Decision on appeal with registration № PPN-02-420 / 01.08.2019 DECISION» PPN-02-420 / 2019 Sofia, 16.01.2020 The Commission for Personal Data Protection (CPDP, the Commission) composed of, Chairman, Ventsislav Karadzhov and members: Maria Mateva and Veselin Tselkov at a regular meeting held on 11.12. 2019 and objectified in protocol № 49 / 11.12.2019, 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-02-420 / 01.08.2019, filed by V.M. against a utility company. A complaint was received with registration number PPN-02-420 / 01.08.2019, filed by V.M. against the DCU with a subject of incomplete and inaccurate ruling on a submitted application under Art. 15 of Regulation 2016/679. The complainant stated that a few weeks ago he had sent a request to the CSC to be provided with information on what personal data he was processing, the purpose of the processing, the retention period, etc. Indicates that within two weeks he received a response from the CSC, which does not meet the minimum requirements of Art. 15 of the General Regulation on Personal Data Protection and violates the principle of transparency in the processing of personal data. 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, by letter ref. № PPN-02-420 # 2 / 10.10.2019, the DCU was given a deadline for expressing an opinion and presenting relevant evidence. In response, a statement was received, registered with Reg. № PPN-02-420 # 9 / 17.10.2019, stating that the personal data of the complainant V.M. are processed lawfully and in good faith, in strict compliance with the principles of personal data processing, promulgated by the provision of Art. 5 of Regulation (EU) 2016/679. Inform that Mr. V.M. is a client of heat energy in his capacity as owner of a heat-supplied property, according to the provision of art. 153 of the Energy Act. The provision of art. 150 of the Energy Act, which states that the sale of heat by the heat transmission company to customers of heat for domestic use is carried out under publicly known general conditions proposed by the DCU and approved by the EWRC. Heat transmission companies must publish the general conditions approved by the commission in at least one central and one local daily newspaper in the cities with domestic heat supply. The General Terms and Conditions enter into force 30 days after their first publication, without the need for explicit written acceptance by customers. Within 30 days after the entry into force of the general conditions, customers who do not agree with them have the right to submit to the relevant heat transmission company an application in which to offer special conditions. The special conditions offered by the customers and accepted by the heat transmission companies are reflected in

written additional agreements. In this case, insofar as the complainant is a customer of heat energy, there is a contractual relationship under publicly known general conditions, his personal data are processed by the DCU, pursuant to Art. 6, para. 1, p. "B" of 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 EC (Regulation) - the processing is necessary for performance under a contract to which the entity is a party. They consider that depending on the specific action for processing the provisions of the same are the legal basis according to Art. 6, para. 1, letter "c" of the Regulation. In this regard, the collection, processing and storage of personal data are necessary to comply with legal obligations that require processing (argument of Article 17, paragraph 3, letter "b" of the Regulation). It is stated that the company has the following personal data of the complainant: three names, a single civil number, address, telephone and e-mail. The source of the same is a list of consumers of heat in a building at the address: ***, submitted upon joining the building on 21.10.2003, notary deed for purchase and sale of real estate under construction № ***, list of consumers of heat energy in a building at the address: ***, presented upon joining the building on 26.01.2001, notary deed № *** and applications with registration indices **** as on them inspections were performed and provided official replies to the applicant. With the e-mail address of the complainant the company has an Application with registration index *** from the same for concluding a contract according to the General Terms and Conditions for sale of heat for business needs by CSC to customers in Sofia, as well as a contract № ** * between V.M. and DCU with the same subject. I am submitting a copy of the above documents to this opinion. They point out that in the application with registration index **** Mr. V.M. he did not request that the above-cited documents be provided to him, but only the personal data being processed, which were provided. We consider the complaint in this part to be unfounded. The application with registration index *** is the first with such a subject, submitted by Mr. V.M. The other statements cited in the reply have a different subject. Inform that against Mr. V.M. civil cases have been instituted before the Sofia District Court as follows: ****. As a customer of heat energy, the CSC stores personal data of the complainant for the following purposes: fulfillment of regulatory and contractual obligations in connection with the heat supply of his property, financial and accounting activities, taking necessary court and / or extrajudicial actions to collect of outstanding liabilities to the company. Depending on the basis on which the personal data are processed, the period of storage of the same is different. Personal data is stored by the CSC for a period of 5 years from the termination of the contract / elimination of the grounds on which the data were originally collected and in case of fulfillment of contractual obligations, in cases where we

process personal data to perform contractual obligations. After the expiration of this term and in case there is no legal basis for continuing the storage of his personal data, the information about him shall be destroyed. In order to fulfill the assumed obligations under the contractual relationship with the complainant, as well as in the fulfillment of its normative obligations, it is stated that the company discloses its personal data to: companies providing courier services. This is related to the correspondence sent and received to and from him. The personal data disclosed are three names and an address; the company performing share distribution for the heat-supplied property. This is related to the share distribution. The disclosed personal data are three names and address (that of the heat-supplied property); the company performing printing of the messages for the invoiced amounts for the heat supply property. The disclosed personal data are three names and address (that of the heat-supplied property); companies collecting amounts. This relates to the payments made by the applicant to the company when the payments were made at the offices of those companies. The disclosed personal data are three names and an address (that of the heat-supplied property). They point out that if Mr. V.M. has visited the client centers of the company or the restricted areas, a video recording has been made of him. In this case, data is collected through the integrated video surveillance system, which is owned by the company. The archive of the camera recordings is kept for a period not longer than the statutory ones, and after its expiration, the data are deleted. They consider that these personal data are provided voluntarily by the persons who, upon entering the office premises of the company, express valid consent in connection with the video surveillance. In accordance with the requirements of the law, warning signs for the constant video surveillance are placed at the entrances of the company's buildings. The data is stored on servers owned by DCU and located in Bulgaria. In conclusion, they inform that the CSC strictly observes the provisions in the field of personal data protection. Compliance applies to all processing operations performed by the company. They point out that in order to ensure the security of the personal data handled by the CSC, information on the measures taken for their protection and preservation should not be disclosed. Depending on the specific action for processing the provisions of the same are the legal basis according to Art. 6, para. 1 (c) of 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 (Regulation). In this regard, the collection, processing and storage of personal data of heat customers is necessary to comply with legal obligations that require processing (argument of Article 17, paragraph 3, letter "b" of the Regulation). In this case, insofar as the complainant is a customer of heat energy and there is a contractual relationship under publicly known

general conditions, his personal data are processed on the basis of Art. 6, para. 1, p. b of the General Regulation for Personal Data Protection - the processing is necessary for execution under a contract to which the subject is a party. The considered complaint is fully compliant with the requirements for regularity, according to Art. 28, 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 provisions of Art. 38, para. 1 of LPPD deadlines have been met. 15 of the Regulation by the complainant and is directed against the controller of personal data, which requirement is an absolute procedural prerequisite, in view of which the admissibility of the complaint should be assessed.Given the above 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 30.10.2019, the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: The parties have been regularly notified of the open meeting scheduled for 11 December 2019.

The subject of the complaint is a ruling by the CSC on an application under Art. 15 of the ORZD by Mr. V.M.

The right of access to data and information is regulated in Art. 15 of the ORZD. Pursuant to the cited provision, the data subject has the right to ask the data controller to confirm whether the controller processes his personal data and, if so, access to data and information to the extent specified in the cited provision.

In order for an obligation to arise for the administrator to rule on the request under Art. 15 of the ORD, respectively to establish non-fulfillment of the obligation to pronounce, it is necessary to establish that the administrator has been duly notified, ie. the request is made by a data subject to a person having the capacity of personal data controller, the nature of the request which in turn requires, by definition, the indication of data identifying the data subject and the personal data controller.

Next, given the strictly personal nature of the rights regulated in the ORD, incl. access to data and information and taking into account the adverse consequences for the data subject of exercising this right by a third party, the controller also has an obligation to verify the identity of the data subject (using reasonable measures). therefore, the assessment of whether the measure used is reasonable is made in the light of the specific case) in order to ensure the correct implementation of the obligations arising from the Regulation (under Art. 12, § 1, last sentence and recital 64).

In connection with the above, recital 59 of the Regulation stipulates that the terms and conditions for the exercise of the rights of data subjects, incl. request mechanisms and, if applicable, receipt.

By virtue of Art. 12 of the ORD, the administrator has an obligation to take the necessary measures to provide all information

and communication, incl. under Art. 13, § 2, b. "B" and Art. 15 of the Regulation, which concerns the processing of the data subject, in a short, transparent, comprehensible and easily accessible form, in clear and simple language.

In the specific case, it is not disputable between the parties, but from the evidence gathered in the administrative proceedings that the CSC processes personal data about the applicant arising from contractual relations between the parties and in this sense the CSC has the capacity of obligor within the meaning of Art. 15 of the ORZD.

It is not disputed that on 12 July 2019 the applicant exercised his right to information under Art. 15 of the ORZD. It is evident from the application that it contains three names, a correspondence address and a telephone number. As can be seen from the evidence in the file, the administrator provided a response on July 26, 2019, ie the one-month deadline for ruling on the submitted application was met.

As can be seen from the privacy policy of the personal data published on the company's website, the data subjects have been provided with information for contact with the company, what personal data and on what grounds is processed by the CSC; for what purpose they are collected; how they are processed, how long the processed personal data are stored, to whom they may be provided, what are the rights of data subjects, including their right to lodge a complaint with the supervisory authority.

In this case, the subject of the dispute is the incomplete, according to the complainant, ruling by the CSC on the request for information under Art. 15 of the Regulation dated 12.07.2019

From the answer provided by DKU under Art. 15 of the Regulation shows that the administrator answered the questions put by the complainant. The volume of personal data processed by the administrator is indicated: namely three names, single civil number, address and telephone number, as well as the documents, source of personal data of the complainant V.M. .

In view of the complaint raised with the filing of the complaint, subject of the present proceedings, namely that as part of the personal data processed by the CSC, the e-mail address of Mr. V.M. , it should be noted that in a broad interpretation of the answer provided by the CSC, it is concluded that the administrator replied to the party that the company has "three names, PIN, address and telephone". Given the technological progress, as well as the listed documents, the source of personal data should be assumed that the address refers to both the address for correspondence and e-mail address.

In connection with the request for copies of documents, it should be noted that the CSC has indicated in its response to Mr. V.M. that it provides a copy of personal data representing three names, PIN, address and telephone number. In this connection, it should be noted that the form of providing information on the personal data processed is not an element of the

right of access, but this does not exclude the obligation of the CSC to provide the complainant with access to personal data.

From the answer provided by the company it is evident that the answer to the application contains the requisites required under Art. 15 of the Regulation, with the exception of the one under Art. 15, para. 1, p. "H", namely no answer was provided for the existence of automatic decision making, including profiling.

The allegations that the complaint does not provide information on the policies and actions taken to protect personal data, it should be noted that this issue is outside the scope of the obligation to rule on an application filed under Art. 15 of the Regulation.

In view of the above, it must be concluded that the CSC provided a response to Mr. V.M. on an application under Art. 15, para. 1 of the ORD, in the required by the regulation in time, but the information provided is incomplete, ie there is a partial implementation, which is a violation of the provisions of Art. 12, para. 1 of the Regulation.

Taking into account the above and the fact that the administrator has provided a detailed response to the application, it should be noted that the CSC has fulfilled part of its obligation, which means that partial performance can not be equated with complete failure to fulfill obligations. of Art. 15 of the Regulation for the administrator. For this reason, I believe that it would be most appropriate to apply the corrective powers of the Commission, set out in the provision of Art. 58, para. 2 of the Regulation.

In view of the above and 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-02-420 / 01.08.2018, filed by V.M. against a utility company as well-founded for violation of the provision of Art. 12, para. 1 of Regulation (EU) 2016/679.

2. On the grounds of art. 58, § 2, b. "C" of Regulation (EU) 2016/679 instructs the utility company to comply with the data subject's requests concerning all categories of personal data processed by the controller, as well as to provide information to the complainant as to whether are personal data processed with automatic means and is profiling carried out in respect of Mr. V.M.

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

Maria Mateva / p /

Veselin Tselkov / p /

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