

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-302 / 10.07.2017 Decision on appeal with registration № Ж-302 / 10.07.2017 DECISION № Ж-302 / 2017 Sofia, 10.07.2018 The Commission for Personal Data Protection (CPDP, the Commission) composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a regular meeting, at a regular meeting held on 16.05.2018 and objectified in protocol № 22 / 16.05.2018, 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-302 / 10.07.2017, filed by J.C.N. The Commission for Personal Data Protection has received a complaint with registration number № Ж-302 / 10.07.2017, filed by J.C.N. for violation of LPPD. The complaint states that Mr. J.C.N. has submitted documents for retirement to the National Social Security Institute (NSSI) V., in connection with which the NSSI employees inform him that another person has submitted the necessary application and received the requested data. The applicant alleged that the person G.H., from whom the documents had been taken, was unknown to him and had acted without his authorization. In connection with the above, a complaint was attached to the Territorial Division (TA) of the National Social Security Institute B. With a letter ex. № Ж-302 / 10.07.2017 # 1 dated 08.08.2017 of the CPDP, Mr. J.C.N. is informed that the CPDP is an independent state body that protects individuals in the processing of their personal data. An instruction was given that according to Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA) in connection with Art. 27, para. 2, item 6 of the Code of Administrative Procedure (APC), the complaint must indicate data about the applicant: names, address, contact telephone number, e-mail address (if any), nature of the request; other information or documents, when provided by law or in this law; date and signature. As a result of the letter, the irregularities were eliminated. 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 with a letter ex. № PPN-01 / Ж-302/2017 # 4 / 12.01.2018 of the CPDP, an opinion on the subject of the complaint was requested from the TA of the NSSI - B. By letter ref. № PPN-01 / Ж-302/2017 # 5 / 12.01.2018, the mayor of the municipality of K. was given a deadline for a written statement and presentation of relevant evidence, and with a letter ref. № PPN-01 / Ж-302/2017 # 8 / 23.02.2018 from the Central Office of the National Social Security Institute - Sofia requested an opinion on the subject of the complaint, as well as an explicit clarification of who are the legitimate persons who have the right to apply for issuance of certificate УП - 13. From ТП of NSSI - B. an opinion № Ж-302 # (17) /22.01.2018 was submitted, in which they inform the Commission that a certificate УП - 13 has been issued for establishing circumstances and facts related to the work and

insurance experience of Mr. J.C.N. The sender of the application is Mrs. G.K. - Director of the Financial and Economic Activities Directorate in the capacity of an official representing the Municipality of K., respectively the Municipal Enterprise "Communal Activities", in which, as of the date of submission of the application, Mr. J.C.N. They inform that the application was signed personally by Mrs. G.K. - Director of the Financial and Economic Activities Directorate, with an explicit instruction to send the finished document to the address of the Municipality of K. It is stated that the applicant with an application requested a personal pension for length of service and age under Art. 68, para. 1 and para. 2 of the Social Security Code (SSC), has provided the required under Art. 2 of the Ordinance on pensions and length of service documents and a copy of a certificate form UP - 13, issued by the United Social Security Archive at the TS of NSSI - V. for length of service in cooperatives - K. Inform that according to the provisions of Art. 1, para. 5 of the above-cited ordinance "upon acceptance of an application with irregular and / or missing documents, which cannot be corrected or obtained ex officio on the basis of documents available at the NSSI, the official under Art. 98, para. 1 of the CSR notifies the person of the defects by registered letter with acknowledgment of receipt within 15 days. In this connection, Mr. J.C.N. was notified to present the original of the certificate of the PM - 13. Evidence is attached. The Municipality of K. has committed an opinion filed with Reg. № G-302 # 7 (17) /23.01.2018, which states that Ms. G.K. - economic activities "is assigned the establishment of work and insurance experience of the workers and employees of the municipality of K. It is stated that in the performance of official duties, Mrs. G.K. has requested from the TS of NSSI - V. issuance of a certificate UP - 13 for establishing work and insurance experience of the person - employee of the municipal enterprise "Utilities" - J.C.N. In the municipality of K. the issued certificate УП - 13 was received, the document arrived by mail and was attached to the personal employment file of the employee. It is stated that Ms. G.H. did not personally receive documents from the TS of NSSI - B. Consider that the municipality of K. has not violated the provisions of LPPD, and that the collected personal data are processed only for insurance purposes, according to the provisions of CSR and information is not provided to third parties . It is stated that employees who have been assigned this access have access to the information. Evidence is attached. The Central Office of the National Social Security Institute has filed an opinion with registration № G-302 # 9 (17) /14.03.2018, informing that on 21.06.2017 in the TS of the National Social Security Institute - V. an application for establishment was submitted of circumstances and facts related to the work and insurance experience of the person J.C.N. by G.K. Inform that Mrs. G.K. has signed the application in her capacity as an official representing the municipality of K., respectively the municipal enterprise "Utilities". After an inspection, it was

established that the procedural application was not submitted in person by Mr. J.C.N. Notify that the persons who have the right to submit an application for issuance of a certificate of insurance / work experience, model УП - 13, are defined in instruction № 5 / 30.06.2005 for acceptance and storage of payrolls and employment documents of terminated insurers without successor. They inform that the application is submitted in person in the TS of NSSI or in the archive. Pursuant to Art. 32, para. 4 of the Instruction, the application may also be submitted by an authorized person with a notarized power of attorney, in which case the power of attorney shall be attached to the application. They inform that after an inspection it was established that the person G.H. does not enter the circle of legitimized persons who have the right to submit an application for the issuance of PM - 13. The municipality is the main administrative - territorial unit in which local self-government is carried out. The body of the executive power is the mayor of the municipality. Within the meaning of Art. 3 of LPPD, personal data controller is a natural or legal person, as well as a body of state power or local government, which alone or jointly with another person determines the purposes and means of data processing, and which processes personal data, the type of which, the purposes and means of processing are determined by law. In this regard, the mayor of the municipality (in this case - the mayor of the municipality K.) has the quality of personal data controller, due to the fact that in connection with the exercise of its powers processes personal data of individuals. During an official inquiry in the Register of personal data controllers and the registers kept by them at the CPDP, it was established that the municipality of K. is registered as a personal data controller. It should also be noted that according to the Rules for the structure and activity of the municipal enterprise "Communal activities", the municipal enterprise is not an independent legal entity, but is directly subordinated to the municipality K. To exercise its powers, the Commission should be validly referred. Complaint reg. № Ж-302 / 10.07.2017, filed by J.C.N. contains 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 (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The complaint filed by J.C.N. is fully compliant with the requirements of the CPDP, according to the Rules of Procedure of the Commission for Personal Data Protection and its administration and contains the necessary statutory details for regularity. According to Art. 38, para. 1 of the LPPD in case of violation of his rights under the LPPD, each individual has the right to refer to the Commission for Personal Data Protection within one year of learning of the violation, but not later than five years from its commission. The complaint was filed within the term of art. 38, para. 1 of LPPD and is admissible. In Art. 27, para. 2 of the APC, the legislator links 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 capacity of administrators of personal data within the meaning of the legal definition of Art. 3 of the Act. At a meeting of the Commission held on 04.04.2018, the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: complainant - J.C.N. and the respondent party - the mayor of the municipality of K. and the Central Office of the National Social Security Institute - administrators of personal data, as an interested party is constituted Mrs. G.H. G.K. - Director of the Financial and Economic Affairs Directorate. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for 16.05.2018. 7 of the APC, requiring the existence of established factual facts, given the evidence gathered and the allegations, the Commission considers that considered on the merits of the complaint № G-302 / 10.07.2017 is justified. The Personal Data Protection Act regulates the protection of the rights of individuals in the processing of their personal data. The purpose of the law is to guarantee the inviolability of the person and privacy by ensuring the protection of individuals in the event of improper processing of related personal data. According to the legal definition of Art. 2, para. 1 of the LPPD personal data are any information relating to a natural person who is identified or can be identified directly or indirectly by identification number or by one or more specific features. The names, address and unique civil number of the individual undoubtedly have the quality of personal data, and their provision and use are actions for data processing within the meaning of § 1, item 1 of the Additional Provisions of LPPD and should be carried out in compliance with the provisions of LPPD.

In the provision of art. 4, para. 1 of the LPPD defines the conditions, in the presence of which the processing of personal data is admissible. The legislator has accepted that the processing of personal data of individuals should be carried out in the presence of at least one of these conditions, which is a prerequisite for the lawfulness of the processing.

From the evidence gathered in the course of the administrative proceedings it was indisputably established that the Municipality of K. processed personal data - three names, a unique civil number and address of the complainant, in the case of use of personal data and their provision to the NSSI to establish employment and insurance length of service of the applicant, without the express authorization of the applicant.

As can be seen from the evidence provided in the administrative file, the applicant on application ent. № \*\*\*\*\* is Mrs. G.K. - Director of the Financial and Economic Activities Directorate in the Municipality of K.

The allegations of the complainant that his personal data were processed in the case of the provision by the municipality of K. to the NSSI without his knowledge and consent correspond to the evidence gathered in the file.

In view of the above, it follows that the personal data of the complainant have been processed - provided by the Municipality of K. to the NSSI in violation of Art. 23, para. 1 of the LPPD.

From the evidence provided in the proceedings by the Central Office of the National Social Security Institute and according to the provision of Art. 32, para. 4 of Instruction № 5 / 30.06.2005, the application may also be submitted by an authorized person with a notarized power of attorney, which in the present case has not been provided.

It is not disputed that the NSSI-V provided the information requested by the municipality of K. with an application ent. № \*\*\*\*\*. From the provided work instructions for registration, direction and reflection of the stages and control of the process of preparation of documents for length of service and income from the sector "IDOSD", department "OOA" it is evident that the appointees to the position of "technical contractor" check whether the person who submitted an "application" meets the requirements of Art. 32, para. 1, para. 4 and para. 5 of Instruction № 5/2005 of the NSSI.

According to the file, the NSSI has clearly written internal rules for the acceptance and processing of documents, but despite the detailed instructions in the work instructions for registration, direction and reflection of the stages and control of the process of drafting documents for length of service and income, and in violation of the provision of Art. 23, para. 1 of LPPD as a personal data administrator to take the necessary technical and organizational measures to protect personal data of persons from illegal forms of processing NSSI have provided the required data to the municipality K. From the evidence collected NSSI has not taken the necessary technical and organizational measures of the personal data of the complainant from illegal processing, and the ones undertaken are obviously insufficient and ineffective.

In case of established violation of the provisions of the LPPD, the legislator has given the Commission the following powers: to issue a mandatory prescription, to set a deadline for elimination of the violation or to impose an administrative penalty. The Commission shall act in conditions of operational autonomy, assessing which of its powers to exercise. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be adopted that fully protects the public interest. The power to give a mandatory prescription to the controller of personal data concerns situations in which the controller has not fulfilled its obligation, which omission can be remedied by performing the missed actions within the time allowed and objectifying the conduct required by law. In this case there is no omission, but more actions

have been taken, which imposes a conclusion of inapplicability of this power.

Only the property sanction, as a measure of administrative coercion, is the most 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 and must take the necessary care provided for in the LPPD.

In determining the amount of the pecuniary sanction, the Commission took into account that the violation was first for the municipality of K., as well as the fact that the documents containing personal data were provided by the municipality of K. to a state body, and that NSSI has clearly defined internal rules. for the acceptance and processing of documents, in view of which the imposed property sanction for both administrators should be in the minimum amount provided.

In view of the outcome of the dispute, the Commission considers that the costs claimed by the defendants are not due.

In view of the above and on the grounds of Art. 10, para. 1, item 7, in connection with Art. 38, para. 2 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Announces a complaint reg. № Ж-302 / 10.07.2017, filed by J.C.N. against the Municipality of K., for well-founded.
2. On the grounds of art. 38, para. 2 and Art. 42, para. 9 of the Personal Data Protection Act, imposes on the Municipality of K., address \*\*\*\*\* administrative penalty - "property sanction", amounting to BGN 500 (five hundred), for being a personal data controller has processed the personal data of Mr. J.C.N. in violation of Art. 23, para. 1 of the LPPD.
3. On the grounds of art. 38, para. 2 and Art. 42, para. 9 of the Personal Data Protection Act, imposed on the National Social Security Institute, address Sofia, Blvd. "Alexander Stamboliyski" № 62-64 administrative penalty - "property sanction", in the amount of BGN 500 (five hundred), for processing the personal data of Mr. J.C.N. as a personal data administrator. in violation of Art. 23, para. 1 of the LPPD.

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 after the entry into force of the decision, actions will be taken for its forced collection.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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