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»Decision on the appeal with registration № PPN-01-62 / 31.01.2018 Decision on the appeal with registration № PPN-01-62 / 31.01.2018

ANSWER

№ PPN-01-62 / 2018

Sofia, March 22, 2019

The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 13.02.2019, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on admissibility a complaint reg. № PPN-01-62 / 31.01.2018, filed by V.Y.

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

The Commission for Personal Data Protection was seised with a complaint filed by V.Y. with allegations of illegal processing of her personal data for the purposes of additional mandatory pension insurance in the Universal Pension Fund "*****", managed by "Pension Insurance Company *****" AD.

The complainant informed that from a letter received by the Financial Supervision Commission, the same attached to the complaint, she established the misuse of her personal data and their use for the purposes of supplementary mandatory pension insurance. She claims that she did not sign the attached documents and that her personal data contained in them were used without her knowledge and consent. She considers that the rights granted to her by the LPPD have been violated and asks the Commission to investigate the case.

Attached to the complaint are uncertified copies of letters ex. № 93-00-890 / 07.07.2016 and № 93-00-888 / 07.07.2016, according to the list of the Financial Supervision Commission, addressed to the complainant.

In the conditions of the official beginning of the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, the Pension Insurance Company ***** AD required a written statement and relevant evidence.

In response, an opinion was expressed that the complaint was unfounded. The company informs about an application received by the applicant for participation in a universal pension fund, received by the Pension Insurance Company ***** AD, the same

submitted under Art. 4, para. 1 of Ordinance № 33 of the Financial Supervision Commission, through an insurance intermediary "ST" EOOD. They add that the application is accompanied and signed by the insured person a contract for additional mandatory pension insurance in the Universal Pension Fund "*****". They claim that the submitted documents comply with the mandatory conditions set out in the Ordinance, including the requirement for notarization of the signature of the insured person. They ask the Commission to disregard the complaint with arguments that they process the complainant's personal data lawfully, in accordance with the regulations in the field of supplementary pension insurance and the LPPD. In the course of the proceedings and given the need to clarify the case on the factual side and assess the admissibility of the complaint, the complainant requested information on the date of receipt of the documents attached to the complaint from the Financial Supervision Commission, namely letters ref. № 93-00-890 / 07.07.2016 and № 93-00-888 / 07.07.2016. Despite the two letters sent to the applicant in this regard, the same ones regularly received, as evidenced by the delivery notices, Ms V. J. refuses to assist the Commission. In this regard, and in view of the official principle enshrined in the APC, the Financial Supervision Commission requested the same information. In response, the administrative body informed that letters ex. № 93-00-890 / 07.07.2016 and № 93-00-888 / 07.07.2016 according to the FSC inventory "were received from V.Y., on 13.07.2016, as evidenced by a return receipt from the ID PS 1040 03LS8Q0 ', a certified copy of which is attached.

The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and 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 order to exercise its powers, the Commission must be properly seised.

The appeal shall contain the obligatory requisites, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration. There is information about the complainant, the nature of the request, the date and the signatures, which is why it is regular.

According to Art. 27, para. 2 of the Administrative Procedure Code (APC), the administrative body checks the prerequisites for the admissibility of the request with which it is seised. The preconditions are cumulatively listed, the presence of a precondition from the category of the negative ones (item 3) or the absence of a positive one (items 1, 2, 4, 5 and 6) is a condition for inadmissibility of the request.

The right of every natural person to refer to the CPDP for violation of his rights under the LPPD is a unilateral subjective testamentary right. According to Art. 38, para. 1 of the LPPD in case of violation of his rights under the LPPD, each natural person has the right to refer to the CPDP within one year of learning of the violation, but not later than five years from its commission. The time-limits are preclusive and their expiry precludes the Commission from being able to rule on the merits of the request.

In view of the cited provisions and the evidence gathered in the administrative file, it is necessary to conclude that the submitted by Ms. V.Y. an appeal is procedurally inadmissible.

The subject of the complaint is illegal processing of personal data of Mrs. V.Y. in connection with additional mandatory pension insurance in the Universal Pension Fund "*****", managed by "Pension Insurance Company *****" AD and submitted for this purpose documents - application **** for participation in a universal pension fund and the contract № *****, according to the inventory of "Pension Insurance Company *****" AD, evident from the content of which is that they contain personal data of the applicant in the amount of three names, address, unique civil number and Number of personal ID.

The materials in the file and the allegations made by the applicant testified that a copy of the procedural application and contract had been provided to Ms V.J. from the Financial Supervision Commission with letters ref. № 93-00-890 / 07.07.2016 and № 93-00-888 / 07.07.2016, according to the FSC inventory, addressed to the complainant.

From the analysis of the evidence gathered in the file and in particular the return receipt for the letters submitted by the Financial Supervision Commission, it can be concluded that Ms. V.Y. has learned about the violation for which she has referred to the CPDP, as of 13.07.2016 - date on which she received the documents from the FSC.

In view of this circumstance and in view of the fact that the complaint was filed with the Personal Data Commission on 31.01.2018, a year and a half after learning of the violation, it must be concluded that it is overdue, namely filed after the expiration of schedules in Art. 38, para. 1 of the LPPD preclusive one-year term from learning of the violation, which expired on 14.07.2017.

The overdue complaint is procedurally inadmissible for consideration on the merits, therefore the Commission for Personal Data Protection should leave it without consideration on the merits and terminate the initiated administrative proceedings.

Guided by the above and on the grounds of Art. 27, para. 2, item 6 of the APC, in connection with Art. 38, para. 1 of LPPD, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

Leave without consideration the complaint № PPN-01-62 / 31.01.2018, filed by V.Y., as procedurally inadmissible - overdue and terminates the initiated administrative proceedings.

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 /

Maria Mateva / p /

Veselin Tselkov / p /

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