

Decision on appeal with registration № PPN-01-312 / 10.05.2018 DECISION» PPN-01-312 / 2018 Sofia, 17.01.2019

Commission for Personal Data Protection (CPDP, Commission) composed of: members Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 31.10.2018 and objected in protocol № 41 / 31.10.2018, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered on the merits a complaint reg. № PPN-01-312 / 10.05.2018, filed by N.E. - a student in an educational institution (UZ), with confirmed actions and consent from the parents: H.E. - mother and G.E. - father. The administrative proceedings are by the order of art. 38 of the LPPD. The Commission for Personal Data Protection has been seised with a complaint with registration № PPN-01-312 / 10.05.2018, filed by H.E. to the Ministry of Education and Science, forwarded by competence to the CPDP, in which allegations of illegally processed personal data as a result of a contract concluded between the director of U.Z. and a financial institution (FI) to pay scholarships to students. It is stated that on March 7, 2018, H.E. in the capacity of a parent - guardian of his daughter: N.E. - a student at UZ, Mrs. H.E. "Signs a slip" for consent to receive a scholarship for excellent performance in a bank account without bank fees, opened in F.I. in the name of N.E. Mrs. H.E. does not consent to the provision by U.Z. of her daughter's personal data to a third party. On March 15, 2018 and on March 16, 2018, employees of F.I. visited UZ, who, according to the complaint, put pressure on the students to sign documents on behalf of their parents in order to provide them with a debit card plastic and a personal identification code for activation / PIN / of the provided debit card. map. The prepared documents are as follows: "Preferential conditions for students from U.Z. with recorded names and telephone numbers for contact with the above-mentioned employees of FI, lack of: specified period for validity of the offer, signatures of the persons who prepared the offer, data on fees due, seal of FI, ref. №, proof of authenticity. Pre-prepared and filled in ex officio form by F.I. with the pre-filled personal data - three names and PIN, of the applicant's daughter, as well as filled in access data ***** and cited envelope № ****. The date of the banking system is February 22, 2018. The document was signed by an employee of FI; payment account agreement. Debit MasterCard PayPass debit card issuance agreement with officially marked card features

The complainant requests that an inspection be carried out by the Ministry of Education and Science in connection with the existence of a contract concluded by U.Z. with FI, with subject: provision of bank cards, the existence of which was confirmed orally by telephone in a telephone conversation conducted by the applicant on 16.03.2018 with Yu.S. - employee of F.I. In addition, the applicant asked for the protection of the personal data of the students in the UZ to be guaranteed by sanctioning

the perpetrators of the illegal provision of personal data. By letter with registration № PPN-01-312 / # 1 CPDP the Commission notifies on the grounds of art. 26 of the Administrative Procedure Code (APC) the director of U.Z. for the initiated administrative proceedings on the appeal and the possibility to provide a written statement within 7 days of receiving the letter. In the opinion of the director of UZ, allegations were made that the complaint was inadmissible, as the complaint was directed against the director personally, in the capacity of the director of the high school, and as such it was not in the capacity of personal data controller. Secondly, if the argument of inadmissibility is not upheld, it considers the action to be unfounded. The opinion states that Ms. Sh., In her capacity as director (at the time of filing the complaint) of U.Z. has taken experimental actions for the academic year 2017/2018, regarding the introduction of a new practice in connection with the receipt of the amounts for scholarships for students of UZ, namely to move to payment by bank transfer, for which it receives approval and support to his colleagues. Due to the fact that the servicing bank of U.Z. is FI.2, the obligation of bank FI.2 is to order the transfer of the amounts of student scholarships to accounts stated as desired by the students. In order to speed up the process, an agreement was concluded between the director of U.Z. and the director of a branch in F.I. to open official inactive accounts of all scholarship holders for the second term of the academic year 2017/2018, which will be activated only after signing and receiving the necessary set of documents for this purpose. Declarations are required - consent of the parents on a form drawn up by UZ> for submission of an application for the issuance of a debit card with preferential conditions for receiving a scholarship. In this regard, by virtue of the signed agreement is provided to F.I. the necessary information for the students - scholarship holders electronically of Mrs. M.K., who as a representative of F.I. undertakes to use the data only for this purpose. In U.Z. employees of F.I. distribute to students declarations of consent, which are signed by interested students and their parents. In case of refusal to sign the declaration, the inactive accounts are closed. Attached are copies of documents certified "True to the original", as follows: offer from FI, agreement, declarations, decision of the pedagogical council, payment for translation from FI.2 to FI In a letter with ref. № PPN-01-312 # 2 / 31.05.2018 CPDP informs F.I. for the initiated administrative proceedings and the possibility to provide a written statement and relevant evidence within 7 days of receiving the letter. In response, F.I. sets out the following statements: On 12.02.2018 it was presented to U.Z. - Sofia, proposal for preferential tariff conditions for high school students, and on 14.02.2018 a contract was concluded between U.Z. and F.I., under which F.I. undertakes to open the accounts of the scholarship students, provided that the accounts are activated after collecting the full set of necessary documents, including parental consent. Due to the fact that the written consent of the parent of N.E. not

received, her account closed. The students' data were obtained from U.Z. At the meeting between the representatives of F.I. and students of the latter were provided with documents showing the amount of data received. They are also provided with general conditions containing detailed information on data processing. The agreement between F.I. and U.Z. and a sample declaration of consent. Complaint with registration № PPN-01-312 № 7 / 23.07.2018 was filed by N.E. - a student at U.Z. with confirmed actions and consent of the parents: H.E. - mother and G.E. - father against unilateral actions by the director of U.Z. and concluding a contract with F.I. for payment of scholarships to students, incl. illegal within the meaning of the LPPD provision of personal data to students of third parties. The content of the complaint is identical to that of the complaint with registration № PPN-01-312 / 10.05.2018. № PPN-01-312 № 9 / 07.08.2018 was sent by the CPDP to the director of U.Z. with instructions to send to the Commission information on the amount of personal data provided to F.I. to open official inactive accounts and on what grounds. They were informed that on the grounds of Art. 58, § 1, b. "A" and "e" of the General Regulation on Personal Data Protection (the Regulation), in connection with Art. 22, para. 5 of LPPD, are obliged to provide the Commission with any information it requests for the performance of its tasks. In case of non-fulfillment of the given instructions, on the grounds of art. 83, § 5, b. "E" of the Regulation, an administrative penalty will be imposed on U.Z. for not providing access to all the information that the CPDP needs in order to exercise its powers. Letter with ref. № PPN-01-312 № 8 / 07.08.2018. was sent by the CPDP to the manager of F.I. containing the above instructions and requested information about the necessary documents and personal data used to open official inactive accounts. The complaint of N.E. with confirmed actions and consent of the parents: H.E. and G.E. 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: data about the complainant, nature of the request, date and signature. The appeal is admissible. It was submitted within the term under Art. 38, para. 1 of the LPPD, namely a one-year term from learning of the violation, but not later than five years from its commission. 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 LPPD 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 session held on 03.10.2018, objectified in the minutes № 38 / 03.10.2018, the appeal was declared procedurally admissible, the parties were constituted - complainant NE and respondent parties - U.Z. and FI, regularly notified of the open meeting scheduled for 31.10.2018. At the open meeting, the representative of F.I. provides as evidence a declaration dated

07.03.2018, which shows the consent expressed by Ms. HE, mother of NE, for the issuance of a debit card. The procedural representative of U.Z. explains that the parents were informed by the class teachers at a parent meeting held in January about the idea of opening students' bank accounts. The complaint was filed by a natural person with a legal interest, whose personal data are processed by UZ, who has the capacity of personal data controller. According to Art. 57, §. 1, item "e" of Regulation 2016/679, when referring it, the Personal Data Protection Commission considers complaints against acts and actions of personal data controllers, which violate the rights of data subjects. 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 Regulation on Data Protection) regulates 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. The purpose of the Regulation is to protect the fundamental rights and freedoms of individuals , and in particular their right to protection of personal data. Given the entry into force on 25.05.2018 of Regulation 2016/679, it should be 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". Considered on the merits, the complaint is partially well-founded. The same has as its subject illegal processing - the provision and use of the name and the unique civil number (PIN) of a student - scholarship holder (the applicant) from U.Z. for opening an inactive account and creating a bank card (plastic) by F.I. to receive a student scholarship. From the evidence gathered in the file, it was established, and it is not disputed between the parties, that in the academic year 2017/2018 N.E. was a student at U.Z. From the opinions expressed and the evidence provided by U.Z. if I. it is evident that between F.I. and U.Z. An agreement for opening bank accounts and cards (plastics) was signed on February 12, 2018. From F.I. with an opinion filed with reg. № PPN-01-312 # 3 / 11.06.2018 it is stated that on 14.02.2018 a contract was concluded between F.I. and U.Z., under which F.I. undertakes to open accounts. It is not disputed in the file and between the parties that declarations requiring the consent of the parent of a minor child were provided on 07.03.2018 to the students. It is indisputably established in the administrative file that employees of F.I. on 15-16.03.2018 they visited UZ in order to distribute the individual contracts to the students, which should be signed by their parents. From the evidence provided by the applicant it is evident that the contract for payment account and the contract for issuing a debit card contain the three names and the unique civil number of the applicant, dated 20.02.2018. the data are provided by U.Z. of F.I.

electronically in the period from 14.02.2018 to 20.02.2018 (the date of the violation by the camp of UZ). It follows from the chronology of the performed actions that the data were provided by U.Z. of F.I. before the consent of the student's parent was sought and obtained on the one hand and on the other hand, F.I. is using the data when preparing a payment account agreement and a debit card issuance agreement. For the sake of completeness, the aim of opening bank accounts of fellow students should be noted, namely to facilitate the process of obtaining a scholarship. It should also be borne in mind that a declaration of consent has been prepared for the processing of personal data of scholarship students from the school, although at a later stage of the U.Z. In addition to F.I. It is noted that for the opening of bank accounts, the information needed by banks is regulated in the provision of Art. 5, para. 2 of Ordinance № 3 of the BNB on the Terms and Conditions for Opening Payment Accounts, for Executing Payment Operations and for Using Payment Instruments. According to item 1 of the cited Ordinance of F.I. the personal data of the account holder on an identity document are required. As can be seen from the internal rules of F.I. and Instruction 216 "Measures against money laundering and terrorist financing; Know your customer - general knowledge ", at least the following identification data must be collected for all individuals: names; PIN; Date and place of birth; address - permanent and current; citizenship; country of residence; type, number and issuer of the identification document. With regard to FI, according to the provision of Art. 1, para. 7 of the Rules for application of the Law on Measures against Money Laundering, the bank has a legal opportunity to open an account before the end of the customer identification procedure. According to the legal definition specified in Art. 2, para. 1 of the Personal Data Protection Act (PDPA), respectively Art. 4, item 1 of Regulation (EU) 2016/679 (General Regulation on Data Protection), which applies from 25.05.2018, personal data are any information relating to a natural person who is identified or may be identified directly or indirectly by an identification number or by one or more specific features, as they can indisputably identify the person. According to the LPPD, respectively Regulation (EU) 2016/679, the processing of personal data by personal data controllers, both in the public and private spheres, is lawful if there is any of the legal grounds exhaustively listed in Art. 6 (1) of Regulation (EU) 2016/679: the data subject has consented to the processing of his or her personal data for one or more specific purposes; 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 before the conclusion of the contract; processing is necessary to comply with a legal obligation that applies to the administrator; processing is necessary to protect the vital interests of the data subject or another individual; the processing is necessary for the performance of a task in the public interest or in the exercise of official powers conferred on the

administrator; 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 a child. Consent is one of the grounds for collecting and processing personal data. Despite the fact that it is mentioned in the first place, it is important to know that 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. From the evidence gathered in the administrative proceedings it is evident that between F.I. and U.Z. there is a contractual basis for processing personal data, according to the provision of Art. 4, para. 1, item 3 of LPPD, respectively Art. 6, para. 1, p. "B" of the ORZD and thus for F.I. there is a legal basis for the processing of personal data. Disagreeing with the latter, Mr. Tsanko Tsolov, Member of the Commission, expressed a special opinion, which is attached as an integral part of this decision. It follows from the evidence gathered in the administrative file that the personal data were provided electronically by U.Z. of F.I. in the period 14.02.-20.02.2018, and the declarations requiring the consent of the parents of minor children were submitted on 07.03.2018. personal data of the students in the case of their provision by the school of F.I. to open a student's bank account to pay scholarships. In the prepared by U.Z. Samples of declarations of informed consent of the eligible student and his parent, the same provided to students after opening a bank account of the applicant, also does not specify the method of processing - collection and use of three names and PINs of students for this purpose. The contract for payment account and the contract for issuing a debit card are dated 20.02.2018, ie the personal data are provided by U.Z. of F.I. without the express consent of the data subject. Given the fact that in this case, there is none of the alternative hypotheses in Art. 4, para. 1 of LPPD, respectively Art. 6, apr. 1 of Regulation 2016/679 it follows that the personal data of the complainant were provided by U.Z. of F.I. in the period from 14.02.-20.02.2018 for opening an account and issuing a debit card in violation of Art. 4, para. 1 of LPPD, respectively Art. 6, apr. 1 of Regulation 2016/679, without the condition of admissibility of processing. With regard to the educational institution, Ms. Maria Mateva, Member of the Commission, does not share the conclusions of the CPDP, in view of which she expressed a special opinion, attached as an integral part of this decision. The Commission has operational independence, assessing which of its corrective powers under Art. 58, para. 2 of Regulation 2016/679 to implement. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be adopted that fully protects the public interest. The powers under Art. 58, para. 2, without the one under letter "i",

have the character of coercive administrative measures, the purpose of which is to prevent the commission of a violation or, if the commission has started - to stop it, thus objectifying the conduct required by law. The administrative penalty "fine" or "property sanction" under Art. 58 par. 2, letter "i" has a sanction character. On the application of the appropriate corrective measure under Article 58, para. 2 of the Regulation should take into account the nature, gravity and consequences of the infringement, assessing all the facts of the case. The assessment of what measures are effective, proportionate and dissuasive in each case must reflect the objective pursued by the corrective action chosen, ie. restoration of compliance with the rules, sanctioning of illegal behavior or both (as provided for in Article 58, paragraph 2, letter "i"). As stated above and within the framework of operational autonomy, and considering the fact that the breach of the rules on personal data processing has been completed and its consequences have occurred for the data subject, and in order to remedy the adverse effects, only pecuniary sanction, such as measure of administrative coercion, is the most appropriate and effective measure, given that the Commission imposes on the controller of personal data U.Z. administrative penalty - pecuniary sanction, as a corrective measure under Article 58 (2), letter "i" of the Regulation, for violation of the provision of Art. 4, para. 1 of LPPD, respectively Art. 6, para. 1 of the ORD, as the same is an appropriate and effective measure for protection of the legal public interest. The Commission considers that the pecuniary sanction will have an educational effect and will contribute to the administrator's compliance with the established legal order, taking into account that the amount of the sanction imposed takes into account that the violation is first for the administrator. It should be noted that in addition to a purely sanction measure, the state's reaction to the violation of statutory rules, the property sanction has a disciplinary effect, in view of not committing the same violation in the future. moreover, he owes the necessary care provided by law and arising from his subject of activity, human and economic resources. In view of the above, the Commission for Personal Data Protection ruled as follows

ANSWER:

1. In the dissenting opinion of Mr. Tsolov, but by a majority of three votes, disregards as unfounded the complaint with registration № PPN-01-312 / 10.05.2018, filed by NE - a student in an educational institution, with confirmed actions and consent from the parents: H.E. - mother and G.E. - father in respect of the financial institution, given the fact that a contractual basis for data processing has been established for the financial institution, according to the provision of Art. 6, § 1., b. "B" of the General Data Protection Regulation.
2. In case of a dissenting opinion of Ms. Mateva, but with a majority of three votes, declares a complaint with registration №

PPN-01-312 / 10.05.2018 to be well-founded with regard to the educational institution.

3. In connection with item 2 and on the grounds of art. 58, § 2, letter "d" of the General Data Protection Regulation imposes on an educational institution, BULSTAT *****, with registered office and address of management *****, in its capacity of administrator of personal data, administrative penalty - property sanction in the amount of BGN 1,000 (thousand BGN), according to the provision of Art. 83, § 5, letter "a" for violation of Art. 6, § 1 of Regulation (EU) 2016/679.

After the entry into force of the decision, the amount of the imposed penalties to be paid in cash at the box office of the Commission for Personal Data Protection, located in Sofia, Blvd. "Prof. Tsvetan Lazarov "№ 2 or transferred by bank transfer:

Bank of the BNB - Central Office

IBAN: BG18BNBG96613000158601

BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

The decision of the Commission for Personal Data Protection may be appealed to the Administrative Court of Sofia - city within 14 days of receipt.

MEMBERS:

O.M. Tsanko Tsolov

Tsvetelin Sofroniev / p /

O.M. Maria Mateva / p /

Veselin Tselkov / p /

SPECIAL OPINION

of Tsanko Tsolov, member of the CPDP

I am voting with a special opinion on the Decision on the present appeal, in the part for F.I.

I consider the same to be justified, with regard to FI, as my considerations are in the following directions:

1. F.I. processes the personal data of its clients on a legal basis, in its capacity as a controller of personal data;
2. He has signed a contract with U.Z. for the implementation of a new method for receiving scholarships from students;
3. On the basis of this contract F.I. receives only a list of students containing their personal data;
4. The processing of personal data of children on the basis of "consent" takes place after the collection and "consent" of their

parents and guardians;

5. It is evident from the evidence gathered that F.I. issues the cards (processes the data of the students (children)) without the relevant "consent".

Therefore, on this basis, I consider that F.I. has infringed Article 5 (a), Article 6 (a) and Article 8 of Regulation (EU) 2016/679 of the European Parliament and of the Council, on the lawfulness of the processing.

Tsanko Tsolov

SPECIAL OPINION

of Maria Mateva, member of the CPDP

I am voting with a dissenting opinion on the Decision on the present appeal. I consider that the same is unfounded with regard to U.Z. My thoughts on this are in the following directions:

- o U.Z. processes the personal data of its students on a legal basis as an administrator of their personal data;
- o As an administrator, U.Z. has operational autonomy to decide how to do this processing in the interests of its students. In pursuance of this operational independence, a decision was made to improve the practice of receiving scholarships for students by hand and moving to receiving them by bank transfer. The relevant preliminary survey was conducted to gather the opinion about the new method both among the teachers and among the students and their parents;
- o In this regard, U.Z. has signed a contract with F.I. for the realization of the new method of receiving scholarships;
- o At the parents' meeting the parents of the students were informed about this contract;
- o As a result of signing the contract and fulfilling its contractual obligations under it, the bank has transferred the personal data of the respective students of the bank under the contract.

Therefore, in my opinion, there is no violation of the data protection of individuals - students in UZ, because on the one hand the administrator in the implementation of its operational independence has determined the way to process personal data of individuals, and in this case, the interests of the administrator should be considered to take precedence over those of individuals, and the new method of obtaining scholarships by bank transfer has been designed entirely for the benefit of students. On the other hand, the personal data of the students were provided to F.I. in fulfillment of a contractual obligation of UZ, due to which it was not necessary to request the consent of the persons. That is why in both cases the implementation of Art. 6 paragraph 1 of Regulation (EU) 2016/679. There are no harmful consequences as a result of the actions of U.Z. for

individuals, and F.I. has terminated the processing of students' personal data immediately after the termination of the contractual obligation for such processing.

That is why I am voting for the Decision of the CPDP №PPN-01-312 / 10.05.2018 with a special opinion in this part.

Maria Mateva / p /

Downloads

Decision on the appeal with registration № PPN-01-312 / 10.05.2018

print