered on the merits, the complaint is well-founded with regard to the municipality of K., as a controller of personal data, in which the structural unit is the municipal enterprise “K.D. “. Undoubtedly, for OP KD there is a ground for processing the personal data of the complainant, in his capacity as a person who hired the complainant under an employment contract with the municipal enterprise. It is not disputed that upon termination of the employment relationship of a person, an obligation arises for the employer, according to the provision of Art. 5, para. 7 of the Social Security Code (SSC), for issuing documents for insurance length of service and insurance income, as well as to certify facts and circumstances related to them. When the entries in the employment record book have not been made in accordance with the requirements of the Ordinance on the employment record book and the length of service, it is necessary to issue a certificate form UP-3. According to the provision of art. 328, para. 3 of the Labor Code in the cases under para. 1, items 10 a, 10 b and 10 c, the employer may receive ex officio from the National Social Security Institute information on the existence of an exercised right to a pension by the employee. The National Social Security Institute shall provide the information free of charge within 14 days of receiving the request. In view of the above, for the municipal enterprise "KD" there is no obligation to require a certificate form UP - 3 from previous employers, to establish the length of service of Mr. J.C.N. Such an obligation has the insured person himself, according to the specified provision of art. 5, para. 7 of CSR. It follows from the above that the personal data of the complainant were processed illegally and in bad faith by the municipality of K., in the capacity of personal data controller, whose structural unit is also OP "KD", which violates the principle established by the provision of Art. 2, para. 2, item 1 (the wording of SG, issue 91 of 2006), respectively Art. 5, para. 1, p. "A" of the Regulation. According to the administrative file, it has been established that OP KD sent letters in June 2017 to ZS-K AD and A. AD, in which it indicated the three names and the single civil number (PIN) of the complainant, which required the two companies to issue a certificate form UP - 3 for Mr. J.C.N. It has been established that the certificate УП - 3, containing in the same personal data in the volume of three names, PIN, was prepared and sent by Z.S.-K. AD with a letter, with a return receipt on 14.06.2017. of OP "K.D.", from "A. “AD on 16.06.2017 the procedural UP 3. was prepared. “AD the complaint is also well-founded. It is not disputed in the administrative file that the applicant was an employee of the two enterprises for the period 1977-1978, given that they are obliged to keep the personal data of the applicant within the meaning of Art. 12, para. 1 of the Accounting Act, for a period of 50 years. However, with regard to the provision of personal data by Z.S.-K. AD, and by A. AD at the request of the director of

OP "KD", the same action is the processing of data "use" within the meaning of § 1, item 1 of the Additional Provisions (as amended by SG No. 91 of 10 November 2006).) of LPPD, respectively Art. 4, item 2 of the Regulation. As a data processing action, the same should be done in accordance with the provisions of the LPPD and Regulation 2016/679. From the above it is necessary to conclude that the personal data of Mr. J.C.N. have been additionally processed for purposes different and incompatible with the initial specific, explicitly indicated and legitimate purposes for which they have been collected, whereby the principle of limiting the purposes of processing under Art. 2, para. 2, item 2 of LPPD, respectively Art. 5, para. 1, p. "B" of Regulation 2016/679. In case of such a violation, the complaint should be respected. The Commission has the operational independence, as in accordance with the functions assigned to it, it assesses which of the corrective powers under Art. 58, paragraph 2 of Regulation 679/2016 to exercise. The assessment is based on the appropriateness and effectiveness of the decision, taking into account the specifics of each case and the degree of affecting the interests of a particular individual - data subject, as well as the public interest. The powers under Art. 58, para. 2, without this under letter "i", have the character of coercive administrative measures, the purpose of which is to prevent or stop the infringement, thus achieving the due behavior in the field of personal data protection. The administrative penalty "property sanction" has a sanction nature. When applying the appropriate corrective measure under Art. 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". In assessing the circumstances of the case, the Commission finds that there should be an administrative penalty of a "pecuniary sanction" close to the minimum, which is intended to sanction the misconduct and to discipline the defendants. The Commission, having assessed the fact that the breach of the rules on the processing of personal data has been completed and the consequences for the data subject, and in order to remedy the adverse effects, only a pecuniary sanction as a measure of administrative coercion is the most appropriate and effective measure. In accordance with Art. 83, paragraph 2, letter "i", the reasons are the following: Letter "a" - the processing in respect of the administrator municipality K., in which the structural unit is the municipal enterprise "K.D." refers to the illegal provision of personal data to the applicant in the amount of three names and a single civil number of "Z.S.-K." AD and "A. “AD. For the municipal enterprise "KD" there is no obligation to require a certificate form UP - 3 from previous employers, to establish seniority. Such an obligation has the insured person himself,

according to the specified provision of art. 5, para. 7 of CSR. In accordance with the above, it follows that Z.S.-K. AD and A. “AD the data were provided to Mr. J.C.N., ie the data were provided to third parties. The processing with regard to the administrators Z.S.-K. AD and A. “AD represents the processing of the data“ use ”in the sense of § 1, item 1 of the Additional Provisions (the wording of SG No. 91 of November 10, 2006) of LPPD, respectively Art. 4, item 2 of the Regulation, ie have been additionally processed for purposes different and incompatible with the original specific, explicitly indicated and legitimate purposes for which they have been collected. damage to the applicant. Letter "b" - the case concerns objective innocence in respect of all three legal entities - data controllers. The Municipality of K., in which the structural unit is the municipal enterprise “KD”, was aware that it required the provision of information for which there was no obligation or legal basis. Z.S.-K. AD and A. AD provided the required information in violation of the purpose for which it was collected, and all three administrators aimed for this. Letter "c" - it was not found that the administrative body has taken timely measures by administrators to prevent the violation, on the contrary, was found to have been unlawfully conducted by all three administrators.Letter "d" - the infringement does not concern failure to take technical and organizational measures.

Letter “e” - The violation is not the first for the administrator - K. municipality. With decision № Ж-302/2018 of 10.07.2018 an administrative penalty was imposed on K. municipality - property sanction - BGN 500, for violation of Art. 23 of the LPPD. The decision has not been appealed and has entered into force.

Letter "e" - removal of the violation is not possible. According to the guidelines given by Working Group 29 on this criterion, it is taken into account that, as a result of the intervention of the administrators, the negative effects on the complainant's rights were greater than they could have been without those interventions.

Letter "g" - the three names and PIN of the complainant are processed, data that identify and allow direct identification of the person. No special categories of personal data within the meaning of Art. 9 of the Regulation.

Letter "h" - after referral to the Commission by the data subject. Interpretation by Working Group 29 for this criterion states that compliance with this obligation cannot be interpreted as a mitigating factor, and the lack of notification or non-compliance with the deadline due to inadequate assessment of the extent of the violation may lead to more serious sanctions.

Letter "and" - no measures have been imposed on the administrators under Art. 58, paragraph 2 of the Regulation.

Letter "j" - at the time of the violation there are no approved codes of conduct.

Letter "k" - taking into account the degree of violation committed by ZS-K AD and A. AD, the following mitigating circumstances

are taken into account - no other violations of the administrators have been found, ie the violation of the principles for personal data processing appear first for Z.S.-K. AD and for A. AD, the illegal processing of personal data by the companies is recognized, no serious damages have occurred for the data subject .

The administrative body considers that the property sanction will have an educational impact and will contribute to the observance of the established legal order by the administrator, and in determining the amount of sanction imposed took into account that the violation is not first for the administrator municipality K. Except purely sanction , reaction of the state to the violation of the normatively established rules, the property sanction also has a disciplinary effect, in view of the non-commission of the same violation in the future. Administrators are obliged to know the law and to comply with its requirements, moreover, they owe the necessary care provided by law and arising from its subject of activity, human and economic resources.

In determining the amount of property sanctions, the administrative body shall also take into account the date of the violation by the administrators. According to the provision of art. 142, para. 1 of the APC, the compliance of the administrative act with the substantive law shall be assessed at the moment of its issuance. In order for an act to be considered a violation, it must be declared as such with a legal norm in force at the time of its commission, which must be accepted as violated. In view of this, the violations should be qualified as such under the provisions in force at the time of its implementation, namely Art. 2, para. 2, item 1 of LPPD for the municipality of K. and under Art. 2, para. 2, item 2 of LPPD for ZS-K. AD and of A. AD of LPPD (as amended by SG, issue 91 of 2006), which correspond to Art. 5, para. 1, p. "A" and "b" of the Regulation.

A timely request was made for the award of costs by the procedural representative of the municipal enterprise KD, but given the outcome of the dispute, the Commission considers that no costs are due and should not be awarded.

In the circumstances thus established, on the grounds of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "E" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled as follows

ANSWER:

1. Announces a complaint with registration № PPN-01-607 / 23.07.2018, filed by J.C.N. for justified in respect of the administrator municipality K., in whose structural unit is the municipal enterprise "KD" for violation of the provisions of Art. 2, para. 2, item 1 (the wording of SG, issue 91 of 2006) of LPPD, corresponding to Art. 5, para. 1 of Regulation (EU) 2016/679

2. In connection with item 1 and on the grounds of art. 58, paragraph 2, letter “i”, in connection with Art. 83, paragraph 5, letter

"a" of Regulation 679/2016 imposes on the administrator the municipality of K., in whose structural unit is the Municipal Enterprise "KD", with address K., *** administrative penalty - "property" sanction ", in the amount of BGN 15,000 (fifteen thousand) for violation of the provision of Art. 2, para. 2, item 1 (the wording of SG, issue 91 of 2006) of LPPD, corresponding to Art. 5, para. 1 of Regulation (EU) 2016/679.

3. Announces a complaint with registration № PPN-01-607 / 23.07.2018, filed by J.C.N. for justified in respect of the administrators Z.S.-K. AD, and of A. AD, for violation of the provision of Art. Art. 2, para. 2, item 2 of LPPD (the wording of SG, issue 81 of 2011), corresponding to Art. 5, para. 1, p. "B" of Regulation 2016/679.

4. In connection with item 3 and on the grounds of art. 58, paragraph 2, letter "i", in connection with Art. 83, paragraph 5, letter "a" of Regulation 679/2016, imposes on the controller of personal data - "Z.S.-K." AD, UIC *****, with registered office and address of management: K ., *******, property sanction and amount of BGN 10,000 (ten thousand) and of A. AD, UIC *******, with registered office and address of management: K. , ***** property sanction and amount of BGN 10,000 (ten thousand) for violation of the provision of Art. Art. 2, para. 2, item 2 of LPPD (the wording of SG, issue 81 of 2011), corresponding to Art. 5, para. 1, p. "B" of Regulation 2016/679.

The decision is subject to appeal within 14 days of its service, through the Commission for Personal Data Protection, before the Administrative Court - V.

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

If the sanctions are not paid after the entry into force of the decision, enforcement actions will be taken.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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Decision on the appeal with registration № PPN-01-607 / 23.07.06.2018

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