

Decision on appeal with registration № PPN-01-231 / 22.12.2017 DECISION» PPN-01-231 / 2017 Sofia, 28.05.2018

Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a regular meeting, held on March 28, 2018, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint with registration № PPN-01-231 / 22.12.2017, filed by B.R.R. against NB ("N.") EOOD. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission was informed that about a month before the filing of the complaint, Mr. B.R.R. started receiving anonymous calls from hidden numbers on his mobile phone. He also received messages with threatening content. The callers knew his phone number; the make, model and registration number of his personal vehicle, as well as his home address, three names and PIN. After conducting his own investigation, the applicant found that the threats came from R.V.I. She, in turn, received his personal data from an employee of "N." EOOD, namely - GM, who works in the office of the company in Montana, with which the applicant has a contract for the supply of services from 19.11.2013. After realizing that his personal data were provided by an employee of this company, on 04.12.2017 visited the office and talked to its manager. During the conversation, Mrs. GM joined in, stating that it was she who provided the personal data to R.V.I. The legal representative of Mr. B.R.R. considers that "N." EOOD, as a controller of personal data, has committed a violation under Art. 19, para. 1, item 3 of the LPPD, as it has not taken the necessary measures to prevent the provision of personal data to the complainant to unauthorized persons. The provision was made without the consent, knowledge and notification of the person whose data were disclosed. R.V.I. is not in the category of persons to whom personal data may be disclosed and for whom the interested party has been notified at the conclusion of the contract with the operator. The provision of personal data according to §1, item 5 of the Additional Provisions of the LPPD are actions for complete or partial transfer of personal data from one administrator to another or a third party on the territory of the country or abroad. The complaint expressed an opinion that the company had violated the provision of Art. 23, para. 1 of the LPPD - by indicating a single civil number, in combination with the three names and address of the person, the administrator has not done the necessary for their lawful processing, allowing third parties to know personal data. In view of the above, the procedural representative asks the Commission to uphold the complaint against N. EOOD and to issue a mandatory prescription on the grounds of art. 10, para. 1, item 5 of LPPD, as well as to impose on the administrator a property sanction for violation of art. 19, para. 1, item 3 of the LPPD. A request was made for the award of

costs incurred in the proceedings, including attorney's fees. Attached to the complaint are: two contracts for the supply of services, a tripartite agreement, a contract for legal protection and assistance. 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. With a letter ex. № PPN-01-231 / 2017 # 1 / 17.01.2017 "N." EOOD was notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion with relevant evidence. From "N." EOOD commit an opinion reg. № PPN-01-231 # 2 (17) /23.01.2018 for unfoundedness of the complaint. The manager informed that the company is a provider of telecommunications services - Internet and television. In the course of its activity the company collects and processes the following personal data: names, PIN, address, telephone number. The company does not collect or process data up to the make, model and registration number of the vehicles of its subscribers. The complaint alleges that G.M. has provided to R.V.I. personal data of the applicant, namely: names, PIN, address, telephone number, make, model and registration number of his personal vehicle. The Governor considers that these allegations contradict the evidence attached to the complaint. As can be seen from the contracts for the supply of services and from the tripartite agreement, they do not contain data as far as the make, model and registration number of the vehicle of the subscriber B.R.R. After an inspection of the case and the explanations taken by the employee G.M. from "N." EOOD established the following factual situation: B.R.R. is an employee of ODMVR - Montana. He knew G.M. from before and not in connection with the fact that he is a subscriber of "N." EOOD, and on the occasion that he assisted her in registering her personal vehicle in the Traffic Police - Montana. In this connection, the applicant provided his telephone number to Ms GM, who recorded it on her personal telephone. G.M. is also known by the person R.V.I. During a meeting held between them in a cafe during non-working hours, R.V.I. she informed her that she would buy a new vehicle and asked her if she knew B.R.R., as they were acquaintances, but she lost his license plate. Mrs. G.M. stated that she knew him and dictated from her personal telephone number the applicant's number. During the visit of Mr. B.R.R. at the company's office, the employee informed him that she had only provided his telephone number. By right of "N." EOOD consider the following: According to the opinion of the CPDP reg. . Therefore, a telephone number provided independently does not fall within the scope of the definition of personal data and therefore does not benefit from the protective effect of the LPPD. Per argumentum a fortiori р.жа Г.М. she knew the applicant's telephone number and did not know him as an employee of N. Ltd., and in a personal capacity. The manager considers that in this case the name of "N." was involved

without any grounds. EOOD, and the actual purpose of the complaint is to make a profit at the expense of the company, which is essentially an abuse of the right to file a complaint. Attached to the opinion are: certificate reg. № 28239 / 19.11.2013 of the ODMVR - Montana, written request of the complainant to "N." Ltd. with a request to GM appropriate measures to be taken. The Commission also received an additional opinion from N. EOOD with registration № PPN-01-231 # 7 (17) /14.03.18, to which are attached: explanation by the employee G.M. to the manager of the company, as well as its employment contract. The manager considers that the testimony establishes two legally relevant facts: that G.M. provided only the telephone number of B.R.R., which she had long before she started working in "N." Ltd. In order to exercise its powers, the Commission must be properly seised. Complaint № PPN-01-231 / 22.12.2017 contains the required details 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. The subject-matter is 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 has fulfilled its obligation under Art. 17, para. 1 of the LPPD and is registered as a personal data administrator with ident. № 187763. The complaint was referred to a competent body - 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 closed meeting of the Commission held on February 28, 2018, the complaint was declared admissible and as parties to the administrative proceedings were constituted: complainant - B.R.R. and respondent - "N.B." Ltd. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for March 28, 2018. At the hearing the applicant was represented by lawyer V., who maintained the statement in the complaint that personal data of her trustee, in volume - PIN, three names, address and telephone number, were provided by an employee of the company to a third party. The proxy made a evidentiary request for the requirement of video surveillance records from 04.12.2017, made in the office of the company, with which to prove the recognition by the employee. On behalf of the principal, he also claims the costs for which a Contract for legal protection and assistance has been submitted in the file. Respondent - does not send a representative. The Commission rejects the evidentiary request made in this way for the requirement of audio and video recording from the cameras of "N." EOOD dated

04.12.2017. Considers that the confession made in this way was not made before a public authority, therefore it should not be accepted as evidence. In addition to the discussion, the opinion of the administrator is accompanied by explanations from the employee of the company, made for the purposes of the proceedings before the CPDP, in which she stated that she provided a third party only a phone number. In so far as the complaint states that "G.M. stated that it was she who provided the personal data ", the video from the cameras would not reveal the exact amount of data provided. In the factual situation thus established, the Commission examined the complaint on the merits, considering it unfounded on the basis of the following conclusions: The Personal Data Protection Act regulates the protection of individuals' rights in processing their personal data. personality and privacy 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 complaint alleges that data on the complainant were processed illegally in the following volumes: three names; PIN; address; phone number; registration number, make and model of his personal motor vehicle (MV), which data undoubtedly have the quality "personal" within the meaning of Art. 2, para. 1 of the LPPD, because through them Mr. B.R.R. can be directly individualized.

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 allegations of the parties in the proceedings, supported by the presented evidence, it was indisputably established that between the company "N." EOOD and the applicant B.R.R. has a contractual relationship for the provision of services. The controller lawfully processes the complainant's personal data for the purposes of the contract - on the basis of the express consent of Mr. B.R.R. and for fulfillment of an obligation under a contract to which the natural person is a party. The indicated grounds are conditions for admissibility of the processing, specified in art. 4, para. 1, items 2 and 3 of the LPPD.

The applicant alleged that his personal data had been provided by an employee of N. EOOD to a third party, which is an action for their processing within the meaning of § 1, item 1 of the Additional Provisions of the LPPD. It should also be carried out in

accordance with the provisions of the LPPD.

From the evidence gathered, including GM's explanations, it was established that the employee had provided a third party with the telephone number of B.R.R. The complaint alleges that the data provided are in addition to a telephone number and: three names; PIN; address; make, model and registration number of the vehicle. No evidence was presented in the course of the proceedings to show that the information provided was in the amount indicated, so that the applicant's allegation remained unsubstantiated.

According to the Opinion expressed by the CPDP with Reg. in combination with other data individualizing the person, as in the present case.

For the sake of completeness, it should be noted that the Commission shares the EOOD that the information for registration number, make and model of the vehicle is not processed by the company. This information is not one of the obligatory requisites of an individual contract under general conditions between the enterprise providing public electronic communications services and the end user, specified in Art. 228, para. 1 of the Electronic Communications Act. From the collected evidence and the submitted contracts it was not established that such data are processed by "N." Ltd.

When voting on the decision, Ms. Maria Mateva expressed a special opinion, which is attached to it and is an integral part of it.

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 the LPPD,

HAS DECIDED AS FOLLOWS:

1. Rejects the request for presentation of audio and video recordings from the cameras of the cameras of "NB" EOOD from December 4, 2017;
2. Disregards the complaint with registration № PPN-01-231 / 22.12.2017, filed by B.R.R. against NB Ltd., as unfounded.
3. In view of the outcome of the proceedings, it rejects the claim for costs incurred by the applicant's representative.

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:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

O.M. Maria Mateva / p /

Veselin Tselkov / p /

SPECIAL OPINION OF MARIA MATEVA - MEMBER OF THE CPDP

I am voting with a special opinion on the Decision on the present appeal, given the fact that, in my opinion, the appeal against NB EOOD has not been clarified on the factual side.

In the proceedings before the Commission a evidentiary request was made by the procedural representative of the complainant, attorney at law. C. According to her, in the respondent company "NB" EOOD there is a video and voice recording from 04.12.2017, proving the allegations of the complainant for unauthorized access to his personal data by an employee of this company. According to the procedural representative of the complainant this record contains a confession of the employee of the company for unauthorized access to the personal data of the complainant.

In the conditions of the official principle laid down in the administrative process, for the Commission for Personal Data Protection / CPDP / there is an obligation for official collection of evidence and clarification of the actual facts relevant to the proceedings.

In the present case, the CPDP refused to allow and accordingly request this record.

The CPDP should have fulfilled its legal obligation and examined whether the administrator NB EOOD had introduced the necessary technical and organizational measures to prevent unauthorized access to personal data processed by it and its own employees.

In view of this, I consider that the Decision on Appeal №Ш1Н-01-231 / 22.12.2017 issued by the CPDP was issued in an unclear and incomplete factual situation.

In view of the above, I sign the Decision with a dissenting opinion.

Maria Mateva / p /

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