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» Decision on appeal with reg. No. PPN-01-481/21.06.2018 Decision on appeal with reg. No. PPN-01-481/21.06.2018

ANSWER

No. PPN-01-481/2018

Sofia, 11.01.2019

The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Ventsislav Karadzov and members - Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva, at a regular meeting held on 07.11.2018, on the basis of Art. 10, para. 1, item 7 of the Personal Data Protection Act, examined the merits of a complaint with reg. No. PPN-01-481/21.06.2018 filed by V.S. and B.S. against the Municipality of P. and postal operator (P.O.).

Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA).

On the occasion of a complaint filed by the complainants in the Municipality of P., on 03.05.2018, they found that their personal data was provided by the administration of the municipality of P.O. From P.O. they claim to have left the mails attached to the front yard door, which, in addition to three names and addresses, contain documents with information about their properties related to the filed complaint.

Mr. B.S. and Mrs. V.S. declare that they did not sign for and receive the shipments and did not consent to their personal data being processed and provided to third parties. They believe that the presence of their personal data in these documents and their provision to third parties constitutes a violation of the rights granted to them by the Personal Data Protection Act.

A copy of the Resolution on refusal to initiate pre-trial proceedings is attached to the appeal. In the conditions of the official principle inherent in the administrative process and the obligation of the administrative body to ex officio collect evidence and clarify the actual facts relevant to the case, the persons against whom the complaint is directed are notified on the basis of Art. 26 of the APC for the initiated administrative proceedings with letters ex. No. PPN-01-481/2018#1/20.07.2018 to the Municipality of P. and ex. No.

PPN-01-481/2018#2/20.07.2018 to P.O. An opportunity to express an opinion with relevant evidence is provided.

The Commission received an opinion from the Municipality of P. with reg. No. PPN-01-481#3/30.07.2018 that the complaint was unfounded.

The Municipality of P. informs that during an inspection of the case it was found that the postal items addressed to B.S. and V.S. were sent by the municipal administration to the specified persons through a licensed P.O. as registered mail with return receipts, each wrapped and sealed in a white opaque envelope labeled with the recipient's name and address. They consider that there is no illegal processing, as there is a basis and purpose for the same according to Regulation 2016/679.

A copy of the daily inventory of correspondence shipments of the Municipality of P. dated 04/25/2018 is attached to the opinion.

From P.O. express an opinion with Reg. No. PPN-01-481#5/03.08.2018 that the appeal is groundless.

The manager informed that the postal items cited by the complainants were requested for delivery by the sender Municipality P. and were delivered to the address of the recipients. The indicated shipments are from the scope of the universal postal service and are delivered in fulfillment of a statutory obligation established under the Postal Services Act. In order for the postal service to be carried out, it is necessary to indicate the sender and recipient data, as well as the address of the sender and the recipient, as a minimum content on each shipment. Otherwise, it would be impossible to provide this service.

There are no attachments to the opinion.

In connection with the Resolution on refusal to initiate pre-trial proceedings No. 1211/2018 submitted to the appeal, according to the inventory of the District Prosecutor's Office, the city of P., the prosecutor's office requested the written information collected on the file.

In order to exercise its powers, the Commission should be validly referred.

The considered complaint contains the required details specified in Art. 30, para. 1 of the Rules of Procedure of the Commission for the Protection of Personal Data and its Administration, namely: there are data on the complainants, nature of the request, date and signature, in view of which the complaint is regular.

The complaint is procedurally admissible - filed within the period under Art. 38, para. 1 of the Labor Code of Natural Persons with a Legal Interest. The subject of the complaint is an allegation of unlawful processing of personal data of the complainants and is directed against personal data controllers. The complaint was referred to a body competent to rule - the Commission for the Protection of Personal Data, which examines complaints against acts and actions of the administrators of personal data that violate the rights of natural persons under the GDPR and Regulation 2016/679.

At a meeting of the Commission held on 10.10.2018, the complaint was declared procedurally admissible and the following were constituted as parties to the administrative proceedings: complainants - V.S. and B.S., and as the defendant – Municipality P. and P.O. In order to clarify the case from a factual point of view, the contents of the shipments described in the complaint have been requested from the Municipality of P. The parties are regularly notified of the Commission meeting scheduled for 07.11.2018 but for consideration of the appeal on its merits.

At the held open session, the appellants did not appear, did not represent themselves.

The defendant – for the Municipality of P. and P.O. there are procedural representatives who challenge the complaint as unfounded. The Municipality of P. presents a copy of the shipments, as well as a contract for postal services with P.O.

In the thus established factual situation, the Commission examined the complaint on its merits, accepting it as partially justified based on the following conclusions:

When considering the complaint, it should be taken into account that the processing is a one-time action, carried out and completed before the implementation of Regulation (EU) 2016/679 of 25.05.2018.

Regulation 2016/679 and the Personal Data Protection Act regulate the rules regarding the protection of natural persons in connection with the processing of their personal data. The aim is to guarantee the inviolability of the person and private life by ensuring the protection of natural persons in case of unlawful processing of the personal data related to them in the process of free movement of data.

According to the legal definition given in Art. 2, para. 1 of the GDPR, personal data is any information relating to the natural person that is identified or can be identified directly or

indirectly through an identification number or through one or more specific signs. In the sense of the mentioned provision, the documents contained in the parcels, three names, address and uniform social security numbers, have the quality of personal data for the applicants, since through them Mr. B.S. and Mrs. V.S. can be undeniably individualized. The conditions under which the processing of personal data of natural persons is permissible are defined in Art. 4 of the Labor Code. The processing should be carried out in the presence of at least one of the alternatively specified conditions, which is a prerequisite for the legality of the processing. In order for there to be lawful processing of personal data, the same should be carried out in strict compliance with the principles for their processing referred to in Art. 2, para. 2 33ЛД

When delivering the parcels to the courier, the Municipality of P. processed the personal data of the complainants on the basis of Art. 4, para. 1, item 6 of the LLPA - the processing is necessary for the exercise of powers granted by law to the administrator, namely - preparation of a statement of findings under the Law on Territorial Planning and sending it to the persons who can familiarize themselves with it and file an objection. In accordance with Art. 142, para. 1 APC – an identical condition for admissibility of processing is provided for in Art. 6, par. 1, letter "e" of Regulation 2016/679.

As can be seen from the presented daily inventory of correspondence shipments dated 25.04.2018, the shipments to the complainants were requested by the Municipality as registered mail with delivery notice. Registered mail with delivery notice is delivered personally to the addressee or a member of his household, therefore the Commission assumes that the controller has taken the necessary technical and organizational measures to protect the data.

P.O. has processed the personal data on the basis of Art. 4, para. 1, item 1 of the Postal Services Act – for the fulfillment of the legally established obligations specified in the Postal Services Act. In accordance with Art. 142, para. 1 APC, an identical condition for admissibility of processing is provided for in Art. 6, par. 1, letter "c" of Regulation 2016/679.

As it was stated, the shipments were claimed by the Municipality of P. as registered, but instead they were delivered as non-registered mail due to a technical error made by the serving courier, as evidenced by the information collected in the prosecutor's file.

Registered mail is a type of personal data protection, as it is delivered against a personal signature of the person or a member of his household. According to Art. 1, para. 1 of the Contract for postal services concluded between the Municipality and the courier, the postal operator has agreed to provide postal services to the user (Municipality of P.) with additional services - "recommendation" and "declared value", which in this case was not complied with by P.O.

Thus, the personal data administrator has not taken the necessary technical and organizational measures under Art. 23, para. 1 of the GDPR in order to protect the data from accidental or illegal destruction, from accidental loss, from illegal access, modification or distribution, as well as from other illegal forms of processing. In accordance with Art. 142, para. 1 of the APC, the administrator's obligation to take the necessary technical and organizational measures is also provided for in Art. 24 of Regulation 2016/679, which is why the responsibility for violating these requirements has not been waived.

In the case of the violation found in this way, the complaint should be upheld in relation to P.O. The Commission has operational independence, assessing which of its corrective powers under Art. 58, par. 2 of Regulation 2016/679 to implement. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be enacted that protects to the fullest extent

