

Home »Practice» Decisions of the CPDP for 2019 »Decision on appeal with registration № Ж-287 / 30.06.2017 Decision on appeal with registration № Ж-287 / 30.06.2017 DECISION № Ж-287 / 2017 Sofia, February 22, 2019. Commission for Personal Data Protection (CPDP, Commission) composed of, Chairman - Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 13.12.2018. and objected in protocol № 47 / 13.12.2018, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered on the merits a complaint with registration № G-287 / 30.06.2017, filed by B.M. against a health institution (ZZ). The administrative proceedings are by the order of art. 38 of the LPPD. The Commission for Personal Data Protection (CPDP) was seised with a complaint with registration № G-287 / 30.06.2017, filed by Dr. BM, which set out the following allegations: The complainant claims that on 01.07 .2016 has sent via Telepost with a return receipt an application to his employer Z.Z. with a request for: Confirmation of whether data relating to it are processed, information on the purposes of such processing, on the categories of data and on the recipients or categories of recipients to whom the data are disclosed; Communication to him in an understandable form, containing his personal data that are processed, as well as any available information about their source; Information on the logic of any automated processing of personal data relating to him. The complaint states that as can be seen from the attached receipt, the application was received on 04.07.2016, but Mr. B.M. has not received a response from the personal data controller within the statutory period under Art. 32 of the LPPD. The applicant requested that administrative sanctions be imposed on the perpetrators. Attached is a copy of the return receipt for the delivery of the registered letter dated 04.07.2016 and a copy of the Applicant's Application under Art. 30 of LPPD to the personal data controller. Letter with ref. PPN-01 G-287 # 1 / 22.08.2018 was sent by the CPDP, in which B.M. for the initiated administrative proceedings and is given the opportunity to provide relevant evidence within 7 days of receipt of the letter. Letter with ref. № PPN-01-287 # 3 / 22.08.2017 was sent by the CPDP, informing Ms. V.M. - Manager of Z.Z. for the initiated administrative proceedings and is given the opportunity to provide a written statement and evidence within 7 days of receipt of the letter. An opinion was received from ZZ, in which the following allegations were made: It is alleged that ZZ has not received the application attached by Mr B.M. The registered staff list as of the date indicated in the complaint does not include a person with the surname I., who signed the delivery notice. It is stated that the complaint is another request of Mr. B.M. with similar content and has completed court proceedings before the ACCG between the parties on the complaint of BM that he was not provided with information in connection with the processing of his personal data by the company represented by him, the ACCG terminated the

proceedings under Adm. case *****. In addition, it is alleged that Z.Z. has personal data of the complainant from a civil contract terminated years ago, but does not use them, for which B.M. has already been notified in the case before the ACCG. Attached as evidence: ruling № **** of the Supreme Administrative Court of the Republic of Bulgaria, ruling № **** of the Administrative Court - Sofia. The complaint of B.M. 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. Less than one year has elapsed since the alleged infringement became known or five years have elapsed. The provisions of Art. 38, para. 1 of the LPPD deadlines have been met. 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". At a closed meeting of the Commission held on November 7, 2018, the complaint was declared admissible. The following parties have been constituted: complainant - B.M. and respondent - Z.Z. in his capacity of personal data controllers, regularly notified of the open meeting scheduled for 13.12.2018. The applicant appeared in person, "Z.Z. does not send a representative for the meeting. In preparing this Decision, the change in the legal framework in the field of personal data protection in the period from the processing of personal data to the ruling on the merits of the request addressed to the administrative body has been taken into account. It is also consistent with the fact that from 25.05.2018 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 and repealing Directive 95/46 / EC (General Data Protection Regulation, Regulation) lays down the rules on the protection of individuals with regard to the processing of personal data as well as the rules on the free movement of personal data. It is also noted that according to Art. 288 TFEU "The Regulation is an act of general application. It is binding in its entirety and directly applicable in all Member States. "According to Art. 15, para. 2 of the Law on Normative Acts (LNA) "if a normative act contradicts a regulation of the European Union, the regulation shall apply". In the absence of an explicit provision, it follows that existing relationships which are not pending and relate to 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 application. occurrence. In this particular case, such are the provisions of the LPPD in view of the fact that the legal facts and legal consequences related to the non-provision of data concern the period 30.06.2017, ie before the application of the regulation. The complaint was filed by a natural person with a legal interest and the subject is a violation of the right of access to personal data and an appeal against a refusal to provide a copy of processed personal data. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. Art. 10, para. 1, item 7 of LPPD, respectively Art. 57, §. 1, item "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data. The presence of a personal data controller is an absolute procedural prerequisite for the admissibility of the complaint. In the specific case, given the provision of Art. 4, item 7 of Regulation (EU) 2016/679 and in view of the evidence gathered in the file, it is necessary to conclude that "Z.Z. is a controller of personal data. According to the file, it was established that according to the ruling № *** on administrative case № *** of the Administrative Court - Sofia city, Second Department, 25th panel, confirmed by the ruling № *** on adm. case № *** of the Supreme Administrative Court that Z.Z. has not been duly notified by B.M. with a request under Art. 28 of LPPD, referring to the same application for granting access to personal data relating to the latter, given that there is no refusal of ZZ, within the meaning of Art. 33, para. 3 of the LPPD. With the definition of № *** according to Adm. case № ****. of the SAC, whereby the Supreme Administrative Court stated that the fact whether the application filed by B.M. was received by the controller of personal data is irrelevant, as in the course of the court proceedings with a notification of 16.01.2017 the procedural representative of the complainant was provided with full information on what was sent by the complainant. In the course of the proceedings it was indisputably established that Mr B.M. has submitted an application for access to his personal data to ZZ, on the grounds of Art. 28, para 1, items 1 and 2 of LPPD. No response to the application has been filed by Z.Z. According to the provision of art. 26 of the Personal Data Protection Act applicable at the time of submitting the application, the natural person has the right of access to the personal data relating to him, which is specified as a volume in Art. 28, para. 1 ZZLD. Identical in law and similar in content is Art. 15, para. 1 and 3 of Regulation (EU) 2016/679. The application was submitted in accordance with Art. 29 of the LPPD order and contains the necessary requisites, specified in art. 30, para. 1 ZZLD. In Art. 32, para. 4 of the LPPD, the obligation of the personal data controller to respond to the request within 14 days has been imposed. In view of the evidence gathered in the administrative proceedings, it is evident that the ruling on the application of Mr. B.M. from Z.Z. has not been done so far. In the event of such an infringement, the complaint should be

upheld in view of the failure to rule on the submitted application. 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 considerations of the appropriateness and effectiveness of the decision, and an act should be enacted to best protect 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. Regarding 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"). It should also be noted that both the LPPD and the Regulation set a deadline for ruling on submitted applications, which in this case was not met, given that the pecuniary sanction as a corrective measure under Article 58 (2) (i) of the Regulation and a measure of administrative coercion, is an appropriate and effective measure to protect the legitimate public interest. It should be noted that in addition to a purely sanction measure, a reaction of the state to the violation of the statutory rules, the property sanction also has a disciplinary effect, in view of the non-commission of the same violation in the future. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided by law and arising from his subject of activity, human and economic resources.

The lack of a ruling on the submission of Mr. B.M. application, according to the legal requirement under Art. 15, para. 1, p. "A", "b", "c" and "g" of the ORD (provisions identical to the provisions of Article 28 of the LPPD) is bound by the imposition of a sanction in the minimum amount. The Commission considers that the pecuniary sanction will have an educational effect and will contribute to the administrator's compliance with the established legal order, taking into account that the amount of the sanction imposed takes into account that the violation is first for the administrator. It should be noted that in addition to a purely sanction measure, a reaction of the state to the violation of the statutory rules, the property sanction also has a disciplinary effect, in view of the non-commission of the same violation in the future. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided by law and arising from his subject of activity, human and economic resources. The same approach was applicable at the time of the violation - Art. 42, para. 7 of the

LPPD.

As can be seen from the above and on the grounds of Art. 38, para. 2 of the Personal Data Protection Act, the Commission for Personal Data Protection to rule with the following

ANSWER:

1. Declares an appeal lodged by B.M. against a health institution, with reg. by the order of art. 29 of the LPPD from the health institution.
2. Imposes on the administrator a health institution, UIC ****, with registered office and address of management: *****, represented by VM, a property sanction in the amount of BGN 1,000 (one thousand thousand BGN), according to the provision of art. 83, para. 5, p. "C" of the Regulation for violation of Art. 12 in connection with Art. 15, para. 1, p. "A", "b", "c" and "g" and par. 3 of the ORD.

After the entry into force of the decision, the amount of the imposed penalties to be paid in cash at the box office of the Commission for Personal Data Protection, located in Sofia, Blvd. "Prof. Tsvetan Lazarov "№ 2 or transferred by bank transfer:

Bank of the BNB - Central Office

IBAN: BG18BNBG96613000158601

BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

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 /

Downloads

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