

Decision on appeal with registration № PPN-01-263 / 25.04.2018 DECISION» PPN-01-263 / 2018 Sofia, 01.08.2018 Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on June 27, 2018, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint № PPN-01-263 / 25.04.2018, filed by P.D.B. 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 P.D.B., in which allegations were made for illegal processing of her personal data by "M. EAD, currently A1B EAD, in the case of providing them without a legal basis to a third party - A.Y.I. The complainant informed that on 28 December 2017 in the office of "M. "EAD located in ***** concluded two contracts with a mobile operator - a contract for the use of a mobile service and a contract for the purchase of a mobile device brand SAMSUNG GALAXY J7 2017 GOLD, which contain her personal data and a copy of which received immediately after signing them. She claims that on April 21, 2018, she received a call on her personal phone number from E.G.B., who informed her that the contract concluded between Ms. P.D.B. and "M. EAD was given to the daughter of Mrs. E.G.B. - A.Й.И. from the town of K. The applicant added that at a meeting between the two ladies Ms E.G.B. handed over the relevant documents to her and informed her that on 28.12.2017 in the office of "M. EAD located in the town of ***** her daughter A.I.I. has entered into a contract with a mobile operator, an employee of which, together with the contract concluded between the parties, provided her with the contract concluded between the operator and Ms. P.D.B. The complainant considers that the actions of a mobile operator are in violation of the LPPD and asks the Commission to impose a sanction on the company, in its capacity of controller of personal data, for violation of Art. 23, para. 1 of LPPD, namely failure to take technical and organizational measures to protect her personal data, as a result of which they are provided to a third party - A.Y.I. No evidence was attached to the complaint. 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, a written statement was requested from the mobile operator. In response, an opinion was expressed PPN-01-263 # 2 / 16.05.2018 on the unfoundedness of the complaint, together with relevant evidence attached to it. The procedural representative of the company informed that on 28.12.2017 in the office of "M. EAD located in the town of ***** by the same employee of the company served both the applicant P.D.B. and A.Y.I. He added that an inspection carried out in the case had not established

the misuse of personal data of the said clients, but admitted that "what was described in the complaint of Ms. P.D.B. is a possible result of a technical error of the employee, when printing and completing the documents of the clients'. He claims that "such technical errors are possible in the daily work of employees in the store and can not be prevented by the measures of the administrator", in this regard, considers that there is no violation of LPPD by the company. 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 PDKZLDNA, 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 Art. 38, para. 1 of LPPD by a natural person with a legal interest. The subject of the complaint is processing by "M. EAD, currently and after a change in the Commercial Register dated 28.05.2018 with the name "A1B" EAD, of the personal data of the complainant contained in the contract concluded between the parties on 28.12.2017 for mobile services, in the case of their provision without legal basis of A.I.I. from the town of Kazanlak. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD / respectively Art. 55, § 1 of Regulation (EU) 2016/679, considers complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data, as there is no exception referred to in Art. 55, § 1 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities carried out by courts. The presence of a personal data controller is an absolute procedural prerequisite for the admissibility of the complaint. In the present case, the complaint was directed against A1B EAD, which, in view of the evidence gathered in the file and the statements made by the parties, undoubtedly has the capacity of a controller of personal data in respect of the complainant. At a meeting of the Commission held on 06.06.2018, the complaint was accepted as procedurally admissible and as parties to the proceedings were constituted: complainant - P.D.B. and respondent - "A1B" EAD, in its capacity of controller of personal data. The parties have been regularly notified of the hearing scheduled for 27.06.2018 for consideration of the complaint on the merits, and they have been instructed to distribute the burden of proof in the process. The applicant was informed of the Commission's decision to allow witnesses E.G.B. and / or A.Y.I., to establish the allegations set out in the complaint. In order to clarify the case on the legal and factual side, the parties requested additional written evidence. In response, the mobile operator provided a tabular report on the users - employees of the company who accessed

the data of the complainant and A.I.I., in the period in which the customers were served, indicating the reasons for access to the data and screen prints. from the company's system. At a meeting of the CPDP held on June 27, 2018, the complaint was considered on the merits. The parties - regularly notified, do not appear, do not represent themselves. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the Code of Administrative Procedure, requiring the existence of established facts, given the written evidence gathered and the allegations made by the parties, the Commission considers that considered on the merits of the complaint № PPN-01-263 / 25.04.2018 is unfounded. From the evidence gathered in the file it was established, and between the parties it is not disputed that the applicant is a subscriber of a mobile operator and between the parties on 28.12.2017 in the office of the company located in ***** concluded contracts for mobile services, which contain her personal data and a copy of which she received immediately after signing. It is not disputable, and it is evident from the evidence gathered in the file, that on the same date and at the same time in the same office of the operator was served another client of the company A.Y.I. According to the information provided in the file, the two ladies were served by various employees of the company reflected in the reference with user numbers ***, ***** and ***** - served by the applicant and an employee with user number *** **** - served by Mrs. A.Y.I. The applicant's allegations of unlawful provision of her personal data by the company to A.I.I. through provided on 28.12.2017 Mrs. A.Y.I. contracts concluded between the applicant and the mobile operator of the same date are unproven. The company disputes the applicant's allegations of unlawful processing of her personal data and although the company's opinion admits such a "possible result of a technical error of the employee, when printing and completing customer documents" it is incumbent on the complainant to prove his allegations. In this regard, Ms. P.D.B. was informed about the distribution of the burden of proof in the process and the possibility to engage additional evidence, including oral evidence in support of his allegations. Despite the instructions, such evidence is not involved, and from the evidence gathered in the file can not be concluded a violation committed by the controller of personal data, in view of which the complaint should be dismissed as unfounded and unproven. Guided by the above and on the grounds of Art. 38, para. 2, in connection with art. 10, para. 1, item 7 of the Personal Data Protection Act, the Commission for Personal Data Protection, HAS DECIDED: Dismisses as unfounded the complaint Reg. № PPN-01-263 / 25.04.2018 filed by P.D.B. . against A1B EAD. 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. CHAIRMAN: MEMBERS: Ventsislav Karadjov / n / Tsanko Tsolov / n / Tsvetelin

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