

Decision on appeal with registration № PPN-01-100 / 09.10.2017 DECISION» PPN-01-100 / 2017 Sofia, 03.08.2018

Commission for Personal Data Protection (CPDP, Commission) composed of members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 30.05.2018 and objectified in the protocol № 25 / 30.05.2018, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered on the merits a complaint reg. № PPN-01-100 / 09.10.2017, filed by I.S.I. against the National Construction Control Directorate (DNCC) for violating the LPPD. The administrative proceedings are by the order of art. 38 of the LPPD. The Commission for Personal Data Protection was seised with a complaint filed by I.S.I. alleging that a message № \*\*\*\*\* of the DNSK was addressed to her and pasted on the front door of her permanent address. After an inspection by the applicant at the DNC, Ms I.S.I. a transcript of an act for establishing an administrative violation was handed over № \*\*\*\*\*. The act states that "in his capacity as a designer in the part of water supply and sewerage under construction" Construction of a sheep farm with a capacity of 400 pcs. sheep ", II has prepared a project for water supply and sewerage in non-compliance with the basic requirements for hygiene. The applicant's allegations were that she did not have the qualifications required for the construction (construction and plumbing designer) and that she had never been involved in such activities and that she had not been to V. Moly to have the necessary inspection checked for illegality. acquisition and use of her personal data and to take appropriate action. 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 with a letter ex. № PPN-01-100 (17) # 2 / 08.12.2017 of the CPDP, the head of the DNSK was given a deadline for a written opinion and presentation of relevant evidence. In response, an opinion was filed, registered with Reg. The Chamber of Engineers in Investment Design with Reg. № \*\*\*\*\* of Eng. I.S.I. the website of the Chamber of Engineers in Investment Design. It is alleged that the commission of the administrative violation was established on the basis of a copy of part of the investment project under Part Vik provided by the Municipality of V., during the verification of the construction permit. "On the front page of the project part it is stated that the project was prepared in 2016, and in 2016 is the validity of the attached certificate of competency reg. № \*\*\*\*\*, issued by KIIP." In connection with the established violation, data from the Unified System for Civil Registration and Administrative Services of the Population (ESGRAON) were requested. The opinion states that the municipality of V. provided information which shows that the national database of ESGRAON contains I.S.I. It is also stated that the erroneous addressing of the act for establishing an

administrative violation in independent circumstances by the employees of RO "NSK" - V. to RDNSK - SZR was promptly remedied by terminating the initiated administrative penal proceedings against Ms. I.S.I. 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 with a letter ex. № PPN-01-100 (17) # 1 / 08.12.2017 of the CPDP, the District Prosecutor's Office V. requested information about the course and movement of filed by Ms. I.S.I. complaint, given the establishment of the presence or absence of the prerequisites under Art. 54, para. 1, item 5 of the Code of Administrative Procedure (APC). With a letter registered with Reg. the applicant had nothing to do with the described construction, much less acted as a designer, and the activities in the latter direction were carried out by another person - I.S.K. from the city of Sofia, which at the time of drafting the project bore the surname I. Due to marriage. Complaint reg. № PPN-01-100 / 09.10.2017 contains the obligatory required 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 (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. According to Art. 38, para. 1 of the LPPD in case of violation of his rights under the LPPD, each individual has the right to refer to the Commission for Personal Data Protection within one year of learning of the violation, but not later than five years from its commission. The complaint was filed within the term of art. 38, para. 1 of LPPD and is admissible. In Art. 27, para. 2 of the APC, the legislator links the assessment of the admissibility of the request with the presence of the requirements specified in the text. The applicability of the Personal Data Protection Act is related to the protection of individuals in connection with the processing of their personal data by persons having the capacity of administrators of personal data within the meaning of the legal definition of Art. 3 of the Act. On 09.05.2018 of the Commission, the complaint was accepted as procedurally admissible and as parties in the proceedings were constituted: complainant I.S.I., respondent - the Head of DNSK and municipality V., personal data controllers. The parties have been regularly notified of the hearing scheduled for 30.05.2018 for consideration of the appeal on the merits, the complainant does not appear, does not represent the Defendant, sends a representative. The procedural representative of the DNCK expressed the opinion that an error had been made with regard to the names of the applicant and the natural person I.S. - I., who actually has a design qualification. It is stated that this lady (I.S.I. - I, who has design qualifications) with these three names actually corresponds to the applicant, who has the same three names. It was also explained that the DNCK has the legal authority to request a PIN from ESGRAON. In this way, the DNC on the PIN drew up an act of I.S.I., the lady who is the

complainant in the present administrative proceedings. After filing her complaint, the DNC found that there was some mistake. Meanwhile, I.S. - the person with design qualifications is divorcing, which has led to confusion between the two families. It is also stated that the personal data of Ms. I.S.I. pursuant to Art. 4, para. 1, item 1, for fulfillment of a normatively established obligation of a personal data controller, in the presence of an established administrative violation under the Spatial Development Act and the by-laws on its application. It is believed that the personal data of Ms. I.S.I. have been collected and processed lawfully and in good faith, in accordance with the requirements of Art. 2, para. 2 of LPPD, for specific precisely defined and legal purposes. 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 control over compliance with the Personal Data Protection Act. Given the entry into force on 25.05.2018 of Regulation (EU) 2016/679, it should be noted that according to Art. 288 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 (LNA) "if a normative act contradicts a regulation of the European Union, the regulation shall apply". The provision of Art. 4 of LPPD does not contradict Regulation (EU) 2016/679, as in Art. 6 of Regulation (EU) 2016/679 the hypotheses under which the processing of personal data is admissible are identical to those in Art. 4 of the LPPD. According to the provision of art. 10, para. 1, item 7 of LPPD, respectively Art. 57, §. 1, item "e" of Regulation (EU) 2016/679, when referring it, the Commission for Personal Data Protection considers complaints against acts and actions of personal data controllers, which violate the rights of data subjects. Since not every person who processes personal data has the quality of "personal data controller" with the provision of Art. 3, para. 1 and para. 2 of LPPD, respectively Art. 4, item 7 of Regulation (EU) 2016/679 gives a legal definition of the term. According to the legal definition of Art. 2, para. 1 of the LPPD personal data are any information relating to a natural person who is identified or can be identified directly or indirectly by identification number or by one or more specific features. The names, address and unique civil number of the individual undoubtedly have the quality of personal data, and their provision and use are actions for data processing within the meaning of § 1, item 1 of the Additional Provisions of LPPD and should be carried out in compliance with the provisions of LPPD. In the provision of art. 4, para. 1 of the LPPD defines the conditions, in the presence of which the processing of personal data is admissible. The legislator has accepted that the processing of personal data of individuals should be carried out in the presence of at least one of these conditions, which is a prerequisite for the lawfulness of the processing. From the evidence gathered in the course of the administrative proceedings, it was indisputably established that the DNC had processed

personal data - three names, a unique civil number and the applicant's address. It is not disputed in the case file, but also between the parties, that Ms. I.S.I. Administrative penal proceedings have been instituted, objectified in an act for establishing an administrative violation № Bp-32 / 30.08.2017, terminated by resolution № BP-32-C3P-21 / 15.11.2017. The parties do not dispute that the notice was pasted at the front door of the applicant's permanent address. It is evident from the content of the communication that it contains the applicant's full name and address.

The use of personal data is an action for their processing and should be carried out in the presence of any of the conditions for admissibility of the processing specified in Art. 4, para. 1 of LPPD, in compliance with the principles specified in Art. 2, para. 2 of the LPPD.

In the specific case, the notification / communication was addressed to Ms. I.S.I. pursuant to § 4, para. 1, sentence 2 of the Supplementary Provisions (RD) of the Spatial Planning Act (SPA).

The APC lacks provisions regarding the content of communications and notifications, and the provision of Art. 144 of the APC referring to the Civil Procedure Code (CPC) and in particular to Art. 47 and Art. 55 of the Civil Procedure Code and Ordinance № 7 of 22.02.2008 of the Minister of Justice for approval of the samples of papers related to service under the Civil Procedure Code.

According to Art. 4 of Ordinance № 7 of 22.02.2008 for approval of the samples of papers related to the service under the Civil Procedure Code, the form and content of the sample notification under Art. 47 of the Civil Procedure Code. In accordance with this template, the three names and the address of the natural person who is the addressee of the notification shall be entered in the notification. This ensures the identification of the individual for the purposes of notification.

With regard to the processing of personal data for the preparation of an act establishing an administrative violation of Ms. I.S.I. it is noted that they have been processed without legal basis.

From the evidence provided in the proceedings it is evident that the initiated administrative penal proceedings were terminated by resolution № VR-32-SZR-21 / 15.11.2017 by the DNC at the moment when an error in the names was established. It is also undisputed in the case file that the DNCK may formally submit requests to ESGRAON for access to the personal identification numbers of individuals.

In case of established violation of the provisions of the LPPD, the legislator has given the Commission the following powers: to issue a mandatory prescription, to set a deadline for elimination of the violation or to impose an administrative penalty. As of

the date of ruling on the merits of the appeal and in accordance with the provisions of Art. 58, para. 2 of Regulation (EU) 2016/679, the Commission has certain corrective powers and acts in the conditions of operational independence, assessing which of its powers to exercise. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be adopted that fully protects the public interest.

In this regard, and given the fact that the violation is the first in relation to the DNC and all necessary actions have been taken by the administrator - the DNC, at the time when the error was found in both individuals, the administrative criminal proceedings were terminated by resolution № VR- 32-SZR-21 / 15.11.2017, the CPDP issues an official warning to the personal data controller when personal data processing operations have violated the provisions of the Regulation.

It is evident from the above that the Commission for Personal Data Protection should rule on the following

ANSWER:

1. Announces a complaint with registration № PPN-01-100 / 09.10.2017, filed by I.S.I. against the DNCK as well-founded.
2. On the grounds of art. 58, § 2, b. "B" of Regulation (EU) 2016/679 issues a formal warning to the controller of personal data - Directorate of National Construction Control to take the necessary in the initiated administrative and administrative criminal proceedings to process up-to-date personal data.

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.

MEMBERS:

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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