

Decision on appeal with registration № PPN-01-116 / 30.01.2019 DECISION» PPN-01-116 / 2019 Sofia, 28.10.2019

Commission for Personal Data Protection ("Commission" / "CPDP") composed of: members - Tsanko Tsolov, Tsvetelin

Sofroniev and Veselin Tselkov, at a regular meeting held on 11.09 .2019, based on Art. 10, para. 1 of the Personal Data

Protection Act in connection with Art. 57, paragraph 1, letter "e" of Regulation 2016/679 considered on the merits a complaint

with Reg. № PPN-01-116 / 30.01.2019, filed by G.I. against EK EOOD (EK). The administrative proceedings are by the order

of art. 38 of the Personal Data Protection Act (PDPA). The applicant informed that after the termination of his employment with

E.K. used the right of access to his personal data according to the provision of art. 26, para. 1 of the LPPD. With an application

dated 20.11.2018, addressed to E.K. in his capacity as controller of personal data, Mr. G.I. requested the provision of

information on paper on what personal data concerning him are processed, for what purposes, on what grounds and for what

period, including a wish to return the originals of two vocational training certificates held by the former his employer. As can be

seen from the delivery notice, the application was received on 21.11.2018. At the time of filing the complaint, the personal data

controller has not ruled on the application, nor has it sent the requested documents. The complainant asks the CPDP to

exercise its legal powers and to issue a mandatory order to the company to rule on the application of 20.11.2018, to provide

the required documents in original, as well as to impose a sanction on the administrator. In addition to the appeal, the decision

no. № ***, received as an uncertified copy with a cover letter ex. № ***, which denied access to personal data. Objections were

made that according to Art. 15 (3) of the Regulation, the copy of personal data is provided in the form of the relevant

documents. In addition, the provisions of Art. 5, paragraph 1, letter "b" and Art. 88, paragraph 1 of Regulation 2016/679 in

connection with Art. 25k, para. 2 and Art. 25a of the LPPD. A request was made for the presentation of proof for the delivery of

the originals of the documents upon termination of the employment contract and a request for the award of costs incurred. In

the conditions of the official principle laid down in the administrative process and in fulfillment of art. 26 of the APC, the person

against whom the complaint is directed has been notified for the commencement of the proceedings. The opportunity under

Art. 34, para. 3 of the APC for expressing an opinion with relevant evidence on the allegations presented in the complaint. The

Commission has received a reply for inadmissibility and unfoundedness of the complaint. The procurator considers the appeal

inadmissible, as it does not meet the requirements of Art. 30 of PDKZLDNA - it lacks a date. In addition, it was filed outside the

term under Art. 38, para. 1 of the LPPD and was filed against a person who is not a controller of personal data. Regarding the

unfoundedness of the complaint, it is stated in the first place that the concept of "copy of personal data" should not be equated with the concept of "copy of documents". The opposite in practice does not correspond to the idea of the nature of the information - subject to access under Art. 28, para. 1 ZZLD. An opinion of the CPDP is also indicated, according to which the right of access to personal data within the meaning of Art. 26, para. 1 in connection with Art. 28, para. 1 LPPD does not include the receipt of copies of documents created or stored by the administrator. Access to documents created in connection with the already terminated employment relationship should be carried out in accordance with the Labor Code and other regulations. Next, it is alleged that the complaint is unfounded, as within the period provided by law there is a ruling on the application with a decision of 26.11.2018, which issued a denial of access to personal data. The letter was sent by post to the address indicated in the application, but was returned as unsolicited by the recipient. Even if it is assumed that there is no decision of the administrator, due to the fact that the same has not come to the knowledge of the person, the procurator considers that the term under Art. 32, para. 4 of the LPPD is instructive and the ruling after it is not a significant violation that would distort the act to an extent that prevents the occurrence of the intended legal consequences. Attached to the opinion is decision no. № **** In connection with the statement in the opinion, by E.K. proof is required for sending a decision ref. № **** to the applicant. The required evidence has not been received by the CPDP. In order to exercise its powers, the Commission must be properly seised. 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 it is regular. The objection of E.K. for inadmissibility due to lack of date is unfounded. The complaint was received by the CPDP by hand, and it was registered in the system of the body, which testifies to the date of submission. The appeal is procedurally admissible - filed within the term under § 44, para. 2 of the TFP of LPPD by a natural person with a legal interest. The subject-matter is an allegation of infringements of the complainant's personal data and is directed against a controller of personal data. 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 of LPPD in connection with Art. 57, para. 1, letter "e" of Regulation 2016/679 deals with complaints against acts and actions of personal data controllers, which violate the rights of individuals under Regulation 2016/679 and LPPD. The objections for inadmissibility of the complaint, due to its submission outside the term under LPPD and lack of personal data controller, are unfounded. The complaint was filed on January 30, 2019. According to § 44, para. 2 of the TFP of LPPD for violations of the law and

Regulation 2016/679, committed before the entry into force of this law (02.03.2019), the deadline for referral to the Commission under Art. 38 is one year from the knowledge of the violation, but not later than 5 years from its commission. The application for access to personal data was submitted on November 20, 2018, and the answer to it is due within one month of receipt, from which the deadline for finding out and committing the violation is counted. As can be seen from the date of the complaint, the deadlines have been met. The complaint was filed against a personal data controller - E.K. Administrator of personal data within the meaning of Art. 4, item 7 of Regulation 2016/679 is a legal entity that alone or jointly with others determines the purposes and means for the processing of personal data. It is evident from the evidence presented in the file that the complainant is a former employee of the company, as well as the reference made for the social and health insurance of more than 100 individuals, makes the company a controller of personal data. In addition, the legal form of a trader-legal entity also implies the processing of personal data of individuals. In view of the above, at a closed meeting of the Commission held on 03.07.2019 the complaint was declared admissible and as parties to the proceedings were constituted: complainant G.I. and the respondent "E.K. "Ltd. The parties have been notified of the open meeting scheduled for September 11, 2019 for consideration of the dispute on the merits. From E.K. was required to provide evidence in support of his claim that the original documents had been handed over to the applicant upon termination of his employment. No evidence in this regard has been presented. At the hearing on the merits, the complainant was represented by a proxy, who supported the complaint and what was stated at the moment. He asks for the same to be respected and claims costs. Respondent - does not send a representative. Immediately before the hearing, a request was received from a procedural representative of EK, which supports the submitted answer and the circumstances set out in it. In the light of the above, the Commission has examined the merits of the complaint, finding it justified on the basis of the following: By Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to data and on the free movement of such data and on the repeal of Directive 95/46 / EC (General Data Protection Regulation, in short Regulation or Regulation 2016/679) and the Personal Data Protection Act (PDPA), the rules on the protection of individuals with regard to the processing of their personal data. The aim is to protect the fundamental rights and freedoms of individuals, in particular their right to the protection of personal data. The subject of the complaint is the right of access to personal data processed by an administrator. As can be seen from the evidence presented, on 20 November 2018 the applicant sent to E.K. request for access to personal data. Although referred to as a "request" indicating provisions of the LPPD, it has the character of a request

for access to personal data. Although at the time of submitting the request for access Chapter Five of the LPPD (Rights of Individuals - Art. 26 et seq.) Has not yet been repealed, at this time Regulation 2016/679 is already applicable, which regulates the same relations, with in view of which the Regulation should be applied as a normative act of a higher degree. According to Art. 15, para. 1 of Regulation 2016/679, the data subject has the right to receive confirmation from the controller whether personal data related to him are processed and, if so, to access the data and the information specified in letters "a" to "h". Paragraph 3 states that the controller shall provide a copy of the personal data that are being processed. The bill of lading submitted with the complaint testifies that the application was received by the administrator on 21.11.2018, Art. 12, paragraph 3 of Regulation 2016/679 obliges the personal data controller to provide the data subject with information regarding the actions taken with a request under Art. 15 of the Regulation, without undue delay and in any case within one month of receipt of the request. In case of complexity and number of requests, the deadline may be extended by another two months. If no action is taken on the requests, the data subject shall be re-notified, stating the reasons (paragraph 4). In the specific case there is no ruling and notification of the actions taken on the application for access to personal data, which is a violation of Art. 12 (3) of Regulation 2016/679. EK's allegation that there was a ruling by Decision № ****, which was sent to the applicant, is unproven. In the opinion of E.K. it is stated that the decision sent to the applicant was returned as unsolicited. As a result of this allegation, evidence was requested from the administrator in support of this allegation, but no such evidence was presented, which leads to the conclusion that the administrator's decision was made for the purposes of the administrative proceedings. In addition to the complaint, the content of the answer to the request for access to personal data, objectified in Decision № ****, which denied access to personal data, is also disputed.

The application for access to personal data consists of two parts.

The first part requires information about what personal data the controller processes, for what purposes, on what grounds and for what period. The required corresponds to the information that the data subject may request under Art. 15, para. 1 of Regulation 2016/679. As can be seen from decision № ****, the administrator indicated that such information was requested from him, but did not specifically respond to any of the requests. Art. 15 (1) of Regulation 2016/679 states that the controller should confirm whether personal data are being processed by the data subject and provide the information referred to in points "a" to "h", which has not been done in this case, with a view to which violates the provision of Art. 15 (1) of the Regulation.

In the second part of the application, the complainant requested that the administrator return all original documents containing

his personal data, including a Certificate of Completion of the "High Pressure Boiler Machinery III Degree" and a Certificate of Vocational Training "Steam and Water Heating Operator" part from the profession "Fireman". In this part there is a ruling from the administrator, which denies access, because the request does not request access to personal data, but requires access to documents.

In Art. 15 (3) of Regulation 2016/679 states that the controller provides a copy of the personal data that are being processed. In this case, original documents containing a copy of the complainant's personal data are requested. There is no reason for the administrator - former employer to keep these documents in the original, in view of which his refusal has violated Art. 15 (3) of Regulation 2016/679. EK's claim that the documents were returned upon termination of employment remains unproven by the company.

In the event of such infringements, the complaint should be upheld. The Commission has operational independence and, in accordance with the functions assigned to it, assesses which of the corrective powers under Art. 58, para. 2 of Regulation 2016/679 to exercise. The assessment is based on the considerations of expediency and effectiveness of the decision, taking into account the specifics of each case and the degree of impact on the interests of the individual - data subject, as well as 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 or stop the commission of an infringement, thus achieving the due behavior in the field of personal data protection. The administrative penalty "fine" or "property sanction" under Art. 58 par. 2, letter "i" has a sanction character. In applying the appropriate corrective action under Article 58, para. 2 of the Regulation shall take into account the nature, gravity and consequences of the infringement, as well as all mitigating and aggravating circumstances. The assessment of what measures are effective, proportionate and dissuasive in each case reflects the goal pursued by the chosen corrective measure - prevention or cessation of the violation, sanctioning of illegal behavior or both, as provided in Art. 58, para. 2, letter "i" of the Regulation.

For the violations under art. 15 (1) and (3) of Regulation 2016/679, the Commission finds that it should order E.K. under Art. 58 (2) (c) of the Regulation to comply with the data subject's requests to exercise his rights, which will put an end to the infringements and achieve the conduct due by the controller.

The Commission finds that in addition to the measure under Art. 58, paragraph 2, letter "c" of the Regulation for the violation under Art. 15, paragraph 1 and Art. 12, paragraph 3 of the administrator should be imposed an administrative penalty "property

sanction" under Art. 58 (2) (i) of the Regulation.

The motives for imposing an administrative penalty "property sanction" and its amount in accordance with Art. 83 (2) of the Regulation are the following:

Letter "a" - failure to rule on a request for access to personal data in time and failure to notify the data subject of the answer, as well as the lack of specific information due, prevents the data subject to exercise a number of other rights under Regulation 2016 / 679 - the right to withdraw his consent to the processing of his personal data, if it is based on this (under Article 7 of the Regulation), the right to request correction, deletion, portability of data, limiting their processing, objection to data processing for direct marketing, automated processing or profiling (Articles 16-22 of Regulation 2016/679), etc .;

Letter "b" - the violation was committed by a legal entity that does not form a fault;

Letter "c" - no damages have been proven in the course of the proceedings;

Letter "d" - the violation does not relate to failure to take technical and organizational measures;

Letter "e" - no breach of data security within the meaning of Article 33 of the Regulation or other related breaches;

Letter "e" - there is a partial ruling after the notification of the complaint filed with the CPDP, which, however, again does not meet the requirements;

Letter "g" - the violation is not for the processing of personal data, but for violated right of access;

Letter "h" - after referral to the supervisory authority by the data subject;

Letter "i" - no measures have been imposed under Art. 58, para. 2 of the Regulation or under LPPD before Regulation 2016/679;

Letter "j" - no approved codes of conduct;

Letter "k" - not established.

In the circumstances thus discussed, the Commission finds that the pecuniary sanction should be close to the minimum.

In the course of the proceedings, the applicant was ordered to pay the costs. In view of the merits of the action, the costs must also be upheld.

Thus motivated and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection
HAS DECIDED AS FOLLOWS:

1. Announces a complaint reg. № PPN-01-116 / 30.01.2019, filed by G.I. against EK EOOD, as well-founded;

2. For violation of art. 15, paragraphs 1 and 3 of Regulation 2016/679, orders on the grounds of Art. 58, paragraph 2, letter “c” of Regulation 2016/679 within 10 days from the entry into force of the decision of the CPDP the personal data controller “EK” EOOD to fulfill the requests of the data subject to exercise his rights under The Regulation, such as: provide the information under Art. 15, paragraph 1 of Regulation 2016/679 and return the required original documents under Art. 15 (3) of Regulation 2016/679. The CPDP should also be notified about the implementation of the order;
3. For violation of art. 12, paragraph 3 and Art. 15, paragraph 1 of Regulation 2016/679, pursuant to Art. 58, paragraph 2, letter “f” in connection with Art. 83, paragraph 5, letter "b" of Regulation 2016/679 imposes on the controller of personal data "EK" with UIC ****, registered office and address of management: *****, administrative penalty "property sanction" “In the amount of BGN 1,000 (thousand);
4. On the grounds of art. 144 of the APC in connection with Art. 78, para. 1 of the Civil Procedure Code respects in favor of G.I. the expenses incurred in the proceedings for representation in the amount of BGN 400 (four hundred), due from EK EOOD.

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.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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