

Decision on appeal with registration № PPN-01-657 / 08.08.2018 DECISION» PPN-01-657 / 2018 Sofia, 07.10.2019 The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 12.06.2019, on grounds of art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, filed a complaint Reg. № PPN-01-657 / 08.08.2018, filed by V.D. 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.D. against V.M. with allegations of improper dissemination of his personal data. The complainant claims that on 7 August 2018 V.M. placed on the window of his office, located on the ground floor in a residential building with address ****, a document containing his personal data - names and a unique civil number, as well as personal data of the house managers at ent. "A" and "B" in the building. He claims that the data are visible and accessible to an unlimited number of people, residents and visitors of the building, which houses several offices. Considers the actions of Mr. V.M. for illegal and asks the Commission to sanction his behavior in view of the lack of grounds for dissemination of personal data, including the lack of consent of the data subject. Relevant evidence is attached to the complaint - photographic material. In the conditions of the official principle laid down 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, by V.M. A written statement and relevant evidence were requested, but no such evidence was involved, despite the proper notification of Mr. V.M. for the proceedings and notifying him of the obligation to assist the administrative body in exercising control powers in the field of personal data protection. With received personally from Mr. V.M. letter PPN-01-657 # 8 / 09.10.2018 he was provided with a certified copy of the complaint and was given the opportunity to express an opinion on it and the obligation to present relevant evidence in the case. The instructions have not been complied with, which is why two more letters PPN-01-657 # 9 / 12.11.2018 and PPN-01-657 # 17 / 18.03.2019 were sent to the country with an explicit request for evidence and information on the date of placement, respectively removal, of the procedural application, the reasons for this, as well as to indicate in what capacity he disseminated the personal data of the complainant and what is his attitude to the property in which the application is placed. The complainant was informed that he owed assistance to the Commission in exercising the powers granted by the Personal Data Protection Act and the General Regulation on Data Protection. 83, § 5 (e) of the Regulation, which provides for a fine of up to EUR 20 000 000. As can be seen from the delivery notices, the letters

were returned in their entirety to the Commission, as unsolicited, and the instructions were communicated to the addressee under Art. 61, para. 3 of the APC with a notice uploaded on 19.03.2019 on the website of the Commission, given the unsuccessful attempt to contact the complainant by phone, reflected in Protocol № PPN-01-657 # 15 / 14.03.2019. The complaint contains the required details, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible, filed within the term under § 44, para. 2 of the Transitional and Final Provisions of the LPPD by a natural person with a legal interest against a competent party - a natural person - personal data controller within the meaning of Art. 4, para. 7 of EU Regulation 2016/679 given the fact that V.M. it determines the purposes and means with regard to the specific processing of the complainant's personal data. The complaint concerns the illegal distribution of personal data of the complainant in the amount of three names and a unique civil number by placing an application in which they are contained in a public place - the window of an office owned by the complainant, located on the ground floor of a residential building ***. It is referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1 of LPPD in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of personal data controllers, which violate the rights of data subjects related to the processing of personal data, Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern activities performed by the courts in the performance of their judicial functions. There are no exceptions under Art. 2, § 2, letter "c" of the Regulation, insofar as, although carried out by a natural person in the present case, the processing does not fall within the scope of the concept of purely personal or domestic activities. As can be seen from the content of the application, the same is dated 07.08.2018, with sender V.M. and the addressee of the Chief of 06 RU-SDVR. The application contained three names and a unique civil number of the applicant - Mr. VD, as well as personal data of Mr. NG. and I. The application concerns illegal access to the property of Mr. V.M. In this regard, the very submission of the application to the addressee of the Head of 06 RU-SDVR falls within the scope of the concept of data processing for personal purposes insofar as it concerns the exercise of constitutional rights of Mr. V.M. However, the same conclusion is irrelevant to the public dissemination of this data in the manner described in the subject matter of the complaint and the latter should not be considered as the processing of personal data for purely personal activity, much less for domestic activity. For the above reasons and due to the lack of negative prerequisites under Art. 27, Ia. 2 of the APC at a meeting of the Commission held on

12.06.2019 the complaint was accepted as regular and admissible and as parties in the proceedings were constituted:

complainant - V.D. and the respondent - V.M. The Commission considers that the evidence available in the file for the passive conduct of the respondent testifies to a violation by Mr V.M. of the provision of art. 58 § 1 (a) and (e) of the Regulation and its obligation to provide the supervisory authority with any information available to it in the performance of its investigative tasks. Mr. V.M. did not respond to the explicit request for evidence and information regarding the date of placement, respectively removal, the procedural application, the reasons for this, did not indicate in what capacity he disseminated the personal data of the complainant and what is his attitude to the property in which the application is placed. Despite being repeatedly given to Mr. V.M. orders and instructions for due assistance, he did not show any procedural activity, which led to a delay in the examination of the procedural complaint, given the fact that the administrative body does not have evidence in the possession of the respondent. At the time of the decision, there was the passive behavior of Mr. VM, which prevented the clarification of the case from a legal and factual point of view and the issuance of a final administrative act on the merits of the complaint. 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 carrying out its functions as a supervisory authority in the field of personal data protection, the Commission has the power to order the controller of personal data to provide any information requested by the authority in the exercise of its powers (Article 58, § 1 (a)). of the Regulation), as well as to receive from the personal data controller access to all the information he needs to perform his tasks. All persons who process personal data are obliged to assist the Commission in exercising its supervisory powers, and failure to comply with this obligation has been raised by the legislator in an administrative breach. In the present case, it is alleged that the applicant's personal data were illegally processed by V.M. is passively legitimized as a defendant in the proceedings and is constituted as a defendant, therefore he owes assistance in gathering evidence that is in his possession and is not in the administrative body. Obligation arising both from the above provisions of the Regulation and from Art. 36, para. 2 of the APC, according to which the parties in the administrative proceedings render assistance to the administrative body in collecting evidence and are obliged to present evidence that is with them and is not with the body. The controller of personal data has been duly informed of his obligation to assist the administrative body by presenting a written opinion and relevant evidence, but such are not involved. The

non-fulfillment of the instructions given by the CPDP constitutes a refusal to assist in exercising its powers to control the legality of the processing of personal data of the individual who referred the matter to the Commission. all facts and circumstances relevant to the proceedings and until the delay in ruling on the complaint referred to the Commission. In connection with the above, the Commission considers that there are grounds for engaging the administrative and criminal liability of V.M. for violation of Art. 58, § 1, letters “a” and “e” of the Regulation, expressed in the refusal to assist the CPDP in exercising its powers in connection with administrative proceedings on complaint PPN01-657 / 08.08.2018, namely non-granting access to the information he needs for the performance of his tasks and non-fulfillment of an order - instructions for its provision.

In the context of its operational autonomy, the Commission considers that, in view of the nature of the infringement found, the imposition of coercive administrative measures is inappropriate and the measures are inapplicable in the present case. administrative penalty, considering that the same will have an educational impact and will contribute to compliance with the established legal order.

In determining the amount of the administrative penalty, the Commission took into account the purpose of the penalty, which should have an educational, dissuasive and warning function, and not create economic difficulties for the controller of personal data who committed the infringement. Therefore, and given the fact that the violation is the first for the administrator, he considers that the amount of the administrative penalty should be below the average amount provided for this violation.

Guided by the above and on the grounds of Art. 38, para. 3 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

Pursuant to Art. 83, § 5, letter "e" of EU Regulation 2016/679 imposes on VM, with PIN *** from town **** a fine in the amount of BGN 1,000 (one thousand levs) for violation of Art. . 58, § 1, letters “a” and “e” of the Regulation, namely failure to provide access to information required by the CPDP for the performance of its tasks and non-compliance with an order - instructions for its provision in connection with the control powers of the Commission. complaint PPN-01-657 / 08.08.2018

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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