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»Practice» Decisions of the CPDP for 2018

»Decision on appeal with registration № PPN-01-138 / 03.11.2017 Decision on appeal with registration № PPN-01-138 / 03.11.2017

ANSWER

№ PPN-01-138 / 2017

Sofia, April 23, 2018

The Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva at a meeting held on March 14, 2018, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on admissibility a complaint reg. № PPN-01-138 / 03.11.2017, filed by I.M.P.

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 IMP, in which allegations were made for illegal processing of his personal data by C.G.M. EAD in the case of their provision, without his knowledge and consent, to a third party - legal counsel DC, for whom the applicant alleges that she abused them by illegally using / providing them in the NAHD № ***** case according to the inventory of the Sofia District Court (SCC). , 135 s-v.

The applicant informed that he was a party - applicant in the cited case, and legal counsel D.C. is a procedural representative of the respondent in the case. He claims that legal adviser D.C. has presented as evidence in the case an act for establishing an administrative violation № ***** / 28.02.2008, which contains his personal data. She considers that her actions in the first place reveal abuse of official position and secondly - a violation of his rights under the LPPD, both on her part and on the part of C.G.M. EAD, for which she claims that as a controller of personal data "he did not store and destroy unnecessary information" and allowed the misuse of his personal data and their reuse.

The complainant wishes to sanction the personal data controller's misconduct.

Attached to the complaint is a certified copy of the Minutes of the court hearing held on 06.11.2015 on NAHD № ***** on the list of SRS and a reference for "issued" NP against I.M.P.

In the conditions of the official principle in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case, from "C.G.M." EAD required a written opinion

and relevant evidence.

In response, an opinion was expressed that the complaint was unfounded, alleging that the personal data of the complainant had been processed correctly and lawfully by both C.G.M. EAD and the procedural representative of the company and not the ones indicated by Mr. I.M.P. violations of his rights under the LPPD.

In the course of the proceedings and in view of the need to clarify the case on the factual side and assess the admissibility of the complaint, the complainant was asked to specify when and how he established the infringement which he had referred to the Commission. The deposit of Mr. I.M.P. answer № PPN-01-138 # 6 / 12.02.2018, however, is irrelevant to the issues of admissibility of the complaint, which is the reason why the complainant was repeatedly asked to know when he found the violation, and to facilitate it it was stated that specifies the month and year of learning.

In response and with a letter PPN-01-138 # 8 / 06.03.2018, Mr. IMP indicates that he established the violation in September 2015, at the first hearing in the case and presents a certified copy of the Minutes of a court hearing held on 04.09.2015 on NAHD № ***** on the list of SRS.

The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing these data, as well as control over compliance with the LPPD.

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 complainants, the nature of the request, the date and the signatures, which is why it is regular.

The appeal is procedurally inadmissible.

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 Mr. I.M.P. an appeal is procedurally inadmissible.

The subject of the complaint is illegal processing of his personal data contained in AUA № ***** / 28.02.2008, in the case of their provision by "C.G.M." EAD to legal counsel DC, as and their illegal processing by legal counsel DC, in her capacity as a procedural representative of the respondent in the case NAHDNe ***** according to the inventory of the Sofia District Court, 135 s.v., namely their illegal provision in the case with subject to the legality of a criminal decree issued in respect of Mr. I.M.P. and engaging his administrative and criminal liability for violation of the Ordinance on the terms and conditions for travel by public transport on the territory of Sofia Municipality.

It is evident from the evidence gathered in the case file and the allegations made by the applicant that in September 2015, at the first hearing in the case, the applicant in the case - Mr. I.M.P. has become aware of the infringement which he has referred to the Commission. Given this circumstance and in view of the fact that the complaint was filed with the Commission on 03.11.2017, two years after learning of the violation, it is necessary to conclude that it is overdue, namely filed after the expiration of the schedule in Art. 38, para. 1 of LPPD preclusive one-year term from learning of the violation, which has expired in 2016. It must be concluded that the complaint is overdue - filed one year after the expiration of the term for exercising the right under Art. 38, para. 1 of the LPPD.

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 reg. № PPN-01-138 / 03.11.2017, filed by IMP, 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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

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