

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № G-193 / 24.04.2017 Decision on appeal with registration № G-193 / 24.04.2017 DECISION № G-193 / 2017 Sofia, January 22, 2018 Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a regular meeting held on 13.12.2017 , pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint with registration № G-193 / 24.04.2017, filed by Z.P.B. against BTC EAD (BTC). The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The applicant informed that she had a contract with B. (trademark of BTC EAD) for using their services. Thinking that her relationship with the operator ends around November 2016, she visited one of the company's offices in Plovdiv. There she expressed her desire to terminate the contract, but received a reply that her contract is until May 2018. Ms. J.P.B. claims that without having made contact with representatives of BTC EAD, whether by phone or in person, it turned out that her contract had been re-signed without her consent. She asks - who, where, when she signed it and where her personal data came from. There are no appendices to the complaint. In the conditions of the official principle in the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, the respondent company was required to submit a written statement and relevant evidence. BTC EAD commits an opinion Reg. № C-451 / 26.07.2017 for unfoundedness of the complaint. They state that the complainant is a subscriber of number ***** dated 09.11.2010. On 16.04.2014 a contract with a change of tariff plan was concluded with a distance transaction. On 28.04.2016, again with a distance transaction, a contract was concluded for a period of 24 months with a change of the tariff plan, for which an application for termination was submitted by Ms. J.P.B. and the same was terminated on 06.01.2017. The Commissioner informed that the last agreement, which the complainant disputes, was concluded on 04.05.2016, after she accepted an offer by phone. From the recording of the conversation, which was conducted by her and an employee of the company, she accepted with a "definite yes" the proposed transaction. The company stated that the applicant's personal data had not been disclosed to third parties or had been improperly processed in any way. Attached to the opinion are: additional agreement dated 09.04.2014; additional agreement of 04.05.2016, audio recording of the telephone conversation for the conclusion of the transaction objectified in the additional agreement and application for termination of 06.12.2016. In order to exercise its powers, the Commission should be validly referred. Complaint reg. № G-193 / 24.04.2017 contains the obligatory required requisites, specified in 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, nature of the request, date and signature, in view of which the complaint is regular. The appeal is procedurally admissible - filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest. It alleges an allegation of unlawful processing of the applicant's personal data. During the official inspection in the Register of personal data controllers and the registers kept by them by the Commission, it was established that the company, against which the complaint is directed, has fulfilled its obligation under Art. 17, para. 1 of the LPPD and is registered as a personal data administrator with ident. № 14414. The complaint is addressed to a competent body to rule - the Commission for Personal Data Protection, which according to its powers under Art. 10, para. 1, item 7 of the LPPD considers complaints against acts and actions of the personal data controllers, which violate the rights of individuals under the LPPD. At a meeting of the Commission held on 07.09.2017, the complaint was declared admissible and as parties in the administrative proceedings were constituted: complainant - J.P.B. and respondent - BTC EAD. In order to clarify the case from a factual and legal point of view, it is allowed to perform a handwritten examination of the provisions of the contract signature. With a letter ex. № PPN-01-Ж-193/2017 # 5 / 14.09.2017 the complainant was notified of the Commission's decision and a 7-day deadline for providing comparative material was indicated, indicating the ways to do so. On 10 October 2017 a telephone conversation was held, objectified in the protocol reg. № Ж-193 # 6 / 10.10.2017, during which the applicant was again notified of the admitted expertise and the procedure for providing comparative material. On October 26, 2017, a second conversation was held with Ms. J.P.B. The last 7-day term for providing comparative material has been indicated, after the expiration of which the proceedings will continue with the evidence collected so far. Within the given term the complainant did not fulfill the instructions given by the administrative body, therefore at a meeting of the CPDP on 22.11.2017 the examination of the complaint on the merits was scheduled for 13.12.2017, of which the parties were regularly notified. The applicant - did not appear, did not represent herself. Respondent - sends a representative who maintains the opinion that the complaint is unfounded. In the factual situation thus established, the Commission examined the complaint on the merits, considering it unfounded on the basis of the following legal conclusions: The Personal Data Protection Act regulates the protection of the rights of individuals in the processing of personal data. The purpose of the law is to guarantee the inviolability of the person and private life by ensuring the protection of individuals in the event of improper processing of related personal data in the process of free movement of data. According to the legal definition given in 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 an identification number or by one or

more specific features. The additional agreement attached by BTC EAD dated 04.05.2016 contains the following data about the complainant - three names, a unique civil number and address, which undoubtedly have the quality of personal data about the person within the meaning of Art. 2, para. 1 of the LPPD. In Art. 4, para. 1 of the LPPD stipulate the conditions under which the processing of personal data of individuals is permissible. 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. In order for there to be lawful processing of personal data, the same should be done in strict compliance with the principles for their processing referred to in Art. 2, para. 2 of the LPPD. From the presented audio recording of a conversation between J.P.B. and an employee of BTC EAD it was established that the disputed contract was concluded at a distance within the meaning of Art. 45 of the Consumer Protection Act (CPA). During the conversation the required under Art. 47, para. 1 33Потр. information. Mrs. J.P.B. she has been duly notified of the right to withdraw from the contract - conditions, manner and term. According to the provision of art. 49, para. 7 of the CPA: "When concluding a distance contract by telephone, the trader is obliged to confirm the offer made to the consumer on a durable medium. The consumer is bound by the offer only after signing it or after sending his written consent to accept the offer. " The proposal in the present case is set out in a contract signed by the applicant. No evidence of the exercise of the statutory right of withdrawal was presented in the proceedings. It follows from the above that the contract is validly concluded and the consumer is bound by the offer received by phone. Given the lack of comparative material provided to carry out the admitted expertise, the applicant's allegation that she had not signed the contract remained unproven. Based on the service contract, BTC EAD lawfully processes the personal data of the complainant on the grounds of Art. 4, para. 1, item 2 of the LPPD - with the explicit consent of Ms. J.P.B. - on page three. At the same time, personal data are processed on the basis of Art. 4, para. 1, item 3 of LPPD - for fulfillment of an obligation under a contract to which the natural person is a party. The Commission for Personal Data Protection, taking into account the facts and circumstances presented in the present administrative proceedings, and on the grounds of Art. 38, para. 2 of LPPD, DECIDES: Leave a complaint with registration № Ж-193 / 24.04.2017, filed by Ж.П.Б. against BTC EAD, without respect as unfounded. This decision is subject to appeal within 14 days of its service, through the Commission for Personal Data Protection, before the Administrative Court Sofia - city. MEMBERS: Tsvetelin Sofroniev / n / Maria Mateva / n / Veselin Tselkov / n / Files for download Decision on appeal with registration № G-193 / 24.04.2017 print