

Decision on appeal with registration № PPN-01-447 / 12.06.2018 DECISION» PPN-01-447 / 2018 Sofia, February 18, 2019.

Commission for Personal Data Protection (CPDP) composed of: members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on January 16, 2019 ., objectified in Protocol № 2/2019, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA) and Art. 57, § 1, letter “f” of 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 on repeal of Directive 95/46 / EC (ORDP), considering the merits of the complaint Reg. № PPN-01-447 of 12.06.2018, in order to rule took into account the following: 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection has been seised with a complaint with registration № PPN-01-447 from 12.06.2018 filed by DP against PEAs with registration number ***, area of action of the Sofia City Court. In the complaint D.P. points out that on 08.02.2018 an employee of the PEA handed over an invitation for voluntary execution with ref. № **** from 01.02.2018 and two writs of execution of his neighbor from the first floor of the apartment building, with whom they were not on good friendly and good neighborly relations. The documents were not packed, which in turn provided free access to information contained in his PIN and those of ten other creditors for scheduled entry into possession with a specified address of the property, number and dates of cases, described amounts of money. On 30.05.2018 a notice was pasted on the front door with a message attached to it with ref. № **** dated 23.05.2018, thus providing free access to personal data relating to him and ten other persons, as well as information on increasing monetary obligations. According to DP with the actions for providing this personal information to the entire condominium a violation of Art. 18 and Art. 19 of the Code of Ethics of Private Enforcement Agents and ORD. Attached to the complaint are: AIP with ref. № *** from 01.02.2018, AIP with ref. № *** from 01.02.2018, writ of execution from 28.09.2016, writ of execution from 30.11.2017, application with ent. № *** dated 23.02.2018, message with ref. № *** dated 23.05.2018, notification under Art. 47 of the Civil Procedure Code of 30.05.2018. 1 and PPN-01-447 # 2 both from 06.07.2018 D.P. and PEAs are regularly notified of the initiated proceedings. With a letter with registration № PPN-01-447 # 3 from 01.08.2018 from the PEA, through the assistant PEA an opinion on the complaint was expressed. The latter states that what is stated in the complaint does not correspond to the objective truth. According to the PEA, the documents in the enforcement case № *** were handed over to a woman named by the debtor on the phone as the person to receive them, and the other documents were placed in a mailbox and not pasted as indicated. In

connection with the filed complaint and the opinion expressed on it, additional information and evidence were provided as follows: D.P. points out that after filing the complaint, on 02.07.2018 he found in his mailbox a new message with a notification attached to it by the PEA with ref. № *** of 06.06.2018, which was in support of the allegations made so far regarding incorrect service, dissemination of personal data and information, distribution of obligations, respectively unfit for execution writ of execution. This notice was prepared before the complaint was filed, and served on July 2, 2018 - a difference of 26 days. He points out that in this case the term for voluntary execution given to him by a notice with ref. № *** dated 23.05.2018, served on him on 30.05.2018, as he was given a new term for voluntary execution, as of 02.07.2018. MD, living at ****. He points out that he has no family relationship with this person, as well as good neighborly relations. According to her, she had accepted 2 pcs. writs of execution is 1 pc. AIP, for which she had signed a letter of surrender, which remained in the subpoena. Regarding the access to the residential building, ***** is provided with information that there is an iron front door, which is locked with bells with nameplates next to it to connect to each apartment in the building. Apartment № ** was located on the 3rd floor, and access to it was blocked by an iron door and a bell next to it. Message with ref. № *** from 23.05.2018 was pasted on the front door of the apartment № **, together with a notification from 30.05.2018 in the middle of the iron door on 06.06.2018 due to the absence of the residents of the country. Attached: letter with ent. № *** dated 13.07.2018, message with ref. № *** dated 06.06.2018, notification under Art. 47 of the Civil Procedure Code of 02.07.2018, the PEA states that AIP with ref. № *** dated 01.02.2018 was served on 08.02.2018 by D.M. - a summoner in the office of the PEA - a neighbor after a telephone conversation with the debtor. The latter agreed to receive them on his behalf. The invitation was served on ***** - permanent and current address of DP No other papers were served on M.D. Message with ref. № *** dated 23.05.2018 was not served personally on the debtor. He was not found at the address, and according to neighbors, it was found that he rarely visits the address, that he had a pawnshop, without information about its location. On May 30, 2018, a notification under Art. 47 of the Civil Procedure Code by D.M. He further clarified that conducting a telephone conversation with D.P. and his consent to be served on a third party is certified by the signatures of the donor and the recipient on the back of the invitation. The fact of receiving the invitation was confirmed by the applicant himself with a request with ent. № *** dated 23.02.2018 on the enforcement case - attached to the letter. Applies AIP with ref. № *** from 01.02.2018 and a receipt, as with a letter with registration № PPN-01-447 # 12 from 08.11.2018 are attached a message with ref. № *** dated 23.05.2018, receipt dated 30.05.2018, notification under Art. 47 of the Civil Procedure Code of 30.05.2018, AIP with ref. № *** dated 01.02.2018, receipt

dated 08.02.2018, writ of execution dated 28.09.2016, writ of execution dated 30.11.2017, application with ent. № *** dated 23.02.2018 in response to a letter with registration № PPN-01-447 # 6 dated 07.08.2018, BCPEA with letters with registration №: PPN-01-447 # 8 dated 16.08.2018. 2018 and PPN-01-447 # 11 of 19.10.2018 notifies the CPDP of the traffic and the results of the inspection carried out on the occasion submitted by DP complaint. Attach a reply and a letter with ref. № *** dated 19.09.2018. With a decision of the CPDP from a meeting held on 19.12.2018, objectified in Minutes № 48, submitted by DP complaint reg. № PPN-01-447 of 12.06.2018 was accepted as regular and admissible, as its content is in accordance with the requirements of Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, respectively Art. 29, para. 2 of the Code of Administrative Procedure (APC) - contains data about the complainant (full name, address), the nature of the request, date and signature; the complaint contains allegations of illegal processing of his personal data by the PEA, the latter having the capacity of personal data controller; the complaint was filed with a competent authority and within the statutory period (violations were committed on 08.02.2018 and 30.05.2018) by a person with legal interest, there are no negative prerequisites specified in Art. 27, para. 2 of the Administrative Procedure Code. The following parties have been constituted as complainants: D.P. and respondent PEA with registration № ***, area of action of the Sofia City Court and a date has been set for consideration of the complaint on the merits. With a letter with registration № PPN-01-447 # 19 (2018) dated January 10, 2019, the PEA through an attorney. E. - proxy, with a power of attorney attached, expresses an opinion on the merits of the dispute. He considers the complaint unfounded and unproven and asks the CPDP to reject it as such. Makes a request for the admission of a witness - DM, summoner, under the regime of bringing, to establish the circumstances concerning the legality of the served message and notifications and in particular: the fact that he had a telephone conversation with the applicant and that the latter gave explicit consent of AIP № *** from 01.02.2018 to be handed over to his neighbor - M.D. An open meeting was held on January 16, 2019, in accordance with the provisions of Art. 39, para. 1 of the PDKZLDNA, of which the parties have been regularly notified. The complainant did not appear and did not send a representative, the respondent was represented by a lawyer. **** by SAC, with a power of attorney presented in the file and at a meeting. He maintains the request for admission to the interrogation of DM, there are no requests for collection of other evidence. In essence, the lawyer. **** maintains the opinion expressed that the complaint is unfounded, considers that no violation of the LPPD was committed during the service of the notices. Given the request made by the respondent for the examination of the witness - DM, the request was granted and he was questioned as a witness at the

hearing. The Commission for Personal Data Protection, after considering the views of the parties in the context of the evidence gathered in the file, finds that the complaint is well-founded and as such the considerations set out below should be upheld. In the proceedings it is not disputable between the parties, and from the evidence gathered it is established that the applicant has the capacity of a debtor in enforcement case ****, instituted before the PEA, with registration № ***, area of SCC. It is also undisputed that to the debtor in the enforcement case and the appellant in the present proceedings were sent and served by the PEA: invitation for voluntary execution with ref. **** from 01.02.2018, writ of execution from 28.09.2016 issued by the Sofia City Court and writ of execution from 30.11.2017 issued by the Sofia City Court on 08.02.2018, on 08.02.2018, announcement with ref. № **** dated 23.05.2018 and the notification under Art. 47 of the Civil Procedure Code on 30.05.2018. It is not disputed that the invitation for voluntary implementation with ref. 1423 of 01.02.2018 were handed over to M.D. - a neighbor of the complainant, and the notification under Art. 47 of the Civil Procedure Code - by pasting them at the address of DP. The subject of the dispute in the specific case is whether during the service of the mentioned papers on the above-mentioned dates personal data for DP were revealed. of third parties and whether to the invitation for voluntary implementation with ref. *** from 01.02.2018 a writ of execution dated 28.09.2016 issued by the Sofia City Court and a writ of execution dated 30.11.2017 issued by the Sofia City Court were attached, and to the notification under Art. 47 of the Civil Procedure Code of 30.05.2018 - announcement with ref. № *** dated 23.05.2018. In connection with the above, it should be noted that the respondent in the proceedings processes data of DP, incl. personal, in connection with the enforcement case instituted before him and on the grounds of Art. 2, para. 1 of the Private Enforcement Agents Act has the capacity of personal data controller according to Art. 3, para. 2 of LPPD / Art. 4, § 7 of the ORD. As can be seen from the invitation for voluntary implementation with ref. 1423 of 01.02.2018, writ of execution dated 28.09.2016 issued by the Sofia City Court and writ of execution dated 30.11.2017 issued by the Sofia City Court is that they contain information (including three names, addresses, PIN), and in message with ref. № *** from 23.05.2018 and the notification under Art. 47 of the Civil Procedure Code (including three names and address) identifying DP and as such the information falls within the scope of Art. 2, para 1 of LPPD / art. 4, § 1 of the ORD. The handing over of the papers: Invitation for voluntary execution with ref. **** from 01.02.2018 by handing them over to the person M.D. - neighbor and the notification under Art. 47 of the Civil Procedure Code on 30.05.2018 by pasting it at the address of DP constitute actions for the processing of personal data under Art. § 1, item 1 of the RD of LPPD / Art. 4, § 2 of the ORD. Given the subject of the dispute of the appeal, which was referred to the CPDP, the relevant provisions concerning the procedure and

manner of service of documents in enforcement cases were considered, as the issues of regularity of service and legality of enforcement actions as outside the scope of the LPPD are discussed in the present proceedings. Based on the referring provision of Art. 43 of the Private Enforcement Agents Act, the service of summons, notices and papers shall be carried out under the conditions and by the order of art. 37 - 58 of the Code of Civil Procedure. Among the regulated methods of service of summons, notices and papers are: 1. personally to the addressee or through another person, 2. by applying the notice in the case or by pasting the notice, 3. by public announcement (Article 43 of the CPC). In view of the fact that the invitation for voluntary implementation with ref. 1423 of 01.02.2018 was served on another person - M.D. - a neighbor of the debtor, the provision of Art. 46 of the Civil Procedure Code. According to the cited provision, when the papers cannot be delivered personally to the addressee, they are served on another person who agrees to accept them. In this case it is not disputed that as of 08.02.2018 this is the person M.D. - a neighbor of the applicant, who signed the consent to receive the papers and that on that date the debtor was not found at the address. It is evident from the receipt for the service of the papers that it states that M.D. has talked to DP on the phone and that they had agreed to receive the documents and hand them over to him. The receipt does not mention the documents served on M.D. Information was requested from the respondent party as to whether the invitation for voluntary execution with ref. **** from 01.02.2018, writ of execution from 28.09.2016 issued by the Sofia City Court and writ of execution from 30.11.2017 issued by the Sofia City Court are served on the debtor and if served in what order and manner. It is also explicitly stated that no evidence is presented for the existence of a telephone conversation and the consent of DP for receiving papers from M.D. In response, the respondent attaches a message with ref. № *** dated 23.05.2018, receipt, notification under Art. 47 of the Civil Procedure Code, AIP with ref. № *** dated 01.02.2018, receipt, writ of execution dated 28.09.2016 issued by the Sofia City Court and writ of execution dated 30.11.2017 issued by the Sofia City Court. In this regard, it should be assumed that the said writs of execution were served on 08.02.2018 together with the invitation for voluntary execution with ref. **** from 01.02.2018 to 08.02.2018. As can be seen from the receipt attached to the invitation, despite the improper design of the same is that it indicates the service of documents (plural) to the neighbor - MD. The receipt does not indicate which documents were served, but given the fact that the respondent requested information on the procedure for serving the writs of execution and such information was not provided, it should be assumed that they were served together with the invitation on February 8, 2018. According to the complainant, the person to whom the papers were served - M.D. is his neighbor, living in an apartment № *** on the 1st floor of the apartment building where DP also lives. - ****,

have no family ties and good good neighborly relations. The complainant informed the CPDP that the front door of the apartment building in which he lived concluded that there were bells with nameplates next to it to connect to each apartment in the building. It is clear from the allegations in the complaint that consent to receive the documents from M.D. not available.

Given the allegations of DP and the distributed burden of proof in the proceedings, it should be assumed that the administrator does not prove the existence of such consent. In fact, the receipt dated 08.02.2018 contains a text stating that M.D. has had a conversation with DP that they have agreed to receive the documents and hand them over to him, but this does not give grounds to accept the thesis of the respondent, as the receipt in this part is not properly formed - no data regarding the date and time of the telephone conversation, the three names and the quality of the persons between whom it was conducted, the content of the conversation, incl. the consent given / the obligation to transmit / receive specific documents. In this sense, even if it is accepted on the basis of the certification made in such a way that on the specified date a conversation was held between D.P. and M.D. that D.P. has given consent to receive the documents from his neighbor, the question remains as to what documents he has agreed to be served with and whether he has been informed that the documents are served in a way that allows the neighbor to understand their contents. The above is not refuted by the testimony of the witness D.M. them. The witness stated that he remembered the case very well, as such cases were not common in his practice. D.M. points out that about 7-8 months ago in ****, which was his first visit to this address, he handed out an invitation for voluntary performance. He does not remember the person to whom the invitation was to be served, he lived on the 3rd floor, or whether the invitation had documents attached to it, incl. writs of execution. In this regard, he notes that sometimes the invitations are accompanied by writs of execution, other times - not. He points out that the front door was locked and while he was looking to ring his face from the balcony on the ground floor, a woman (can't remember the name) appeared and she told him: "I'll call him on the phone, he's not here." She called him on the phone, talked to him, explained to him, gave him D.M. and he talked to him and he also explained what it was about. According to the witness, the person stated "Okay, let him sign for you", in response to which D.M. he asked him to confirm this to the woman by handing her the phone, all of which took place through the balcony. He confirmed she had signed and D.M. handed her the document. He stated that he could not be sure that the person he had spoken to on the telephone was the debtor to whom the summons had been addressed. He points out that, as far as he remembers, he then pasted notices with another invitation or message on the front door of the block, because the person was not there. According to D.M. the notification contained data for three names and addresses, and in some messages and

subpoenas - and PIN. When pasting documents containing PINs, he placed the notice on top and pinched it in several places, then pasted the documents, thus keeping the PIN hidden. The witness also said that when he pasted only notices, people did not take him seriously, but when they received a summons or a message containing information about the amounts due, they went to see what it was about. The testimony of the witness does not establish and prove the fact that on 08.02.2018 a conversation was held with the applicant and that the latter gave consent to receive specific documents from M.D. Moreover, the witness himself stated that he had talked on the phone with a person whom he could not be sure was the addressee of the papers. For these reasons, it cannot be assumed that the administrator has proved the existence of consent according to § 1, item 13 of the Additional Provisions of LPPD / Art. 4 § 11 of the ORZD. Next, para. 2 of Art. 46 of the Civil Procedure Code indicates who are the other persons to whom summons, notices, papers may be served, namely: any adult from his home or who lives at the address, with exceptions: on the service of persons involved in the case as counterparty of the addressee or those who are interested in the outcome of the case or are explicitly stated in a written statement of the addressee. From the analysis of this provision, it follows that M.D. does not fall within the circle of "other persons" to whom service may be effected. In view of the above, it should be assumed that as of 08.02.2018 not only the existence of consent is established as one of the conditions for the admissibility of the processing of the applicant's data by handing them over to a third party, but also to any other of those contained in Art. 4 of LPPD / Art. 6 of the ORZD conditions, which violates the principle of legality under Art. 2, para. 2, item 1 of LPPD / Art. 5, § 1, b. "A" of the ORZD. With regard to the notification under Art. 47 of the Civil Procedure Code dated 30.05.2018, the provision of Art. 47 of the Civil Procedure Code. According to the cited provision, when the defendant cannot be found at the address indicated in the case for one month and no person who agrees to receive the message is found, the server serves a notice on the door or in the mailbox, and when he is not secured. access - at the front door or in a prominent place around it. When the mailbox is accessible, the service provider also places a notification in it. The impossibility to find the defendant at the address indicated in the case is established by at least three visits to the address, with an interval of at least one week between each of them, and at least one of the visits is in absentia. This rule does not apply when the server has collected data that the defendant does not live at the address, after a reference from the manager of the condominium, the mayor of the settlement or otherwise and has certified this by indicating the source of this data in the message. The notification states that the papers are left in the court office when the service is done through a court employee or a private bailiff, respectively in the municipality, when the service is done through its employee, and that they can be

received there within two weeks. from the affixing of the notification. Ordinance № 7 of 22 February 2008 approving the samples of papers related to service under the Civil Procedure Code (Promulgated SG No. 22 of 28 February 2008) approved the form and content of the sample notification under Art. . 47 of the Civil Procedure Code.

According to Art. 47 of the Civil Procedure Code and the information contained in the approved sample of the notification under Art. 47 of the Civil Procedure Code, this notice shall be affixed in certain places (on the door or the mailbox, and when access to them is not provided - on the front door in a visible place around it; when accessing the mailbox the same is placed in it). in the case of the door of an apartment № ** in the apartment building in which the applicant lives. According to Art. 47, para. 2 of the Civil Procedure Code, the notification states that they have been left in the court office and that they can be received there within a certain period by the addressee. It is evident from the receipt to the announcement that it states that a copy of the document and a notification under Art. 47 of the Civil Procedure Code are pasted on the specified date - 30.05.2018. The notification itself states that DP should appear within two weeks, starting from 30.05.2018 in the office of the PEA in connection with the enforcement case. Given the commented evidence, it should be considered proven that the notification under Art. 47 of the Civil Procedure Code, the communication was also attached. It should be noted that the testimony of the witness does not establish a conclusion other than the one indicated. The witness stated that after the invitation had been served (without specifying the time), he had pasted a notice with another invitation or message to the same person (without giving a name) at the same address. According to the applicant, on 30 May 2018, by gluing, he was served with a notification and a message from a private bailiff at the front door on the 3rd floor. The receipt states that they are glued to the front door without indicating whether it is the door of the building or the apartment. At the same time, it is stated that the server received information from neighbors that the person rarely visits the address, but from this data it is not possible to establish how the data was obtained - in front of the front door of the building or in the building itself. Therefore, it must be held that the applicant's allegation in this respect remains undisputed by the administrator.

In view of the fact that the provision discussed above does not provide for the affixing of the papers intended for service on the debtor, but only for notifying them that they are available at the PEA's office and that they can be obtained there in the definitions. term, with the fact of sticking the message to the data contained in the message is provided access to the residents of the cooperative.

In view of the above, it should be assumed that when processing the personal data of the complainant by the administrator

during the service of the Invitation for voluntary execution with ref. **** from 01.02.2018 with attached to it a writ of execution dated 28.09.2016 issued by the Sofia City Court and a writ of execution dated 30.11.2017 issued by the Sofia City Court on 08.02.2018. the principle of legality of art. 2, para. 2, item 1 of LPPD / Art. 5, § 1, item "a" of the ORD, as it has not been established and proved in the proceedings the existence of any of the ones indicated in Art. 4 of LPPD / Art. 6 of the ORZD conditions for the admissibility of processing in the performance of these actions, incl. consent of the data subject, and upon service of a notice with ref. № **** dated 23.05.2018 together with the notification under Art. 47 of the Civil Procedure Code on 30.05.2018 - the principle of reducing the data to a minimum under Art. 2, para. 2, item 3 of LPPD / Art. 5, § 1, item "c" of the ORD, as the provision of Art. 47, para. 2 of the Civil Procedure Code does not require affixing of the papers intended for the addressee.

On the other issues in the complaint, incl. the additions to it are not due to be pronounced, as they are outside the scope of the law and the regulation - for compliance with the deadline for voluntary implementation, for distributions of amounts, etc.

Based on the above and taking into account the fact that as of 25.05.2018 the General Regulation on Data Protection applies and in view of the provisions of Art. 94, § 2, according to which the references of the repealed Directive 95/46 / EC (whose provisions have been transposed into the Personal Data Protection Act - §1a of the Additional Provisions of the LPPD) are interpreted as references to the regulation, under Arg. of Art. 142, para. 1 of the APC and Art. 15, para. 2 of the LNA, the Commission for Personal Data Protection with 3 votes "for" and 1 "against" (V. Tselkov) finds the complaint justified and that as such it should be respected.

In view of the established violations on the basis of the above mentioned facts in the case and in accordance with the determined corrective powers of the supervisory body according to art. 58, § 2 of the ORD, according to the provisions of Art. 6 principle in the APC, as the most appropriate relevant measures for dealing with the violations, the commission considers as a violation of art. 2, para. 2, item 1 of LPPD / Art. 5, § 1, item "a" of the ORD on the grounds of Art. 58, § 2, b. "B" of the ORD issuing an official warning to the administrator and for violation of Art. 2, para. 2, item 3 of LPPD / Art. 5, § 1, item "c" of the ORD on the grounds of Art. 58, § 2, item "d" of the ORD order to the personal data controller to take into account the operations for personal data processing in the service of papers / summonses / notices by the order of art. 47 of the Civil Procedure Code to debtors in enforcement cases with the provisions of the Regulation, processing such data that are adequate, relevant and limited to what is necessary in view of the purpose of their processing. During an inspection in the

record keeping system of the CPDP it was established that there are no data for violations related to the processing of personal data by the administrator, ie. it concerns an incidental violation of the processing of personal data; there is no evidence of any damage suffered by the complainant; all papers are served on the latter; with regard to the first violation - the papers accepted by M.D. have been handed over to the applicant, and the second concerns the short period of time during which the notice was affixed to the door, which is why the measures appear to be effective, proportionate and dissuasive. Thus motivated and on the grounds of Art. 38, para. 2 of LPPD in connection with Art. 39, para. 2 of the PDKZLDNA, the Commission for Personal Data Protection

HAS DECIDED AS FOLLOWS:

1. Notice of complaint reg. № PPN-01-447 dated 12.06.2018 filed by DP against PEAs with registration № ***, area of action of the Sofia City Court as justified for the fact that in processing the data of the complainant on 08.02.2018 he violated the principle of legality under Art. 2, para. 2, item 1 of LPPD / Art. 5, § 1, item "a" of the ORD and of Art. 30.05.2018 - the principle of reducing the data to a minimum under Art. 2, para. 2, item 3 of LPPD / Art. 5, § 1, b. "C" of the ORZD.
2. In connection with item 1 of the decision and on the grounds of art. 58, § 2, b. 2, para. 2, item 1 of LPPD / Art. 5, § 1, b. "A" of the ORZD
3. In connection with item 1 of the decision and on the grounds of art. 58, § 2, item "d" of the ORD for committed violation under Art. 2, para. 2, item 3 of LPPD / Art. 5, § 1, b. "C" of the ORD orders the personal data controller PEA with registration № ***, area of SCC, to comply with the operations of personal data processing in the service of papers / summonses / messages in the order of Art. 47 of the Civil Procedure Code to debtors in enforcement cases with the provisions of the Regulation, processing such data that are adequate, relevant and limited to what is necessary in view of the purpose of their processing. The decision of the Commission for Personal Data Protection may be appealed before the Administrative Court of Sofia within 14 days of its receipt.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

O.M. Veselin Tselkov / n

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