

Decision on appeal with registration № PPN-01-544 / 30.07.2020 DECISION № PPN-01-544 / 2020 Sofia, 20.01.2021

Commission for Personal Data Protection ("Commission" / "CPDP") composed of: Chairman - Ventsislav Karadzhov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, on a regular basis meeting held on 16.09.2020, on the grounds of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, paragraph 1, letter "e" of Regulation 2016/679, considered a complaint Reg. № PPN-01-544 / 30.07.2020, filed by V.V. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The complainant states that on 09.06.2020. he was handed a notarial invitation by the person D.Y., through a notary reg. № ***, with area of action Plovdiv District Court. The summons was served in person by an employee of the notary's office in the presence of two witnesses (the applicant's wife and son). After getting acquainted with its contents, Mr. V.V. found that there was illegal disclosure of his personal data (full name, PIN, address of residence) in the invitation. He declares that he has not given his consent for his personal data to be processed for the specified purpose - both before the notary and before the submitter. It is clear that notaries are controllers of personal data, but the same does not apply to the person who illegally disposes of them. The complainant considers that the presence of his personal data in the served notarial summons constitutes a violation of the rights granted to him by the Personal Data Protection Act and Regulation (EU) 2016/679. I ask the Commission to engage the administrative and criminal liability of the person submitting the notarial invitation for processing personal data in violation of the LPPD, as a result of which my personal data were accessed and became available to persons external to the complainant. Asks the Commission to assist in identifying the source and persons to whom they have become known. In view of the property dispute that arose between the complainant and the sender of the notarial summons, there are concerns about him about possible continuing unregulated and unscrupulous use of his personal data. Asks the Commission to take the necessary action in relation to the information provided. The considered complaint is in compliance with the requirements for regularity under Art. 29 of the APC, Art. 38, para. 2 of LPPD and under Art. 28, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA) - there are data about the complainant; nature of the request; date of knowledge of the violation; the person against whom the complaint is filed; date and signature. The appeal is procedurally admissible - filed within the term under Art. 38, para. 1 of LPPD by a data subject with legal interest. The same is the subject of an allegation of violation of rights under Regulation 2016/679 or LPPD. The complaint was referred to a competent body to rule - the Commission for

Personal Data Protection, which according to its powers under Art. 10, para. 1 LPPD in connection with Art. 57 (1) (f) of Regulation 2016/679 deals with complaints lodged by data subjects. There are prerequisites for admissibility under Art. 27, para. 2 of the APC. The Commission for Personal Data Protection is an independent supervisory body that protects individuals when processing their personal data and when accessing such data, as well as monitoring compliance with 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 (in short the "Regulation" or Regulation 2016/679) and the Personal Data Protection Act (PDPA). One of the tasks of the CPDP under Art. 10, para. 1 LPPD in connection with Art. 57 (1) (f) of Regulation 2016/679 is to examine complaints lodged by data subjects and to investigate the subject matter of the complaint, as appropriate. The operational independence in considering the complaints is procedurally further developed in Art. 38, para. 4 of the LPPD - when the complaint is obviously unfounded or excessive, with a decision of the Commission the complaint may be left without consideration. Regulation 2016/679 and the Personal Data Protection Act (PDPA) set out the rules regarding the protection of individuals in connection with the processing of their personal data, as well as the rules regarding the free movement of personal data. The aim is to protect the fundamental rights and freedoms of individuals, and in particular their right to the protection of personal data. The processing of personal data by personal data controllers, both in the public and in the private sphere, is lawful and admissible if there is any of the legal grounds exhaustively listed in Art. 6 (1) of Regulation (EU) 2016/679: (a) the data subject has consented to the processing of his or her personal data for one or more specific purposes; (b) the processing is necessary for the performance of a contract to which the data subject is a party or for taking steps at the request of the data subject prior to the conclusion of the contract; (c) the processing is necessary to comply with a legal obligation to which the controller is subject; (d) the processing is necessary in order to protect the vital interests of the data subject or another natural person; (e) the processing is necessary for the performance of a task in the public interest or in the exercise of official authority conferred on the administrator; (f) the processing is necessary for the legitimate interests of the controller or a third party, except where such interests take precedence over the interests or fundamental rights and freedoms of the data subject which require the protection of personal data, in particular where the data subject is kid. The consent under letter "a" is one of the grounds for collection and processing of personal data. Despite the fact that it is mentioned in the first place, all legal bases are alternative and equal, and they are not arranged in a hierarchical relationship. The presence of any of them makes the processing lawful, provided that the other requirements of the regulation are met.

When a data controller decides whether to process personal data on the basis of consent, he must examine whether there is no other legal basis for their processing. If another reason exists, the consent of the data subject is not required. According to Art. 2, para. 1 of the Law on Notaries and Notarial Activity (ZNND) the notary is a person to whom the state assigns the performance of the notarial actions provided for in the laws. The service of a notarial invitation (as well as other communications, warnings and answers in connection with civil relations) under Art. 592 of the Code of Civil Procedure (CPC) is precisely such a normatively established notarial act, which is systematically specified in Chapter Fifty-four of the CPC, entitled "Notarial proceedings". The notarial invitation is widely used in civil turnover. In general, the notarial summons provides a means of proof for the person who issued it in a future legal dispute with the invited person. In other cases, such as the present one, the notarial invitation serves as an attempt to settle disputes voluntarily and to notify of possible subsequent actions in case of impossibility to settle the dispute voluntarily. According to Art. 23 of the ZNND, the notary considers all requests for assistance addressed to him, unless he is interested in performing the requested action or is in a special relationship with the party, which raises reasonable doubts about his impartiality. Art. 592, para. 1 of the Civil Procedure Code stipulates that the notarial invitation should be prepared in 3 or more (depending on the number of addressees) uniform copies, and if the invitation is sent by a proxy, his power of attorney is presented. When presenting the invitation, the notary does not certify the content or signature of the person issuing it, but only certifies the fact of presentation of the invitation. The notary does not check the content of the invitation and the accuracy of the statements in it. He shall neither certify the content of the invitation nor the signature of the sender. The notarial invitation certifies the act of service of the invitation on its addressee. The notary is obliged to carry out an inspection only regarding its legality due to the explicit rule of Art. 574 of the Civil Procedure Code - "Notarial acts may not be performed on transactions, documents or other actions contrary to the law or good morals. "Therefore, the notary may not refuse to send a notarial invitation, except in the cases of Art. 23 of ZNND and Art. 574 of the Civil Procedure Code. The activity of the notary in the service of notarial invitations is to certify by whom the invitation was presented, to organize its proper service in accordance with the procedure provided for in the Civil Procedure Code, and to certify the fact of service. In view of the above, when sending a notarial invitation, the notary processes personal data on the grounds of Art. 6, paragraph 1, letter "e" of Regulation 2016/679 - for the exercise of his official powers granted to him by the ZNND and CPC, in which case the consent of the entity under letter "a" is not required. It should be noted here that the service of the notarial invitation itself is regulated in a way that does not allow personal data to become available to an unlimited

number of persons. Art. 50 of ZNND stipulates that the notary may assign to a certain employee in the notary office to hand over notices and papers under the conditions and by the order of art. 37-58 of the Civil Procedure Code. In this case, the notarial summons was served in this order - by the employee in the notary's office and personally to the addressee (the applicant). In this way, personal data became known only to the administrator (the notary and his notary office) in the course of his usual statutory activities. As far as the person making the invitation is concerned, he has a legitimate interest in defending his rights by all lawful means. As stated, the sending of a notarial summons is a statutory possibility for protection of rights, therefore the legitimate interest of the sender of the summons has an advantage over that of the addressee of the summons (the complainant). Therefore, in this case the processing is lawful on the grounds of Art. 6 (1) (e) of Regulation 2016/679, where the consent of the complainant is again not required. Given the grounds for processing, in this case there is no bad faith in the processing, as alleged in the complaint. Thus motivated and on the grounds of Art. 38, para. 4 of LPPD in connection with Art. 38, para. 1 of the Rules of Procedure of the CPDP and its administration, the Commission for Personal Data Protection

HAS DECIDED AS FOLLOWS:

Leaves the complaint reg. № PPN-01-544 / 30.07.2020, filed by VV, without consideration as obviously unfounded.

This decision may be appealed within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court of Plovdiv.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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