

Home » Practice » Decisions of the CPLD for 2020 » Decision on appeal with reg. No. PPN-01-435/03.05.2019 Decision on appeal with reg. No. PPN-01-435/03.05.2019 DECISION no. PPN-01-435/2019 Sofia, 25/03/2020 The Commission for the Protection of Personal Data (KPLD, the Commission) in composition, chairman - Vencislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a regular meeting held on 12.02.2020 and objectified in protocol No. 6/12.02.2020, based on Art. 10, para. 1 of the Personal Data Protection Act (PPA) in conjunction with Art. 57, § 1, b. "f" of Regulation (EU) 2016/679, examined the merits of a complaint with reg. No. PPN-01-435/03.05.2019, filed by P.G. against a telecommunications operator (T.O.). The Commission for the Protection of Personal Data has been referred with a complaint reg. No. PPN-01-435/03.05.2019, submitted by PG, in which allegations of unlawful processing of his personal data by T.O. are presented. Mr. P.G. informs that he has a contract with the mobile operator for a home internet service, which as of 04/24/2019 he found to be inactive. After a call to the office of T.O., to Mr. P.G. it has been reported that several services and leases are held in his name whose payments are overdue and for this reason Mr. P.G. no home internet. He declares that he did not sign the contracts with arrears due. He believes that this is a misuse of his personal data. By letter ext. No. PPN-01-435#2/02.07.2019 T.O. has been notified of the initiated administrative proceedings. The company was given the opportunity to express its opinion and provide relevant evidence. In the opinion of the operator it is stated that Mr. P.G. has concluded contracts with T.O. for mobile services signed on 13.06.2019, which they apply as evidence, together with system screens for issued invoices to these contracts and system screens for payments made by the subscriber. They indicate that after a conversation with the "subscriber" on 07.06.2019 and in view of the customer-oriented policy, the operator reversed the invoices. They inform that, in view of the credibility of the contracts, they have no reason to consider that the signatures placed under them are not genuine and that there has been abuse by the company with regard to the used personal data of Mr. P.G. They point out that if the complainant's allegations are true, the case will concern a crime committed within the meaning of the Penal Code (PC) by an employee of T.O. and in that case Mr. P.G. should alert the competent authorities. A special law is the Criminal Code, and the realization of the corresponding criminal liability is carried out according to the procedure of the Criminal Code. This also follows from the provision of Art. 33, para. 1 of the ZANN, according to which, in cases where a criminal prosecution has been initiated for a given act by the prosecution authorities, administrative-criminal proceedings are not instituted. The drawing up and use of a false document, as well as the attestation of false circumstances in it constitute criminal documents within the meaning of Art. 311 in connection with Art. 308 of the Criminal Code. In this case, the

establishment of the fact whether the applicant's data was processed for a criminal purpose are actions within the competence of the investigative authorities, therefore the criminal prosecution should be carried out in accordance with the procedure of the Criminal Procedure Code. By Mr. P.G. additional evidence has been filed, filed with Reg. No. PPN-01-435#8/07.08.2019. The complaint under review fully complies with the requirements for regularity, according to Art. 28, para. 1 of the Regulations for the activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA), namely: there are data on the complainant, the nature of the request, date and signature. The provisions provided for in Art. 38, para. 1 of the Labor Code, the terms have been met, given the provision of par. 44, para. 2 of the Transitional and Final Provisions to the Law on Amendments to the LLDP. The subject of the complaint is an allegation of unlawful processing of the complainant's personal data and is directed against a personal data administrator, which requirement is an absolute procedural prerequisite, in view of which the admissibility of the complaint should be assessed. Given the above and on the basis of the provision of Art. 27, para. 2 of the APC, the complaint is admissible. At the meeting of the Commission held on 23.10.2019, objected in protocol No. 42/23.10.2019, the complaint was accepted as procedurally admissible, as the parties are constituted - complainant, P.G. and the defendant - T.O., as the performance of a handwriting examination was allowed with the subject of the examination: to establish whether the signature in the annexes to the contract ***** dated 13.06.2017 were signed by the complainant. The complainant was notified of the Commission's decision and on 31.10.2019 she submitted to the Commission's office samples of signature and handwriting, which were sent by letter ex. No. PPN-01-435#13(19)/30.10.2019 of the Scientific Research Institute of Forensics (NIK). At a meeting held on 11.12.2019, a complaint with reg. No. PPN-01-435/03.05.2019 is scheduled for consideration on the merits for 29.01.2020, the parties are regularly scheduled for the meeting, as can be seen from the notices for delivery, due to the lack of unanimity in making the decision, the Commission has postponed the making of the decision for the next meeting with a different composition. At the meeting held by the representative of T.O. technical and organizational measures have been filed as evidence; a list of trained employees, as well as an opinion when considering the complaint of Mr. P.G. and opinion that led to the reversal of the amounts due. At the meeting, it was stated that the operator canceled the obligations after the customer's complaint, as well as the fact that for a long period of time these services were paid regularly, so the mobile operator could not consider that there was an irregularity in activations . They point out that when documents are available and payments are made, there is no doubt that this is not the actual will of the client, given the fact that it is not a hollow contract that has not been performed. The contract was executed

between the two parties and in view of this by T.O. consider that they processed the data of Mr. P.G. namely for the provision of electronic communication services and for the sale of end devices, such as the evidence we have presented in the file. The subject of the proceedings are the specific allegations of abuse of the personal data of the complainant P.G. and their processing without his knowledge and consent, for signing annex No. 1 to contract No. ***** dated 13.06.2017 with T.O., conditions for using tariff plans, annex No. 1 to contract No. ***** from 13.06.2017, prices and conditions for using the fixed Internet service over a mobile network - 1 or 2 years, installment sales contract No. ***** from 13.06.2017 for interest in the amount of 10.06% and reception - transmission protocol of the purchased end device from 13.06.2017. Considered in substance, the complaint is well-founded. It is not in dispute between the parties that between Mr. P.G. and T.O. a payment sale contract No. ***** was concluded for the use of a service - home internet, in connection with which he voluntarily provided his personal data to the company for the purposes of the contract. From the circumstances collected in the case file, it was established that on 13.06.2017, Annex No. 1 to contract No. ***** dated 13.06.2017 was signed with T.O., conditions for using tariff plans, Annex No. 1 to contract No. ***** dated 13.06.2017, prices and conditions for using the fixed Internet service over a mobile network – 1 or 2 years, installment sales contract No. ***** dated 13.06.2017. and the receipt-handover protocol of the purchased end device from 13.06.2017, all of which contain three names, the uniform civil number of the applicant, information which undoubtedly has the quality of personal data for Mr. PG, given the circumstances, that with them the latter can be unquestionably individualized, and in the installment sale contract No. ***** dated 13.06.2017 and the acceptance-handover protocol of the purchased end device dated 13.06.2017, an address for correspondence is also contained. to the complainant that his personal data were processed without his knowledge and consent by the company for the purpose - p cancellation of annex No. 1 to contract No. ***** dated 13.06.2017 with T.O., conditions for using tariff plans, annex No. 1 to contract No. ***** dated 13.06.2017, prices and conditions for using the fixed internet service over a mobile network – 1 or 2 years, installment sales contract No. ***** dated 13.06.2017 and handover protocol for the purchased end device dated 13.06.2017, are reasonable. It can be seen from the evidence collected in the administrative file and in particular the results of the expertise carried out, objectified in the protocol for expertise carried out No. 19/DOK - 269 of 18.11.2019, from the Scientific Research Institute of Forensic Science - Ministry of the Interior, Center for Experimental Forensic Research, Sofia, and more precisely the conclusion of the expertise, it is indisputable that the signatures in the columns "accepted", in the 3 copies of contracts for the sale of payment ***** dated 13.06.2017, in the columns "place for signature of the Subscriber" in the two copies of

Appendix No. 1 to the contract ***** dated 13.06.2017. Terms of use of tariff plans and appendix No. 1 to the contract ***** dated 13.06.2017, prices and conditions for use of the fixed internet service via a mobile network and in the columns "for the buyer", in three copies of the acceptance-transmission protocol, are images of those not laid down by P.G. In addition, in item 9.2 of the expertise, it is stated that the person who signed in the "Delivered" columns in the three contracts, in the "signature: The three names of the employee" columns in the two annexes and "for the seller" in the three pines acceptance-handover protocol, probably the signatures in the "accepted" columns were also signed, therefore there is no consent to the processing of his personal data for the purposes of the contract. It is noted that it is clear from the provided contracts that the processing of the personal data of Mr. P .G. it started in 2017 but continues to the present. Given the above and the fact that in the specific case none of the other hypotheses specified in Art. 6 § 1, letters "a", "b", "c", "d", "e", "f", the conclusion that the applicant's personal data was processed by T.O. for concluding the contract in violation of Art. 4, para. 1 of the Labor Code (repealed), corresponding to Art. 6, § 1 of the Regulation, without the presence of a condition for the admissibility of the processing. Irrelevant to the present administrative proceedings are the statements of the representative of T.O. for a committed crime, in which the dispute is outside the competence of the Commission. CPLD is the only competent body to issue a decision regarding the unlawful use of personal data.

The Commission considers the allegations made by the defendant to be reasonable, that in the event that payment is being made under the disputed contracts, even if one device has been paid, it has no legal grounds to doubt that this contract is invalid. At the held open meeting, the representative of the mobile operator provided technical and organizational measures; a list of trained employees, as well as an opinion from the examination of the complaint of Mr. P.G. - led to the reversal of the amounts owed, from which it is clear that the mobile operator was not inactive in the case filed by Mr. P.G. complaint.

The Commission has operational independence, and in accordance with the functions granted to it, it assesses which of the corrective powers under Art. 58, par 2 of Regulation 679/2016 to exercise. Taking into account the nature, gravity and consequences of the infringement, as well as any mitigating and aggravating circumstances, the Commission makes the assessment of what measures are effective, proportionate and dissuasive in each individual case and reflects the objective pursued by the chosen corrective measure – prevention or cessation of the violation, sanctioning of the illegal behavior or both, which possibility is provided in art. 58, par 2, letter "i". The assessment is based on the expediency and effectiveness of the decision, taking into account the specifics of each individual case and the degree of impact on the interests of a specific natural

person - data subject, as well as the public interest. Considering the fact that for similar violations the Commission sanctioned the administrator T.O. and despite the imposed pecuniary sanctions, complaints about the specific type of violations continue to be submitted to the authority, the Commission considers that the administrator should be imposed a coercive administrative measure to take additional technical and organizational measures given the fact that such a violation is not the first time for the administrator . CPLD considers it expedient T.O. to notify the subscriber in a timely manner - by phone or in accordance with the information collected in the contract for correspondence with customers about changes in the plan, about new mobile devices purchased and others, which will allow the administrator to receive timely information from its customers in the event that any such change actually occurs .

At the moment, such type of measures have not been taken by the mobile operator, and CPLD suggests that, if technically possible, the mobile operator should promptly notify the subscribers of changes in the contract. CPLD considers that this is an organizational measure that could be introduced for the purpose of prevention, and the administrator should take additional organizational measures to be able to detect such violations committed by his employees at an earlier stage. When making the decision, Commissioner Tsolov expresses an opinion on the merits of the complaint, imposition of corrective authority - issuance of an order, but considers that it is appropriate to impose a pecuniary sanction on the administrator.

In view of the above and on the basis of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "f" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled as follows

ANSWER:

1. Announces a complaint with reg. No. PPN-01-435/03.05.2019 filed by P.G. against a telecommunications operator for reasonableness.
2. In connection with item 1 and on the basis of Art. 58, § 2, letter "d" issues an order to the administrator for violation of Art. 6, § 1 of Regulation (EU) 2016/679 T.O.
3. Deadline for execution of the order – one month from the entry into force of the decision, after which to notify the commission of the measures taken, presenting the relevant evidence.

The decision is subject to appeal within 14 days of its delivery, through the Commission for the Protection of Personal Data before the Administrative Court - Sofia - city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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