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»Decision on appeal with registration № PPN-01-275 / 26.04.2018 Decision on appeal with registration № PPN-01-275 / 26.04.2018

ANSWER

№ PPN-01-275 / 2018

Sofia, June 18, 2019

The Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a meeting held on 22.05.2019, pursuant to Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, considered on the merits a complaint reg. № PPN-01-275 / 26.04.2018, filed by T.Y.

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 T.Y., with allegations in the same for illegal processing of his personal data by "PT" Ltd. in connection with direct marketing carried out by telephone.

The applicant claims that on 24 April 2018, at around 09:45, he received a telephone call from *****. He indicates that the person who contacted him on his mobile number - *****, introduced himself as an employee of "PT" Ltd. and expressed a desire to send him advertising materials by e-mail. Mr. T.J. informed that in the course of the telephone conversation he asked the representative of the company for information on where he had his personal data - names and telephone number, but the subsequent answer that "PT" Ltd. has purchased a database for many people, did not satisfy him. He added that he also requested information about the seller in the database, but was refused to provide the requested information. Considers that there is no legal basis for the company to process his personal data and asks the Commission to investigate the case.

No evidence was attached to the complaint.

In the conditions of the official beginning of the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, PT OOD requested a written opinion and relevant evidence, including a printout / a recording of a telephone conversation conducted by an employee of PT OOD on 24.04.2018 to the telephone number indicated in the complaint and information on the amount of personal data of the complainant that the company

processes.

In response, an opinion was filed that the complaint was unfounded, alleging that the company did not carry out "telephone marketing" and did not have a database from which to extract and recruit potential customers. They are categorical that the number ***** indicated in the complaint is not the property of the company and is not used by it.

In the course of the proceedings and in order to clarify the case on the factual side, a telecommunications operator requested information on the process telephone number, in response to which the mobile operator informed that the number ***** was not provided for use of "P .T. "Ltd., and to" T.E.M.B. "Ltd.

In this regard, TEMB OOD requested information on the existence of a relationship with PT OOD, which the company denies having with PT OOD.

The applicant was informed of the evidence gathered in the file and of the distribution of the burden of proof in the proceedings and the need to present evidence in support of his allegations, in particular a screen printout from his telephone showing that on 24.04.2018 searched by phone from number *****. Mr. T.J. reports the impossibility of preparing a screen printout and provides correspondence with the telecommunications operator regarding the fact that the company provides detailed printouts only for outgoing calls from a specific number.

The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and 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.

In order to exercise its powers, the Commission must be properly seised.

The appeal shall contain the obligatory requisites, specified in the provision of 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 it is regular.

The appeal is procedurally admissible, filed within the term under § 44, para. 2 of the Transitional and Final Provisions of the LPPD, by a natural person with a legal interest against a competent party - a legal entity controllers of personal data within the meaning of Art. 4, para. 7 of EU Regulation 2016/679.

The complaint was referred to a competent body - the CPDP, which in accordance with its powers to consider complaints

against acts and actions of data controllers, which violate the rights of individuals related to the processing of personal data, and there are no exceptions to Art. 2, § 2, letter "c" and Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by courts in the performance of their judicial functions.

For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, at a meeting of the Commission held on 27.03.2019 the complaint was accepted as admissible and as parties in the administrative proceedings were constituted: complainant - T.Y. and respondent - "PT" Ltd., in its capacity of controller of personal data.

At a meeting of the CPDP held on May 22, 2019, the complaint was considered on the merits.

The parties - regularly notified, do not appear, do not represent themselves.

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 of the parties, the Commission finds that considered on the merits of the complaint № PPN-01-275 / 26.04.2018 is unfounded.

The subject of the complaint are the allegations of Mr. T.J. for illegal processing of his personal data - names and telephone number by "PT" Ltd. for the purposes of direct marketing, namely offering goods and services by telephone, through a telephone call made on 24.04.2018, around 09:45 from number *****.

The allegations of the complainant that the company processes his personal data - names and telephone number, are disputed by the respondent. They were unsubstantiated and unproven by the applicant and did not correspond to the evidence gathered in the file. There is no evidence of personal data of Mr. T.Y. to be processed by "PT" Ltd. for the purposes of direct marketing. The applicant was informed of the burden of proof in the proceedings, he did not adduce evidence in support of his allegations, and the case file shows that the number *****, from which the applicant states that direct marketing took place, was not provided for use by the respondent. A party to a contract for the provision of services for the specified number is "TEMB" Ltd., which categorically denies having a relationship with "PT" Ltd. or to carry out direct marketing by phone.

The evidence gathered in the file did not reveal the processing of personal data of the complainant by PT OOD, respectively the alleged violation. In this regard, and in view of the distribution of the burden of proof in the process, it is necessary to

conclude that the complaint is unfounded.

Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

Disregards the complaint PPN-01-275 / 26.04.2018, filed by T.Y. against PT OOD, as unfounded and unproven.

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

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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