

Decision on appeal with registration № PPN-01-137 / 04.02.2019 DECISION» PPN-01-137 / 2019 Sofia, 06.01.2020

Commission for Personal Data Protection ("Commission" / "CPDP") composed of: Chairman - Ventsislav Karadzhov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a meeting held on 20.11.2019 regular 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-01-137 / 04.02.2019, filed by V.V. against a utility company (CSC) and a private bailiff (PEA). The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The complainant complained to the CPDP about serious misuse of his personal data, as he had been sent an arrest warrant without being convicted or had any relationship with the CSC. On December 21, from the Human Resources Department of the company in which he works, Mr. V.V. received an arrest warrant from the PEA in a case with DKU. The applicant was puzzled and shocked as he had never had any relationship with the DCU. The office of the PEA indicated that they had initially received incomplete data from the CSC and had asked for the PIN and confirmation of the debtor's data. The DCU returned the data to Mr. VV, but with a different address from the one where he lived years ago. A few days later, the applicant received an apology call from the PEA, confirming that an error had occurred, for which they would send a notice to lift the seizure. In the conditions of the official principle laid down in the administrative process and in fulfillment of art. 26 of the APC, the persons against whom the complaint is directed have 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. PEA informs that enforcement case № ***** was initiated on 15.04.2016 at the request of the DCU on a writ of execution issued against L.R., V.V. and MR, all with address ***. When initiating the enforcement proceedings, the bailiff sent a message to the creditor with a request to indicate the PIN of the debtor VV, due to the lack of such in the attached writ of execution. On November 26, 2018, an application was submitted by the State Tax Administration, stating PIN *****, on the basis of which a lien was imposed on the remuneration of V.V. in "M. "Ltd. On 2 January 2019 an e-mail was received from the applicant and after getting acquainted with him, the seizure was lifted. On 15.01.2019 an application was submitted by the DCU with a correct PIN of the debtor V.V. The CSC believes that this case is not about improper processing of personal data, but about the technical inaccuracy as a result of human error. On the factual side, the following is noted: On January 23, 2013, the company filed an application with the Sofia District Court for the issuance of an enforcement order under Art. 410 of the

Civil Procedure Code against L.R., V.V. and M.R. No objection has been filed against the enforcement order under Art. 414 of the Civil Procedure Code and it has entered into force. On 11.03.2013 a writ of execution was issued in favor of the company. Based on the issued writ of execution and at the request of the company, against V.V. was formed izp.d. № ***** according to the inventory of the PEA. As can be seen from the application for instituting enforcement proceedings, it does not indicate a single civil number of the debtor. In a statement, the bailiff indicated to the company that he should indicate the debtor's PIN. In this regard, with a request to the PEA, the CSC indicated the PIN of the debtor. The mistake was eliminated, as far as another request specifies the correct PIN. In order to exercise its powers, the Commission must be properly seised. 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 § 44, para. 2 of the TFP 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 16 October 2019, the complaint was declared admissible and the parties to the proceedings were constituted: complainant V.V. and respondent CSC and PEA, in the capacity of personal data controllers. The parties have been notified of the open meeting scheduled for November 20, 2019 to consider the dispute on the merits. In order to clarify the case, the CSC requested information on how the company had obtained the applicant's PIN and whether it processed his personal data for other purposes. The DCU informs that with a request-declaration for opening an account, submitted by MR, a Certificate of heirs was presented, which shows that the legal heirs of the current holder are: L.R., V.V. and M.R. The same shows the date of birth of each of them. The CSC has conducted previous court proceedings against the said persons. The same ended with a decision in favor of the company and after issuing a writ of execution an enforcement case was initiated with PEA X. The same was requested and reference GRAO, from which the company obtained the PIN of the debtors, as far as they had a date of birth to each of the debtors. The appellant and the PEA did not appear at the hearing on the merits. Procedural representatives are for the CSC. They dispute the appeal. Pursuant to the request of the CPDP, they

presented proof of where they had obtained the applicant's PIN - a reference from the Agency for Geodesy, Cartography and Cadastre. They stated that the applicant's personal data were not processed for other purposes. In view of the above, the Commission considered 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. From the evidence gathered, it is established that the applicant's salary was seized. The attachment was imposed in the course of enforcement proceedings with the PEA, instituted at the request of the DCU on the basis of a writ of execution issued in civil case № ***** of the Sofia District Court. The writ of execution lists only 3 names of one of the debtors, which are identical to those of the applicant. After ascertaining the lack of a PIN, the office of the PEA requested a PIN from the creditor. On 22 November 2018 the DCU provided the applicant's PIN. After establishing the error, the company provided another PIN - to the actual debtor. In view of the stated factual situation, the CSC processed the personal data of the complainant in the amount of three names and PIN by providing them to the PEA for the purposes of enforcement proceedings, without any of the conditions for admissibility of processing under Art. 6 (1), letters "a" to "e" of Regulation 2016/679. Specifically for the case: Letter "a" - there is no consent for the processing of personal data within the meaning of Art. 4, item 11 of Regulation 2016/679; Letter "b" - the applicant is not the owner or holder of a real right of use in a building - condominium, connected to a subscriber station or to its independent deviation, in view of which he is not a customer of heat within the meaning of Art. 153, para. 1 of the Energy Act. There is no contractual relationship between the applicant and the company. There is no obligation to the CSC at all, as the debtor is a third party, in view of which it is not necessary to process personal data to fulfill an obligation under a contract; Letter "c" - no legal obligation has been established that applies to the controller, which requires the processing of personal data; Letter "d" - the processing is not necessary to protect the vital interests of the complainant or another natural person; Letter "e" - the collection of receivables is not a task of public interest, but of private, in view of which the processing is not necessary to perform a task of public interest. The administrator in this case is a private person who has not been granted official powers; Letter "e" - there is no legitimate interest of the controller to process personal data, as the complainant is not a debtor of the company. The complaint is unfounded against the PEA. The private bailiff as a controller of personal data may in principle process personal data of individuals for the purposes of the official enforcement powers granted to him, regulated by the Civil Procedure Code and the Law on Private Bailiffs - grounds

under Art. 6 (1) (e) of Regulation 2016/679. In the present case, the applicant is not a debtor and his personal data should not be processed for the purposes of an enforcement case. However, in this case, the specific evidence in the file should be considered. The enforcement case was instituted in accordance with the requirements of Art. 426, para. 1 of the Civil Procedure Code - based on a request from the creditor and a writ of execution. The writ of execution lists only three names of one of the debtors - VV, as are the three names of the applicant. After ascertaining the impossibility to indisputably identify the debtor, the office of the PEA requested the PIN from the creditor. The DCU provided the wrong PIN, which led to the processing of personal data by the private bailiff, who according to Art. 19, para. 3 of the Private Enforcement Agents Act cannot refuse to perform enforcement actions. In view of the above, the personal data in this case were processed by the PEA lawfully and in good faith. In addition, the attachment of the applicant's remuneration was lifted by the private bailiff immediately after learning of the error. In the event of such a violation, the complaint should be upheld against the CSC. 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.

In assessing the circumstances of the file, the Commission finds that the committed violation is of high public danger and an administrative penalty "property sanction" should be imposed on the CSC. The grounds for this in accordance with Art. 83 (2) of the Regulation are the following:

Letter "a" - the provision of personal data to the applicant to a private bailiff has led to the processing of his personal data for the purposes of enforcement proceedings. This has given rise to specific unfavorable consequences - the attachment of the

remuneration of Mr. V.V. In addition, with his application, the creditor has commissioned an investigation of the debtor's property status, making inquiries and obtaining documents, which could have been done, as it was issued by Decree of 29.11.2018 to the assistant private bailiff from the office of the PEA.

In this case, only one data subject is affected. There is no evidence of material damage as a result of processing. However, the same led to non-pecuniary damage - undermining the applicant's authority before the employer and his colleagues, as well as stress until the error was established;

Letter "b" - the violation was committed by a legal entity that does not form a fault. The actions of the administrator's representatives indicate negligence. In the Certificate for heirs of MV attached to the file, attached to the application-declaration for opening an account for the address, heir VV is indicated. with date of birth 21.05.1969, which significantly differs from the date of birth of the applicant - 20.12.1985. However, after obtaining the PIN of the applicant, these differences were not established and the wrong PIN was provided;

Letter "c" - no data on material damage for which remedial action should be taken. Non-pecuniary damage cannot be remedied. It should be noted here that the attachment of remuneration was lifted ex officio by the private bailiff and not at the request of the creditor;

Letter "d" - the violation is not for failure to take technical and organizational measures;

Letter "e" - no breach of data security within the meaning of Article 33 of the Regulation or other related breaches;

Letter "e" - it is not possible to eliminate the violation;

Letter "g" - the processed personal data are in the volume of three names and PIN. No special categories of personal data within the meaning of Art. 9 of the Regulation, which are subject to increased protection.

Letter "h" - CPDP has learned about the violation after referral by the data subject;

Letter "i" - for a similar violation of the CSC an administrative penalty "property sanction" in the amount of BGN 10,000 was imposed by Decision № PPN-01-108 / 17 of 01.06.2018. The decision of the CPDP was confirmed by the first instance court with Decision № 692 / 06.02.2019, ruled under Adm. № 7178/2018 according to the inventory of the Administrative Court Sofia-city, II division 58 panel. The first-instance decision has been appealed to the Supreme Administrative Court, on which there is no ruling at the moment;

Letter "j" - at the time of processing there are no approved codes of conduct;

Letter "k" - not established.

In the mitigating and aggravating circumstances thus discussed, taken together, the Commission finds that the pecuniary sanction should be close to the minimum.

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:

1. Declares the complaint reg. № PPN-01-137 / 04.02.2019, filed by VV, unfounded in respect of a private bailiff;
2. Declares the complaint reg. № PPN-01-137 / 04.02.2019, filed by VV, as well-founded with regard to the utility company;
3. On the grounds of art. 58, paragraph 2, letter "i" of Regulation 2016/679 in connection with Art. 83, paragraph 5, letter "a" of Regulation 2016/679 imposes on the controller of personal data a utility company with UIC ***** and seat and address of management: *****, administrative penalty "property" sanction "in the amount of BGN 10,000 (ten thousand) for violation of Art. 6 (1) 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 Sofia - city.

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

In case the sanction is not paid within 14 days from the entry into force of the decision, actions will be taken for its forced collection.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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