

Home »Practice» Decisions of the CPDP for 2020 »Decision on appeal with registration № PPN-01-93 / 28.01.2019 Decision on appeal with registration № PPN-01-93 / 28.01.2019 DECISION» PPN-01-93 / 2019 Sofia, 21.02.2019 The Commission for Personal Data Protection (CPDP, the Commission) composed of, Chairman, Ventsislav Karadzhov and members: Maria Mateva and Veselin Tselkov at a regular meeting held on 12.12. 2019 and objectified in protocol № 50 / 12.12.2019, on the grounds of Art. 10, para. 1 of the Personal Data Protection Act (PDPA) in conjunction with Art. 57, § 1, b. "E" of Regulation (EU) 2016/679, considered on the merits a complaint with Reg. № PPN-01-93 / 28.01.2019, filed by V.M. against a financial institution (FI) and a postal operator (PO). The Commission for Personal Data Protection has been seised with a complaint Reg. The complaint states that on 14.11.2018 Ms. V.M. has visited the office of F.I. and has filled in an application for termination of the contract, enclosing a copy of the ID card (true with the original and signature) and a copy of the bank account, signed and stamped by the bank. It is described that the company's rules are such that the applicant sent the described documents by registered letter with acknowledgment of receipt to a branch of FI, address \*\*\*. On November 19, 2018, Ms. V.M. received a return receipt showing that the company had received the letter on 16 November 2018. One month after the applicant had not been paid the amount under the contract, she called FI's office, where she received information that the employee in charge of the post office has been fired and in order to receive the amount, she must fill in the application again and send again copies of ID card and bank account. He asked the Commission for help, as he was worried that he could not find the documents described and that someone might misuse the data from the original copy of his ID card and bank account. With a letter ex. № PPN-01-93 # 2 / 14.03.2019 F.I. has been notified on the basis of the provision of Art. 26 of the APC for the initiated administrative proceedings and the company is given the opportunity to express an opinion and provide relevant evidence. The opinion states that the applicant's application was received by the Company in January 2019 on site at the Company's office and is stored in accordance with the requirements of European and Bulgarian legislation on personal data protection and internal rules and procedures. of the Company for lawful processing and protection of personal data. The opinion regarding the allegation set out in the complaint that an employee of the Company accepted the postal item sent by the Complainant in November 2018, signing the delivery note (return receipt), is that this allegation is false and unfounded. It is described that as of November 2018, in the town of S., in F.I. There was no employee with the surname M .. It is also stated that from the evidence presented to the complaint, namely: indicated in what capacity (as what employee of the Company) he accepted the postal item and signed the delivery notice (return receipt). In addition, they emphasized that the delivery note in

question did not contain the signature of the person who received the postal item and did not certify that the documents containing personal data referred to by the applicant were in the postal envelope with the barcode № \*\*\*\*. They inform that the investigation conducted by the Company has not established other facts and circumstances relevant to the case, therefore at present we can not provide more information for the purposes of administrative proceedings. With a letter ex. № PPN-01-93 # 1 / 14.03.2019 P.O. have been notified of the initiated administrative proceedings and the company has been given the opportunity to express an opinion and provide relevant evidence. In response, an opinion was filed stating that a registered item with delivery notice (ID) and barcode № \*\*\*\*, with sender VVM, town of P. and recipient FI has been received for delivery at a post office \*\*\*. It was delivered the same day for delivery to the address. Registered shipment with ID and barcode № \*\*\*\* was delivered the same day to the recipient's address against a signature in the Inventory and an entry was made - "M." - security guard. They inform that since November 2018 the access to the companies in the building at address \*\*\* has been restricted to outsiders. The postal distributors from PS \*\*\*\* delivered the items with recipient FI to the security guard of the building - Mr. M .. With the restriction of access, the postal operator was placed outside the 3 possible hypotheses of item 44., , a ", " b "and" c "of the General Terms and Conditions of the contract with the users of the universal postal service and postal money orders, performed by P.O. ". They point out that, according to a complaint, there is no indisputable evidence that the consignment was not handed over by the security guard to an employee of FI. has arrived on purpose. The lack of information has been checked in the file system for registration of incoming mail, as well as by the insurer, but in no way refutes the undisputed delivery of the process shipment, although with some deviations from the rules caused by the restricted access regime. From the security form (OF) an opinion was expressed that in the period from October to July 26, 2019 a security guard with the surname M. worked at the site of FI, located in the town of \*\*\*\*\*, as all security guards were instructed not to accept shipments, and the job description shows that he was not assigned such an obligation. The considered complaint is fully compliant with the requirements for regularity, according to Art. 28, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature. The appeal was filed within the time limit under par. 44, para. 2 of the Transitional and Final Provisions of the LPPD by a natural person with a legal interest against competent parties - administrators of personal data within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679, given the fact that the latter themselves determine the purposes and means of processing personal data. Given the above and in view of the lack of prerequisites from

the category of negative under Art. 27, para. 2 of the APC, the appeal was declared admissible. The administrative body acts ex officio to clarify relevant facts and circumstances. The competence of the CPDP is the observance of the LPPD (of the provision of art. 12 of the LPPD). To rule after referral by natural persons indicates the inapplicability of the dispositive principle in the implementation of the Commission's activities. The specification of the subject of the violation is within the competence of the body in view of the evidence gathered in the file. In the present case, the complaint filed by V.M. is directed against a passively legitimized party - against F.I. Pursuant to the principle of ex officio and in view of the evidence gathered in the administrative file, the body was ex officio constituted as parties in the administrative proceedings, the applicant, V.M. and respondent parties - F.I., P.O. and interested party OF, in the capacity of data controllers. An open hearing has been scheduled to consider the complaint on the merits on 12.12.2019, of which the parties have been regularly notified and instructed to distribute the burden of proof in the process. According to Art. 10, para. 1 in connection with Art. 38 of the Personal Data Protection Act, when referring it, the Personal Data Protection Commission considers complaints against acts and actions of personal data controllers, which violate the rights of individuals under the LPPD, as well as complaints of third parties in connection with their rights under this law. According to the legal definition given in Art. 4, para. 1, item 1 of the Regulation "personal data" means any information related to an identified natural person or an identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more features specific to the natural, the physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. According to the administrative file, it was indisputably established that Ms. V.M. has sent a shipment to the company - recipient, FI, to the address: \*\*\*\*\* through P.O. As can be seen from the delivery notice \*\*\*\*\* , the consignment was received by a person with the surname M. on 16.11.2018. According to the administrative file it was established that an employee with the surname M. was appointed security guard to OF in the period from October to July 2019. As can be seen from the job description provided by the company, the security guards were not obliged to accept shipments. From the information provided in the administrative file, it was established that O.F. by order № \*\*\*\*\* they forbade the security guards to accept letters and parcels with the addressee, representative of the assignor / client or his employee, without the express permission of the IFO. It was indisputably established that the letter sent by the applicant, as sender, to F.I., as recipient, was by registered mail, with notice of delivery and barcode № \*\*\*\*\* , a service provided by P.O. that a registered item with a delivery note and barcode № \*\*\*\*\* has

been delivered to a person other than the consignee. It should be noted that according to Art. 43, b. "A" of the General Terms and Conditions of the contract with users of the universal postal service and postal money orders made by PO, it is stated that the delivery of registered mail, postal parcels and money orders is made personally to the recipient against signature. The recipient identifies himself with an identity document. To prove the delivery of registered postal items, parcels and money orders, the official forms reflect the three names, address and PIN of the recipient. From the open meeting of the Commission it was established that from P.O. no internal investigation has been carried out in the case, and the practice of delivering consignments to persons other than those indicated as recipients has been established.

In view of the above, the Commission considers that the complaint is well-founded with regard to P.O. for violation of the principle regulated by the provision of art. Art. 5, § 1, b. "E" of Regulation (EU) 2016/679, personal data should be processed in a way that ensures an appropriate level of security.

The Commission has the operational independence and, in accordance with the functions assigned to it, assesses which of the corrective powers under Art. 58, paragraph 2 of Regulation 679/2016 to exercise. In the specific case the corrective measures under letters "a" - "h" and letter "j" of Art. 58 (2) of the Regulation are applicable. The assessment is based on the appropriateness and effectiveness of the decision, taking into account the specifics of each case and the degree to which the interests of a particular data subject are affected, as well as the public interest. In determining the corrective power, the Commission took into account the fact that the violation is first for the administrator, took into account the fact that the present case concerns the delivery of registered mail, for which the order and requirements are an increase over non-registered letters. .O. no internal investigation was carried out in the case, as well as the fact that P.O. the practice of delivering consignments to persons other than those indicated as recipients has been established. In determining the type of sanction, the Commission also took into account the fact that P.O. does not fall within the definition of a small and medium-sized enterprise, determined by the provision of Art. 3, para. 1 of the Small and Medium Enterprises Act. In view of all the above, the Commission considers that it is appropriate and effective for P.O. to issue an order under Art. 58, § 2 (d) of Regulation (EU) 2016/679.

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

ANSWER:

1. Leaves a complaint with registration № PPN-01-93 / 28.01.2019, filed by V.M. disrespectful as unfounded in relation to the

financial institution and the security company.

2. Declares a complaint with registration № PPN-01-93 / 28.01.2019 as well-founded with regard to the postal operator for violation of Art. 5, § 1, b. "E" of Regulation (EU) 2016/679, personal data should be processed in a way that ensures an appropriate level of security.

3. On the grounds of art. 58, § 2, letter "d" of Regulation (EU) 2016/679 issues an order to the postal operator to bring its rules on personal data processing in line with the Regulation and to train employees who deliver registered items according to the universal service.

4. Deadline for execution of the order - three months from the entry into force of the decision, after which to notify the commission of the execution by presenting the relevant evidence.

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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Maria Mateva / p /

Veselin Tselkov / p /

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