

Home » Practice » Decisions of the CPLD for 2019 » Decision on appeal with reg. No. PPN-01-31/22.08.2017 Decision on appeal with reg. No. PPN-01-31/22.08.2017 DECISION no. PPN-01-31/2018 Sofia, 11.01.2019 The Commission for the Protection of Personal Data (KPLD, the Commission) in composition, chairman - Ventsislav Karadjov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 13.12.2018 and objectified in protocol No. 47/13.12.2018, on the basis of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), examined the merits of a complaint with reg. No. PPN-01-31/22.08.2017, filed by K.K. Administrative proceedings are in accordance with Art. 38 of the Labor Code. The Commission for the Protection of Personal Data has been referred with a complaint reg. No. PPN-01-31/22.08.2017, submitted by KK, in which allegations of unlawful processing of his personal data by "D. N." Ltd. The complainant informed that he is an employee of "D.N." Ltd. On 20.07.2017, his employer served him with a request for explanations under Art. 193, para. 1 of the Labor Code (LC) and findings protocol dated 20.07.2017. On 21.07.2017 Mr. K.K. states that he gave the required explanations, together with a sick leave, in a commercial outlet located in the city of *****, a franchise store of a telecommunications operator (T.O.), using the occasion to pay a bill to an acquaintance of his. Mr. K.K. has found that the data in the fiscal receipt is according to invoice No. **** with user E.A. and contract No. ****, issued fiscal voucher No. *** with service person K.K. The case was reported to the executive director of T.O. K.K. considers that there is an illegal use of his personal account, as an employee in the position of "sales specialist", with which he processes the visible data of T.O.'s customers. He is asking for an investigation and an end to the vicious practices. Attached to the complaint as evidence is a complaint to the executive director of T.O. dated 21.07.2017 with a response for continued verification, two numbers of explanations with attached requests and findings protocols. By letter ext. No. PPN-01-31/2017#1 of 10.11.2017 the manager of "D.N." EOOD is notified on the basis of Art. 26 of the APC for the initiated administrative proceedings and the opportunity to express an opinion and provide evidence relevant to the case is provided. In response from "D.N." EOOD has filed an opinion, filed with Reg. No. PPN-01-31#5/28.11.2017. An opinion has been presented on the one hand about the inadmissibility of the appeal, due to the lack of legal interest for the appellant, given the fact that the appeal is for suspension of actions against illegal use of the official account of the person - K.K., and the official account was deactivated on 21.07.2017 at the request of "D.N." Ltd. Next, there are claims that the complaint is unfounded, given the fact that the business account "does not contain personal data". It is stated that only the relevant employee has a password to access the account, the employer has no right and never wanted the password of the relevant employee to be provided to him. They argued that if any

of the employees in the store had used the access of the applicant, then this could not have happened without the latter having provided it voluntarily, saying that "such a hypothesis" is devoid of logic, since each employee has his own account and it is not available to use someone else's account. By letters ext. No. PPN-01-31/2017#3 dated 10.11.2017 and PPN-01-31(17)#7 dated 15.06.2017 of T.O. - the company was given a deadline to express an opinion and apply relevant evidence in the case, a request was also made for the deactivation of K.K.'s account. The company informs that between "D.N. " EOOD and T.O. a franchise agreement has been concluded. According to the subject of the contract, the franchise partner is entrusted with the organization and management of the franchise store, and the contract lists all the basic rights and obligations of the partner, including regarding the protection of personal data. The employees of the franchise partner who will have the right to access the systems of T.O. receive a username and initial password for access, which is done with an express written request of the franchise partner to the Company. It is explained that the initial access password and username are issued and provided to the franchise partner, and it is the partner's responsibility to provide them only to the person for whom they are intended. The initial password provided by T.O. it should be immediately replaced by the user with another password known only to him. The company points out that the applicable rules explicitly state that "due to the confidential nature of the information contained in the programs, when granting /user/ access rights it is absolutely mandatory: employees work only with their users or do not provide passwords to other employees or outsiders'. Attached are two reports from the company's internal system, which show the request to deactivate the account of Mr. K.K. "*****" and the suspension of the applicant's access to the systems of T.O. on 21.07.2017. Attached as evidence: franchise agreement dated 12.06.2014. Between T.O. and "D.N. " EOOD, copy of power of attorney, copies of references from the internal system of "A1" EAD - 2 pcs. They consider the complaint unfounded The complaint of K.K. is fully compliant with the requirements for regularity, according to Art. 30, para. 1 of the Regulations for the activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA), namely: there are data on the complainant, the nature of the request, date and signature. The norm of Art. 38, para. 1 of the LLDP provides for a deadline for referral to the Commission - within one year of learning of the violation, but no later than five years from its commission. One year has not passed since the knowledge of the alleged violation or five years since its commission. The provisions provided for in Art. 38, para. 1 of the Labor Code, deadlines have been met. In Art. 27, para. 2 of the APC, the legislator binds the assessment of the admissibility of the request to the presence of the requirements specified in the text. The applicability of the Personal Data Protection Act is related to the protection of natural persons in connection with the

processing of their personal data by persons having the status of "personal data administrators". At a closed meeting of the Commission held on 07.11.2018, the complaint was declared procedurally admissible. Constituted parties: applicant - K.K. and defendants - "D.N." EOOD and T.O. in their capacity as administrators of personal data, regularly notified of the open meeting scheduled for 13.12.2018. The complainant appears in person, for "D.N." Ltd. is an authorized representative, with a power of attorney on file, for T.O. are authorized representatives with powers of attorney presented at the meeting. When preparing this decision, the change in the legal framework in the field of personal data protection in the period from the processing of the personal data to the ruling on the merits of the request submitted to the administrative body was taken into account. It is also consistent with the fact that from 25.05.2018 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data and for the repeal of Directive 95/46/EC (General Data Protection Regulation, the Regulation) governing the rules regarding the protection of natural persons in connection with the processing of personal data, as well as the rules regarding the free movement of personal data. It is also noted that according to Art. 288 of the TFEU "The Regulation is an act of general application. It is binding in its entirety and directly applicable in all Member States. According to Art. 15, para. 2 of the Law on Normative Acts "if a normative act contradicts a regulation of the European Union, the regulation shall apply". Given the absence of an express provision, I consider that the established relations, which are not pending and refer to legal facts and their consequences, which occurred before the implementation of the Regulation, should be assessed according to the substantive law that was in force at the time of their occurrence. In the specific case, such are the provisions of the GDPR in view of the fact that the legal facts and legal consequences related to data processing concern the period from 21.07.2017 to 22.08.2017, i.e. before the implementation of the regulation. The complaint is directed against unlawful processing of personal data of the complainant K.K. The complaint was referred to a body competent to make a decision - CPLD, which according to its powers under Art. Art. 10, para. 1, item 7 of the Labor Code, respectively Art. 57, §. 1, point "f" of Regulation (EU) 2016/679, considers complaints against acts and actions of the administrators of personal data, which violate the rights of natural persons related to the processing of personal data. The presence of a personal data administrator is an absolute procedural prerequisite for the admissibility of the complaint. In the specific case, given the provision of Art. 4, item 7 of Regulation (EU) 2016/679 and in view of the evidence gathered in the file, the conclusion is necessary that T.O. and "D.N." EOOD are administrators of personal data. According to § 1, item 10 of the Additional Provisions (DR) of the Corporate Income

Tax Act, a "franchise" is a set of industrial or intellectual property rights relating to trademarks, trade names, company signs, manufactured models, designs, copyright, know-how or patents provided for a fee to be used to sell goods and/or provide services. Given the stated and concluded franchise agreement, "D.N. EOOD does not have the status of a personal data processor within the meaning of Art. 24 of the ZZLD and § 1, item 3 of the DR of the ZZLD, regardless of the fact that in item 20 of the contract dated 12.06.2014, that "the franchise partner manages, manages and carries out commercial activity in the entrusted by T. O. franchise - stores on behalf of T.O. ". The cited regulations in the contract refer only to the commercial activity carried out by the franchise partner. As administrators of personal data, both companies (each on an independent basis) should comply with the provisions of the Polish Data Protection Act in the processing of personal data, regulating the obligations of the administrator, as principles , processing conditions, including those for taking the necessary technical and organizational measures to protect data from accidental or illegal destruction, or from accidental loss, from illegal access, modification or distribution, as well as from other illegal forms of processing according to the provision of Art. 23 of the Labor Code According to the legal definition specified in Art. 2, para. 1 of the Labor Code, respectively Art. 4, item 1 of Regulation (EU) 2016/679, which applies from 25/05/2018, personal data means information relating to an identified natural person or an identifiable natural person ("data subject") directly or indirectly, through an identifier such as name, identification number, location data, online identifier or by one or more characteristics specific to the physical, physiological, genetic, mental, mental, economic, cultural or social identity of that natural person.

From the evidence collected in the administrative proceedings, it was established that T.O. references from the internal system have been provided, from which it is clear that on 21.07.2017, the account of Mr. K.K. is deactivated, i.e. on the day of receipt of the information from "DN" EOOD.

From the rules provided by the TO, described as IT - infrastructure (hardware and software) security systems, it is clear that in item 7.2 and item 7.3, the rules for access to the electronic work systems are listed. It is described that when giving user access rights, it is absolutely mandatory that employees work only with their users and do not share their passwords with other employees or outsiders.

It is further described that the franchise partner and all its employees are responsible for safeguarding the confidentiality of personal as well as company information provided by customers, employees, shareholders and suppliers and to protect such data.

In view of the above, it follows that the complaint is groundless with regard to T.O., since the company has carried out the necessary technical and organizational measures, according to the provision of 23 of the Labor Code.

From the evidence gathered in the administrative file, it was established that the fact that the applicant - K.K. on 21.07.2017 he was not at work and was therefore objectively unable to use the account and password given to him by the company. It can be seen from the provided receipt with No. **** at 12:50:5 that the person's name is K.K. is written, as a service person, in view of which it follows that with regard to "DN" EOOD, the complaint is well-founded.

It is not in dispute in the case file that on 21.07.2018, "DN" EOOD issued a receipt *** at 12:50:54, in which the three names of the applicant appear, and that the company informed T.O. for the case, through an e-mail sent at 2:23 p.m. by K.A., and the e-mail was answered by T.O. on 21.07.2017 that all rights of K.K. are stopped.

Pursuant to item 21.10.2 of the franchise agreement concluded on 12.06.2014 between T.O. and "DN" EOOD, franchisee - the partner undertakes to ensure the maximum level of protection of T.O.'s systems by observing and ensuring compliance with the requirements specified in the information security policy and related instructions, rules and other documents. In this regard, and considering what was found in the administrative file, it follows that "DN" EOOD did not fulfill the obligation arising from the provision of Art. 23, para. 1 of the GDPR regarding taking technical and organizational measures to protect data from unauthorized access.

A request was made by the legal representative of "DN" EOOD for the award of costs for attorney's fees in the proceedings, to be assigned to the burden of the appellant, however, in view of the outcome of the dispute, the request for the award of costs should not be respected.

When determining the most appropriate corrective measure for the violation committed by the administrator "DN" EOOD, the following should be taken into account:

There is no evidence of damages suffered by the complainant, follow-up actions were taken by "DN" EOOD at the moment when the violation was detected, and that the violation was the first for the administrator "DN" EOOD.

In view of the above, the Personal Data Protection Commission ruled as follows

ANSWER:

1. Announces a complaint with reg. No. PPN-01-31/22.08.2017 filed by K.K. against a telecommunications operator and "DN" EOOD, as unfounded in relation to the telecommunications operator, given the fact that the company has taken the necessary

technical and organizational measures according to the provision of art. 23 of the Labor Code, respectively Art. 24 of Regulation (EU) 2016/679.

2. Announces a complaint with reg. No. PPN-01-31/22.08.2017 filed by K.K. against a telecommunications operator and "D.N" EOOD, for a justified in relation to "D.N" EOOD for violation of the provision of art. 23 of the Labor Code, respectively Art. 24 of Regulation (EU) 2016/679.

3. In connection with item 2 and on the basis of Art. 58, § 2, letter "d" of Regulation (EU) 2016/679 orders "DN" EOOD to comply with the personal data processing operations with the provisions of the Regulation by organizing the access and use of the accounts of each employee a way not allowing the use of an account by a person other than the one to which the latter belongs.

The decision is subject to appeal within 14 days of its delivery, through the Commission for the Protection of Personal Data before the Administrative Court - Sofia - city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsvetelin Sofroniev /p/

Maria Mateva /p/

Veselin Tselkov /p/

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