

Decision on appeal with registration № PPN-01-420 / 23.04.2019 DECISION» PPN-01-420 / 2019 Sofia, 19.02.2020

Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Maria Mateva and Veselin Tselkov at a meeting held on 11.12.2019 , pursuant to Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, considered on the merits a complaint reg. № PPN-01-420 / 23.04.2019, filed by Z.S. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint filed by Z.S. with allegations of violations of the General Regulation on Personal Data Protection by a telecommunications operator (TO). The applicant informed that as a subscriber of T.O. has used a fixed mobile service for number *** by virtue of a contract № **** and claims that during the term of the contract T.O. has committed a "number of breaches in the process" of processing her personal data grouped as follows: Breaches related to the processing of data when submitting complaints and alerts; Violations of the right to information and access to personal data; Violation of the legal basis and misleading of the data subject; Violations of the rights of the subject in the Privacy Policy of TO Mrs. Z.S. indicates that at the end of 2018 she filed a complaint with ent. № 132T.O.88 / 2018 to T.O., and the employees of the latter refused to enter the document without indicating and supplementing data from their ID card. Considers the latter a violation of Art. 5, para. 1 (c) of Regulation 2016/679, namely infringement of the principle of 'minimizing data', as it claims that in its complaint it provided three names, address, mobile number and PIN - quite sufficient for the undisputed individualization and considers that the collection of other data from her identity card violates her rights. In support of the above informs that the Privacy Policy, available on the website of TO, states that for identification are processed: three names, PIN, permanent address and does not specify that they are collected and processed and identity card data for identification of persons. She is indignant that before the complaint was filed, its contents were read by employees of the company, arguing that it concerned the performance of official duties related to the technical processing of the document. It considers that these actions are unnecessary and in breach of the Regulation insofar as it explicitly stated the subject of the document "at the top of the first page". In addition, he claims that an employee of the operator M.M. stated that she would use the data from the submitted complaint to take action against her, due to her claims regarding the manner of work in TO. The latter finds a violation of Art. 32 of the Regulation. She claims that the way in which the documents submitted by her by the company's employees convinced her that either the order for protection of

personal data and their processing has not been introduced or this order is not observed and is violated uncontrollably and with impunity by the employees of T.O. “. It adds that the operator restricts its right to lodge complaints by requiring that it be carried out only in designated shops of the company, personally by the entity, without the possibility of lodging a complaint by post. The complainant informed that she had exercised her rights of access to personal data with applications with ent. № *** and ent. № ****, to which she received written answers not containing the requisites provided in Art. 15 in conjunction with Art. 13 of the Regulation, including no clarifications on specific issues raised by it. Mrs. Z.S. also objects to the form of consent used by the company for processing personal data in connection with the one introduced by T.O. electronic system for checking complaints and signals through the company's website, considering that it is contrary to the norms of the ORD, and T.O. misleads that consent may be withdrawn at any time and the processing of personal data provided by consent may be terminated. The complainant also informed about fundamental violations in the Privacy Policy of T.O. available on the company's website, for which it claims to have lodged a complaint with the Austrian data controller in so far as it is stated that 'T.O. applies group practices of T.O.A. and others. Relevant evidence is attached to the complaint - a copy of the answer of TO and a contract № **** 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 by T.O. a written statement and relevant evidence were required. In response, an opinion was expressed PPN-01-420 # 3 / 03.09.2019 on the unfoundedness and lack of proof of the complaint for all violations mentioned in it. No evidence was attached to the opinion.

The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as control over compliance with the LPPD and Regulation (EU) 2016/679. In order to exercise its powers, the Commission must be properly seised. The complaint contains obligatory requisites - data about the complainant, the nature of the request, date and signature, in view of which it is regular. It is procedurally admissible, filed within the term under § 44, para. 2 of the Transitional and Final Provisions of the LPPD by a natural person with a legal interest against a competent party - a legal entity - personal data controller within the meaning of Art. 4, para. 7 of EU Regulation 2016/679. The body competent to rule is the CPDP, which according to its powers under Art. 10, para. 1 of LPPD in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of data subjects related to the processing of personal data, as there are no the exceptions under Art. 2, § 2, letter “c” and Art. 55, § 3 of the Regulation in view of the fact that the case does not concern processing

activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by the courts in the performance of their judicial functions. For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, at a meeting of the CPDP held on November 6, 2019, the appeal was accepted as admissible and as parties to the proceedings were constituted: complainant - Z.S. and the respondent - T.O. An open meeting has been scheduled to consider the complaint on the merits for December 11, 2019, of which the parties have been regularly notified and have been given the opportunity to get acquainted with the materials collected in the file. In order to clarify the case on the legal and factual side, the respondent requested evidence in support of the allegations set out in the company's opinion, including a certified copy of the submitted by Ms. Z.S. application ent. № *** and ent. № ****, respectively the answers of the company, as well as a certified copy of the submitted by Mrs. Z.S. complaint the same with ent. № *** according to the description of T.O. In response and by letter PPN-01-420 # 8 / 27.11.2019 the required documents were provided. At an open meeting of the CPDP held on December 11, 2019, the complaint was considered on the merits. The complainant - regularly notified, appeared in person and upheld the complaint. T.O. EAD - regularly notified, represented by MP - an employee with legal education, with a power of attorney for the file, which disputes the complaint. The parties separately state that they are acquainted with the materials collected in the file, and in addition the procedural representative of the mobile operator states that he will not point out other evidence and no requests for evidence. The complainant insisted that the CPDP admit to interrogation a witness MS, who had personal and immediate perceptions about the alleged circumstances related to the signal she had given in the shop of T.O. and the conduct of the company's employees when entering it to verify that its data were collected in violation of EU Regulation 2016/679 and may be used in the future to its detriment. As far as there is no dispute between the parties regarding the submission of the specific signal and the actions of the employees of T.O. on his entry, including that an identity document was required when submitting it, the commission disregarded the request of Ms. Z.S. to allow the examination of a witness to establish facts on which there is no dispute between the parties, insofar as the testimony of witnesses would be admissible in disputed facts, which is not the case here. In addition, it should be noted that the testimony of witnesses is admissible to establish facts and circumstances that have occurred and which the witness has accepted, but not to prove future uncertain events such as the allegations of Ms. Z.S., "That this data can be used" by the employee M.M. for the future, to her detriment. Apart from that, it should be noted that it is inadmissible to allow the examination of a witness to establish facts and circumstances related to compliance with the labor discipline of TO employees,

irrelevant to the processing of personal data, as the commission is not competent to pronounce on these issues and they are not the subject of the proceedings and insofar as the conduct of the employee, respectively given by Ms. Z.S. qualifications of the same are not subject to control by the CPDP. In progress on the merits, Ms. Z.S. asks the commission to uphold the complaint, reiterating the allegations set out in the same for violations committed by the company and upholding the arguments set out in its complaint for engaging the administrative and criminal liability of the operator. Confirms that in connection with the entry of the signal by the employees of T.O. have requested to present personal data on an identity card and to present the same. Despite the Commission's clarifying questions to the applicant as to whether she had provided the "all personal data" requested by her contained in the identity card and whether they had been recorded and how they had been processed by TO's staff, Ms Z. S. does not specify or claim the form of processing of the personal data contained in her identity document, maintaining that "The question is what they asked for", and this includes, according to Ms. Z.S. "Absolutely all the data contained in the identity card", including "full name, height, eyes, date of birth". In the course of the merits, the procedural representative of the respondent party asks the commission to disregard the complaint as unfounded, for reasons detailed in a written statement involved in the case. In addition to it, he points out that these are undertaken by T.O. measures to protect the personal data of individuals from unlawful processing of personal data, the same in the interest of data subjects. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the Code of Administrative Procedure, requiring the existence of established factual facts, given the collected written and oral evidence and the allegations of the parties, the Commission considers that considered on the merits complaint № PPN-01-420 / 23.04.2019 is unfounded. From the evidence gathered in the case file, it was established that the applicant was a client of T.O. on the occasion of used mobile services under contract № **** for the purposes of which it has provided to the company and the same processes its personal data in volume - three names, a single civil number and address. It is not disputed that on 12 September 2018 the applicant visited TO's office located in the town of ***** and lodged a complaint with the company, the same with ent. № ***, concerning the conduct of an employee of TO, which Ms. Z.S. finds it "unprofessional" and "arrogant." It was established that subsequently, in the same case, Ms. Z.S. has given a second signal with ent. № ****, in which, in addition, he claims that he was prevented by the employee of the company from submitting the initial signal, as the employee, contrary to EU Regulation 2016/679, required her to identify herself with an ID card when submitting signal. In a third signal submitted to the company, Ms. Z.S. expresses its dissatisfaction again with the "systematic

unacceptable behavior" of the company's employees towards it, claiming that the actions of the employees are in violation of EU Regulation 2016/679. In response to the signals, a letter was prepared (without date and outgoing number) addressed to and received by Ms. Z.S., the same submitted by T.O. on the present file, in which it is stated that the company has introduced technical and organizational measures in order to protect the processed personal data, which the employees of the company observe. As can be seen from the content of the signals submitted by the applicant to T.O. is that they contain her personal data in the amount of three names, address and telephone number. For the sake of completeness, it should be pointed out that, contrary to the allegations set out in the complaint to the CPDP, the signals do not indicate and do not process a single civil number of Ms. Z.S. There is no evidence in the file that the company processes - collects and / or stores data from the applicant's ID card for the purposes of the signals submitted by her to the company, other than those indicated in the signals, namely: names, address and telephone number. The fact that employees of the company demanded Ms. Z.S. to identify himself by presenting an identity document for service (submission of signals) does not change these conclusions, as long as the identity document is provided for reference and indisputable individualization of the sender and there is no evidence and allegations, data from him to be processed by the company . In addition, the committee considers that these actions of the administrator's staff should be seen as fulfilling the administrator's obligations to introduce organizational measures for the unquestionable individualization of individuals. The applicant's allegations that they were in violation of Art. 5, §1, letter "c" of the Regulation, namely violation of the principle of "minimization of data" are unfounded, insofar as it has been established that for the purposes of the submitted by Ms. Z.S. signals are processed only the data specified by her in the signals to TO. - names, address and telephone number, limited to what is necessary for the purposes for which they were provided. For the above reasons, the Commission considers that there is no violation of the rules in the field of personal data when entering the signal submitted by the complainant and the fact that an employee of the company read and checked the contents before entering the document. There is no evidence in the file of unregulated and illegal access by third parties to the personal data of Ms. Z.S. contained in the signals submitted to the company, much less the use of "such personal data to the detriment of the data subject". Before the committee, the applicant expressed only concerns in this regard. The applicant's allegations of infringement of the Regulation concerning her restriction by the administrator regarding the latter's accepted way of lodging complaints with the company, namely the impossibility of lodging complaints by post, are also unfounded. In this regard, it should be noted that the Regulation and the LPPD regulate the procedure for submitting applications for exercising rights,

which is not the nature of the submitted signals, and do not regulate the manner of correspondence (incoming and outgoing) of the company on matters outside the protection of privacy data. There is no evidence in the file of the personal data of Ms. Z.S. to be processed for purposes other than those for which they have been provided by it to the administrator. In this connection, the allegations of the complainant for a violation by TO should be disregarded as unfounded and unproven. of Art. 32 of the Regulation regarding the threat addressed to Ms. Z.S. by an employee of the company, who stated that he would use the information and data submitted by Ms. Z.S. signals "to take action" against her. Even if there was a conflict involving an emotional exchange of remarks, there is no evidence that the information provided by the complainant was used for purposes other than to deal with her complaint to the administrator. The behavior of the administrator's employees in customer service is not subject to control by the CPDP. The allegations of Ms. Z.S. are also unfounded. for violation by T.O. the right to information and access to personal data. Given the content, form and names of those sent by Ms. Z.S. "Written inquiries" signals № *** and № **** it is necessary to conclude that they do not have the character of requests for access to personal data, therefore they do not give rise to an obligation for TO. EAD, in his capacity of controller of personal data, to provide Ms. Z.S. the information under Art. 15 of the Regulation. The complaint is also unfounded and unproven with regard to the allegations of "Violation of the legal basis and misleading of the data subject" developed in items 8-10 of the complaint. In the first place, the allegations were generally and vaguely worded, and evidently they were a form of interpretation of the rights of the subjects of personal data by the applicant. They have been disputed by the company as incorrect, and there is no evidence to the contrary in the file, and for completeness it should be noted that consent is only one of the alternative grounds for the lawfulness of the processing of personal data and it can be withdrawn at any time. time, and in the present case the applicant's data are processed in the terms of a contractual relationship between the parties. The allegations of illegal collection of personal data - the applicant's unique civil number when tracking the movement of the complaint electronically, respectively access to information containing personal data, are also unfounded, as far as access to information containing personal data electronically - remote In this regard, the controller is obliged to introduce appropriate measures to identify the person, so that not everyone has access to the information provided, as it is individual and contains personal data. The electronic service is provided for the convenience of the individual and is used at his request, and the individualization mechanism introduced by the company was created to protect the data subject. In addition, the company had taken an alternative means of verifying the signals submitted, namely at the company's office, against which the applicant also objected. With regard to the allegations

under items 11-13 of the complaint "Violations of the rights of the subject in the Privacy Policy of TO" and insofar as they do not indicate a violation of the rights of the complainant, CPDP considers that in the present the proceedings do not require a ruling, moreover, they have the character of commentary and analysis of the content of the Privacy Policy of TO, which is not the subject of the proceedings, and apart from that it should be noted that they are another supervisory authority was contacted, according to the applicant. Guided by the above and on the grounds of Art. 38, para. 3 of the Personal Data Protection Act, the Commission for Personal Data Protection, HAS DECIDED: Dismisses complaint PPN-01-420 / 23.04.2019 as unfounded. 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. CHAIRMAN: MEMBERS: Ventsislav Karadjov / n / Maria Mateva / n / Veselin Tselkov / n / Files for download Decision on appeal with registration № PPN-01-420 / 23.04.2019 print