

Home »Practice» Decisions of the CPDP for 2019 »Decision on appeal with registration № PPN-01-31 / 22.08.2017 Decision on appeal with registration № PPN-01-31 / 22.08.2017 DECISION» PPN-01-31 / 2018 Sofia, 11.01.2019 Personal Data Protection Commission (CPDP, Commission) composed of, Chairman - Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 13.12.2018 and objectified in protocol № 47 / 13.12.2018, 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 № PPN-01-31 / 22.08.2017, filed by K.K. The administrative proceedings are by the order of art. 38 of the LPPD. The Commission for Personal Data Protection was seised with a complaint reg. № PPN-01-31 / 22.08.2017, filed by K.K. N. " Ltd. The applicant informed that he was an employee of DN Ltd. On 20.07.2017 the employer submitted a request for explanations under Art. 193, para. 1 of the Labor Code (LC) and a statement of findings dated 20.07.2017. On 21.07.2017 Mr. K.K. states that he gave the required explanations, together with a sick note in a commercial site located in the town of *****, a franchise store of a telecommunications operator (TO), using the opportunity to pay a bill to his acquaintance. Mr. K.K. has established that the data in the fiscal receipt are on invoice № **** with user E.A. and contract № ****, issued fiscal voucher № *** with service person K.K. The case was reported to the executive director of TO K.K. considers that there is an illegal use of his personal account, as an employee of the position of "sales specialist", which processes personal data to customers of TO Asks for an inspection and cessation of vicious practices. A complaint to the executive director of TO was attached to the complaint as evidence. from 21.07.2017 with a response for ongoing inspection, two explanations with attached requests and statements of findings. With a letter ex. № PPN-01-31 / 2017 # 1 of 10.11.2017 the manager of "DN" EOOD was notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings and was given the opportunity to express an opinion and provide relevant evidence. In response to DN EOOD has filed an opinion filed with Reg. of actions against illegal use of the official account of the person - KK, as the official account was deactivated on 21.07.2017 at the request of "DN" Ltd. The following are allegations that the complaint is unfounded, given the fact that the official account "does not contain personal data". It is stated that only the respective employee has a password to access the account, the employer has no right and has never wanted the password of the respective employee to be provided to him. They argued that if one of the employees in the shop had used the complainant's access, this could not have happened without the latter having provided it voluntarily, stating that "such a hypothesis" was illogical, as each employee had his own account and it is not available to use someone else's. With letters ex. №№ PPN-01-31 / 2017 # 3 of 10.11.2017 and PPN-01-31 (17) # 7 of

15.06.2017 of TO - the company was given a term for expressing an opinion and applying relevant evidence in the case, a reference for deactivation of the account of K.K. The company informs that between "D.N. EOOD and TO has a franchise agreement. According to the subject of the contract, the franchise partner is assigned the organization and management of the franchise store, and the contract sets out all the basic rights and obligations of the partner, including with regard to personal data protection. The employees of the franchise partner, who will have the right to access the systems of T.O. receive a username and initial password for access, which is done with an explicit written request of the franchise partner to the Company. It is explained that the initial access password and username are issued and provided to the franchise partner, and it is the partner's obligation to provide them only to the person for whom they are intended. The original password provided by T.O. it should be immediately replaced by the user with another password known only to him. The company states that the applicable rules explicitly state that "due to the confidential nature of the information contained in the programs, when granting access rights / users / it is absolutely mandatory: employees to work only with their users or not to provide passwords to other employees or outsiders'. Attached are two reports from the internal system of the company, which show the request for deactivation of the account of Mr. K.K. "*****" and the suspension of the applicant's access to T.O.'s systems. on 21.07.2017. The following are attached as evidence: a franchise agreement dated 12.06.2014. and "D.N. EOOD, copy of power of attorney, copies of references from the internal system of A1 EAD - 2 pcs. Consider the complaint unfounded The complaint of K.K. is fully compliant with the requirements for regularity, according to 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. The norm of art. 38, para. 1 of the LPPD provides for a limitation period for referral to the Commission - within one year of learning of the violation, but not later than five years from its commission. Less than one year has elapsed since the alleged infringement became known or five years have elapsed. The provisions of Art. 38, para. 1 of the LPPD deadlines have been met. In Art. 27, para. 2 of the APC, the legislator binds 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 status of "personal data controllers". At a closed meeting of the Commission held on November 7, 2018, the complaint was declared admissible. Parties have been constituted: complainant - K.K. and respondent parties - "DN" Ltd. and T.O. in their capacity of administrators of personal data, regularly notified of the open meeting scheduled for 13.12.2018. The applicant appeared in

person for DN EOOD is an authorized representative, with a power of attorney for the file, for T.O. are authorized representatives with powers of attorney presented at the meeting. In preparing this Decision, the change in the legal framework in the field of personal data protection in the period from the processing of personal data to the ruling on the merits of the request addressed to the administrative body has been taken into account. It is also consistent with the fact that from 25.05.2018 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 (General Data Protection Regulation, Regulation) lays down the rules on the protection of individuals with regard to the processing of personal data as well as the rules on the free movement of personal data. It is also noted that according to Art. 288 TFEU "The Regulation is an act of general application. It is binding in its entirety and directly applicable in all Member States. "According to Art. 15, para. 2 of the Law on Normative Acts (LNA) "if a normative act contradicts a regulation of the European Union, the regulation shall apply". In the absence of an explicit provision, I consider that existing relationships which are not pending and relate to legal facts and their consequences, which occurred before the application of the Regulation, should be assessed according to the substantive law in force at the time of their application. occurrence. In this case, such are the provisions of the LPPD in view of the fact that the legal facts and legal consequences related to data processing concern the period from 21.07.2017 to 22.08.2017, ie before the application of the regulation. The complaint is directed against illegal processing of personal data of the complainant K.K. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. Art. 10, para. 1, item 7 of LPPD, respectively Art. 57, §. 1, item "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data. The presence of a personal data controller is an absolute procedural prerequisite for the admissibility of the complaint. In the specific case, given the provision of Art. 4, item 7 of Regulation (EU) 2016/679 and in view of the evidence gathered in the file, it is necessary to conclude that T.O. and "D.N. "Ltd. are administrators of personal data. According to § 1, item 10 of the Additional Provisions (Additional Provisions) of the Corporate Income Tax Act, a franchise is a set of industrial or intellectual property rights relating to trademarks, trade names, trademarks, designs, designs, copyright, know-how or patents granted for remuneration to be used for the sale of goods and / or for the provision of services. Given the above and the concluded contract for the franchise, "D.N. "EOOD does not have the quality of processing personal data within the meaning of Art. 24 of the LPPD and § 1, item 3 of the RD of the LPPD, regardless of the fact that in item 20 of

the contract of 12.06.2014 that "the franchise partner manages, manages and carries out commercial activity in the entrusted to him by T. O. franchise - shops on behalf of TO ". The cited regulations in the contract refer only to the commercial activity carried out by the franchise partner. As personal data controllers both companies (each on its own grounds) should comply with the provisions of the LPPD in the processing of personal data , processing conditions, including those for taking the necessary technical and organizational measures to protect data from accidental or unlawful destruction or accidental loss, from unauthorized access, alteration or dissemination, and from other illegal forms of processing in accordance with Art. 23 of the LPPD According to the legal definition specified in Art. 2, para. 1 of LPPD, respectively Art. 4, item 1 of Regulation (EU) 2016/679, which applies from 25.05.2018, personal data means information related to an identified natural person or an identifiable natural person ("data subject") directly or indirectly, through an identifier such as name, identification number, location data, online identifier or one or more characteristics specific to the physical, physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual.

From the evidence gathered in the administrative proceedings it was established that from T.O. References from the internal system have been provided, which show that on 21.07.2017, the account of Mr. K.K. is deactivated, ie on the day of receipt of the information from DN EOOD.

From the rules provided by TO, described as IT - infrastructure (hardware and software) security systems, it is evident that in item 7.2 and item 7.3, the rules for access to electronic work systems are written. It is described that when granting user access rights, it is absolutely mandatory for employees to work only with their users and not to provide their passwords to other employees or outsiders.

It is also described that the franchise partner and all its employees are responsible for protecting the confidential nature of personal and company information provided by customers, employees, shareholders and suppliers and to protect this data.

In view of the above, it follows that the complaint is unfounded in respect of TO, as the company has carried out the necessary technical and organizational measures in accordance with the provision of 23 of the LPPD.

From the evidence gathered in the administrative file, it was established that DN EOOD did not dispute the fact that the complainant - K.K. on 21.07.2017 he was not at work and therefore was in an objective impossibility to use the account and password given to him by the company. It is evident from the provided receipt with № **** in 12: 50: 5, that the name of the person K.K. is listed as a service person, given that it follows that in respect of DN EOOD the complaint is well-founded.

It is not disputed in the file that from DN EOOD on 21.07.2018, a receipt *** was issued at 12:50:54, in which the three names of the complainant appear, as well as that the company has informed T.O. for the case, by e-mail sent at 14.23 by KA, and the e-mail was answered by T.O. on 21.07.2017 that all rights of K.K. are stopped.

According to item 21.10.2 of the franchise agreement, concluded on 12.06.2014 between TO and DN EOOD, franchisee - the partner undertakes to ensure the maximum level of protection of TO systems, observing and ensuring compliance with the requirements specified in the information security policy and related instructions, rules and regulations. other documents. In this regard and in view of the findings of the administrative file, it follows that DN EOOD has not fulfilled the obligation arising from the provision of Art. 23, para. 1 of the LPPD with regard to taking technical and organizational measures to protect data from unauthorized access.

A request was made by the procedural representative of DN EOOD for the award of attorney's fees in the proceedings, to be borne by the applicant, but in view of the outcome of the dispute the request for award of costs should not be granted.

In determining the most appropriate corrective measure for the violation committed by the administrator DN EOOD, the following should be taken into account:

There are no data on damages suffered by the complainant, follow-up actions were taken by DN EOOD at the time the violation was established, and that the violation was the first for the administrator DN EOOD.

In view of the above, the Commission for Personal Data Protection ruled as follows

ANSWER:

1. Announces a complaint with registration № PPN-01-31 / 22.08.2017, filed by K.K. against a telecommunications operator and DN EOOD, as unfounded in respect of the telecommunications operator, given the fact that the company has taken the necessary technical and organizational measures in accordance with the provisions of Art. 23 of LPPD, respectively Art. 24 of Regulation (EU) 2016/679.
2. Announces a complaint with registration № PPN-01-31 / 22.08.2017, filed by K.K. against a telecommunications operator and DN EOOD, as well-founded in respect of DN EOOD for violation of the provision of Art. 23 of LPPD, respectively Art. 24 of Regulation (EU) 2016/679.
3. In connection with item 2 and on the grounds of art. 58, § 2, letter "d" of Regulation (EU) 2016/679 orders DN EOOD to bring the operations of personal data processing in line with the provisions of the Regulation, organizing the access and use of the

accounts of each employee of a way that prevents an account from being used by a person other than the person to whom it belongs.

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

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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