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»Decision on appeal with registration № PPN-01-335 / 02.04.2019 Decision on appeal with registration № PPN-01-335 / 02.04.2019

ANSWER

№ PPN-01-335 / 2019

Sofia, July 30, 2019

The Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a regular meeting held on June 12, 2019, pursuant to 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-01-335 / 02.04.2019, filed by C.T.

The administrative proceedings are by the order of art. 38, para. 4 of the Personal Data Protection Act (PDPA).

The complainant informed that on 18 January 2019 he received an order for fulfillment of a pecuniary obligation under Art. 410 of the Civil Procedure Code, from which he learned that "V.M." Ltd. has used his personal data without his permission and consent, in violation of Regulation 2016/679.

Mr. C.T. declares that he has not signed and has not given his consent for his personal data to be processed by "V.M." for this purpose. He considers that his rights granted by the LPPD have been violated. He asks the Commission, after finding that his rights have been violated, to impose on V.M. Ltd. fine in the maximum amount permitted by law.

A copy of the Order for Execution of a Monetary Obligation is attached to the complaint.

The considered complaint contains the obligatorily required requisites, specified in art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, namely: there are data about the complainant, nature of the request, date and signature, in view of which the complaint is regular.

The appeal is procedurally admissible - filed within the term under 38, para. 1 of LPPD by a natural person with a legal interest.

It is the subject of an allegation of unlawful processing of the complainant's personal data and is directed against a personal data controller. The complaint is addressed 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.

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 expediency of considering the complaints is procedurally 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. In cases where a data controller decides whether to process personal data on the basis of consent, he must investigate whether there is no other legal basis for their processing. If another reason exists, the consent of the data subject is not required.

As can be seen from the allegations in the complaint and the evidence presented, "V.M." Ltd., in its capacity of representing condominium town ****, has filed an Order for fulfillment of a monetary obligation under Art. 410 Code of Civil Procedure. In the specific case there is a ground for processing personal data of Mr. C.T. under Art. 6, paragraph 1, letter "c" of Regulation 2016/679 - the processing is necessary to comply with a legal obligation that applies to the administrator. Art. 23, para. 1, item 5 of the Condominium Management Act (ZUES) states that the management board (manager) represents the condominium in its relations with local authorities and other legal entities. Art. 23, para. 4 of ZUES states that the chairman of the management board (manager) represents before the court the owners of the condominium on the claims brought against them in connection with the common parts and on the claims filed against the owner, user or occupant who does not comply with the decision of the general assembly or its obligations under this law. In claims against third parties, in connection with the common parts, the chairman of the management board (manager) represents the owners, if authorized by the general meeting. In Art. 38, para. 2 ZUES explicitly provides for the possibility that when the owner, user or occupant does not execute a decision within the specified period, the chairman of the management board (manager) may submit an application for issuance of an enforcement order under Art. 410, para. 1, item 1 of the Code of Civil Procedure.

In view of the above, the administrator "V.M. Ltd. has lawfully processed the personal data of the complainant on the grounds of Art. 6, paragraph 1, letter "c" of Regulation 2016/679 - for the fulfillment of its obligations under ZUES, where the requirement of explicit consent of the data subject is not necessary.

Guided by the above and on the grounds of Art. 38, para. 4 of LPPD, the Commission for Personal Data Protection
HAS DECIDED AS FOLLOWS:

Leaves a complaint reg. № PPN-01-335 / 02.04.2019, filed by C.T. against V.M. Ltd., without being considered manifestly unfounded.

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

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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