Home »Practice» Decisions of the CPDP for 2020 »Decision on appeal with registration № PPN-02-31 / 24.01.2019 Decision on appeal with registration № PPN-02-31 / 24.01.2019 DECISION» PPN-02-31 / 2019 Sofia, 03.06.2020 Commission for Personal Data Protection ("Commission" / "CPDP") composed of: Chairman - Ventsislav Karadzhov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, on a regular basis meeting held on March 11, 2020, on the grounds of 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 Reg. № PPN-02-31 / 24.01.2019, filed by V.T. against “P. “EAD (briefly P.). The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The complainant informed that after applying for a job at P. in the summer of 2018 and not receiving a reply to his application, on 30 August 2018 he sent a letter to their official e-mail address requesting the deletion of his personal data. from their system, as well as from the systems of their representatives or third parties to whom they may be transferred. In the application he stated that he would like to receive confirmation when his personal data is deleted. After a long wait without an answer, on December 31, 2018 he sent an email again. In response, he received an email from Mr. KP, from which it was not clear whether his personal data had been deleted, stating that in principle all applications to them under the GDPR were processed and the data deleted from the company's system. , and that their company has no practice of responding to such emails, which also contain personal data. Mr. V.T. asks the CPDP to check whether his application has really been taken into account and whether his personal data has actually been deleted, as well as to assess whether it is legal for the company not to send a response to the application. E-mail correspondence is attached to the complaint. 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 replied that the complaint was unfounded. P. stated that the applicant's job application had not been received by him, but by a third party, a former employee of the company, who had been asked to recommend him as a suitable candidate. The company opposes the statement of Mr. VT that he did not receive a timely response to the request for deletion of personal data. This statement is not supported by the e-mail attached to the signal with text for deletion, as it does not contain the date 30.08.2018, as claimed by the data subject, and the date 21.01.2019. year, the company not only took into account the request for deletion of personal data, but responded immediately to Mr. VT, confirming the deletion of his personal data from the company's systems. A Protocol for deletion of personal data is

attached to the opinion. In order to exercise its powers, the Commission must be properly seised. The CPDP received an initiating document, called a "signal", which seeks protection of violated rights of the applicant, which is essentially a "complaint" within the meaning of Art. 36, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (SG, issue 10 of 2016). The considered complaint contains the obligatorily required requisites, specified in art. 30, para. 1 of the PDKZLDNA (SG, issue 10 of 2016), namely: there are data about the complainant, nature of the request, date and signature, in view of which the same is regular. 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. It is the subject of an allegation of unlawful processing of the complainant's personal data and is directed against a controller of personal data. The complaint was referred 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, paragraph 1, letter “e” of Regulation 2016/679 and Art. 38, para. 1 of the LPPD considers complaints filed by data subjects in violation of their rights under Regulation 2016/679 and LPPD. At a closed meeting of the Commission held on 05.02.2020, the complaint was declared admissible and as parties to the proceedings were constituted: complainant V.T. and the respondent “P. “EAD. The parties have been notified of the open hearing scheduled for 11.03.2020 to consider the dispute on the merits. The applicant did not appear at the hearing on the merits. The respondent shall be duly authorized by a procedural representative. He disputes the appeal and considers it unfounded. Presents an additional opinion. In view of the above, the Commission considered the complaint on the merits, accepting it as well-founded on the basis of the following: Regulation 2016/679 and the Personal Data Protection Act (PDPA) lays down rules regarding the protection of individuals with regard to the processing of personal data. their 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, in particular their right to protection of their personal data. The parties do not dispute that personal data were provided voluntarily for processing by the complainant to the administrator for the purposes of staff selection, which according to the administrator is an informal procedure - by recommendation of an employee of the company. From the information in the complaint and the correspondence with P. submitted to it, it is evident that on 30.08.2018 the complainant sent to the administrator the withdrawal of consent for the processing of his personal data and a request for their deletion. Due to lack of response, on 31.12.2018 an inquiry was sent to the administrator regarding the result of the submitted application. The communication between the complainant and the administrator took place between August and December 2018. In this period, Regulation 2016/679 (dated 25.05.2018) has

already been applied, but the amendments to the LPPD, made with SG, no. 17 of 26.02.2019, which should synchronize the domestic national legislation with the European one, have not been adopted yet. Therefore, at the time of submitting the request, the provisions for exercising rights under Chapter Five of the LPPD have not yet been repealed, although they have already been regulated by Regulation 2016/679. In this situation, they should apply the provisions of Community law - Regulation 2016/679, prescribed by a normative act of a higher rank. According to Art. 17 of Regulation 2016/679, the data subject has the right to ask the controller to delete personal data related to him without undue delay, and the controller has the obligation to delete personal data without undue delay in the presence of any of the grounds under letters "a" to " is' of the same article, unless there are any grounds for refusal under paragraph 3 of the same article. In this case, actions have been taken on the application and it is evident from the submitted protocol from 03.09.2018, the application has been accepted and the personal data have been deleted. In addition to taking action on the application, within one month of receiving the request, the personal data controller shall provide information to the applicant regarding the actions taken in connection with the request, according to Art. 12 (3) of Regulation 2016/679. In the present case, there is no reply to the applicant regarding the actions taken. This is provided only after a second request from the subject. P.'s allegation that the complainant was answered in time is unfounded, as the application is not from 30.08.2018, but from a later date - the second request from the complainant from 31.12.2018. which is from 03.09.2018, it is stated that the deletion is made at the request of the complainant, sent by email, ie. the request of 30.08.2018 was received by the administrator and it was accepted that the application was duly submitted. In view of the above, the personal data controller has taken action on the application for deletion of data under Art. 17 of Regulation 2016/679 within the statutory period, but in violation of Art. 12 (3) of Regulation 2016/679 has not fulfilled its obligation to notify the data subject of the actions taken. In the event of such an infringement, the complaint must be upheld. In addition to the above, P.'s legal representative stated that the company was ISO certified for information security. However, a violation has been committed. There is no dispute that the personal data were provided to the controller for processing by the complainant himself, albeit in an informal selection procedure. However, it is not clear how this data is processed - there is no policy for personal data processing, which indicates what personal data are processed, for what purposes, how they are processed, for how long they are stored (within Art. 25k of LPPD) and others. In view of the above, the controller should draw up clear rules for the processing of personal data in the selection of staff, including in specific situations such as the informal procedure in question. Apart from the above, there are no rules on how requests for exercising rights under Art. 15-22 of

Regulation 2016/679. On the one hand, according to Art. 37b, para. 2 of the LPPD, the applications for exercising rights can be submitted electronically in compliance with the relevant identification rules (eg with an electronic signature under the Electronic Document and Electronic Certification Services Act). On the other hand, according to Art. 12, paragraphs 2 and 6 of Regulation 2016/679, the administrator shall assist in the exercise of the rights under Art. 15-22 of the Regulation, but when there are reasonable concerns about the identity of the individual may request additional information for identification. If he is unable to identify the person, the administrator may refuse to consider the request addressed to him. In both cases, the administrator owes an answer to the applicant. In addition, the application itself should be registered in the registry of the administrator in order to comply with the principle of accountability under Art. 5 (2) of Regulation 2016/679 - i.e. there should be information that there has been an application from a data subject, what the request is and what action has been taken. In this case, the application was submitted without an electronic signature, but the administrator accepted it as appropriate and fulfilled it, but did not respond.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 Regulation 2016/679.

In addition to the above, according to Art. 10d of the LPPD, in exercising its tasks and powers in relation to controllers or processors of personal data, which are micro-enterprises, small and medium-sized enterprises, the CPDP should take into account their special needs and available resources. This should be taken into account when assessing whether to impose an administrative penalty "property sanction" instead of another corrective measure under Art. 58 (2) of the Regulation or in

addition thereto. Analysis of the published data of the company shows that within the meaning of Art. 3 of the Small and Medium Enterprises Act, the administrator is a medium-sized enterprise.

In view of the stated general requirements for determining a corrective measure, in this case there are the following mitigating circumstances - the violation is first for the administrator, the rights of one entity are violated, in addition actions on his application were taken and although not specific) that the applications have been reviewed and personal data deleted.

Given the above, the most appropriate measure aimed at preventing future violations is under Art. 58, para. 2, letter “d” of the Regulation - order to the personal data controller to comply with the processing operations with the requirements of the Regulation by preparing and submitting a policy for personal data processing in a personnel selection procedure and processing requests under Art. 15-22 of Regulation 2016/679, received electronically.

In case of non-observance of an order under Art. 58, paragraph 2 of Regulation 2016/679, a property sanction may be imposed under Art. 83 (6) of Regulation 2016/679.

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-02-31 / 24.01.2019, filed by V.T. for justified for violation of Art. 12 (3) of Regulation 2016/679;

2. On the grounds of art. 58 (2) (d) of Regulation 2016/679 orders the administrator "P." EAD within one month from the entry into force of the decision to prepare and submit to the CPDP a policy for processing personal data in the selection of staff and for administering requests for exercise of rights under Art. 15-22 of Regulation 2016/679, received electronically.

This decision can be appealed within 14 days of its service through the Commission for Personal Data Protection, before the Administrative Court Sofia - city.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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