

Decision on appeal with registration № PPN-01-408 / 05.06.2016 DECISION» PPN-01-408 / 2018 Sofia, 27.06.2019

Commission for Personal Data Protection (CPDP, Commission) composed of, Chairman - Ventsislav Karadzhov and

members: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a regular meeting held on 22.05.2019 and objectified in

the protocol № 22 / 22.05.2019, on the grounds of Art. 10, para. 1 of the Personal Data Protection Act (PDPA) in conjunction

with Art. 57, § 1, b. "E" of Regulation (EU) 2016/679, considered on the merits a complaint with reg. № PPN-01-408 /

05.06.2016, filed by G.G.K. against the Cooperative Association (CC) "P.B.P. ". The administrative proceedings are by the

order of art. 38 of the LPPD. The complainant referred a complaint to the Commission for Personal Data Protection, which

described that after a check in the commercial register at the Ministry of Justice she found that her personal data was

processed and disseminated by the Cooperative Association "P.B.P. ". Mrs. G.G.K. shares that contrary to the provision of Art.

2, para. 2 of the CRAF, her three names were published in the register, the unique civil number (PIN), for which the

cooperative association was responsible, as they published her personal data in a public register. The applicant stated that the

data could be found in the commercial register in the case of the cooperative association. Up-to-date extracts from the book of

a member - the cooperators are attached to the annual G2 applications, and her name under serial number ****, with

membership number ***** is also present in the lists. According to the applicant, the cooperative association processed her

personal data within the meaning of Art. 4 of Regulation (EU) 2016/679 and violated the principles of personal data processing.

Indicates that she did not consent to the processing of her personal data and that the purposes for which her personal data are

processed are not clear, and that they were not processed in a way that ensures an adequate level of security and that she

was not given meaningful information. of Art. 13 and Art. 14 of the Regulation. 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-01-408 # 1 / 15.06.2018 of the CPDP, the

Cooperative Association "PBP" was given a deadline for a written opinion on the subject of the complaint and the presentation

of relevant evidence. In response, an opinion was received stating that Ms. G.G.K. was a member - cooperator in the CS

"PBP" from 22.02.2002. Her membership was terminated / due to exclusion / by a decision of the General Assembly - of the

CC, held on 19.02.2016 The General Meeting was published in the account of the Constitutional Court in the Commercial

Register in July 2016. They indicate that according to the requirements of the Commercial Register Act, when submitting A7 or

G2 applications applicable to cooperatives, the decision of the General Meeting must be applied. of the cooperative, current extract from the book of the member - the cooperators, list of those present at the General Meeting. It is in connection with these requirements when submitting applications to the Commercial Register that the statements from the book of a member - the cooperators, in which the data of Ms. G.G.K. They point out that after her expulsion in 2016, her name did not appear. They inform that the provision of Art. 2, para. 2 of the Law on Personal Data Protection, in fact contains a ban on the publication of personal data of persons, but this provision is in force since 01.01.2018, and the legislator has not provided for its retroactive application, which means that it could not be applied for published personal data of a member - cooperators for previous periods. They also stated that the applicant's data did appear in the CC's account in the Commercial Register, but until 2016, when she was excluded from the CC. It was in connection with her objections and complaints about the disclosure of her personal data that they contacted the Commercial Register at the Registry Agency for deletion of personal data of all persons submitted by applications and documents, but did not receive a response. They consider that the consent of the complainant is not necessary for the processing of her personal data, as after the date of her exclusion and deletion from the list of co-operative members, she appears in the CC system only as a debtor. They consider the complaint unfounded. With a letter ex. № PPN-01-408 (18) # 11 / 16.04.2019, the Executive Director of the Registry Agency requested information on the basis of the provision of Art. 44 of the APC for clarification of the file on the factual side. In response, an opinion was filed, filed with Reg. № PPN-01-408 # 15 (18) /08.05.2019, in which the Registry Agency informed that according to the content of Art. 2, para. 1 of the Law on the Commercial Register and the Register of Non-Profit Legal Entities (CTMR) legal definition, the Commercial Register and the Register of Non-Profit Legal Entities (CTMR) are a common electronic database, including the circumstances entered by law and acts , declared by law, for traders and branches of foreign traders, non-profit legal entities and branches of foreign non-profit legal entities. Pursuant to Art. 11, para. 1 ZTRRYULNZ database of TRRYULNZ is public and everyone has the right to free and open access to it. In view of the fact that the legislator has provided that the database of the commercial register should contain information about the circumstances to be entered, the acts to be announced and the documents on the basis of which the entries and announcements are made, as the security of trade depends from the possibility for the citizens and the organizations to make fast and reliable inquiries about the entered circumstances and on the documents on the basis of which the entries were made. Pursuant to the regulations of the Registry Agency, the obligation to provide access to all documents on the basis of which entries, deletions and announcements of third parties, state bodies,

local self-government bodies and local administration, persons to whom assigned the exercise of a public office. In Art. 2, para. 3 of the Law on Non-Profit Legal Entities states that for a trader and a branch of a foreign trader and for a non-profit legal entity and a branch of a foreign non-profit legal entity a case is conducted in electronic form. The applications, the documents certifying the entered circumstances, the announced acts and other documents, which may also contain personal data, shall be attached to the case. The Agency shall provide registered access to the case of the trader or the non-profit legal entity. Access may be granted at the territorial units of the Agency upon presentation of an application and an identity document. The person who requested access electronically should be identified by an electronic signature or by a digital certificate issued by the agency (Article 11 of the LTRLP). They inform that during an inspection it was established that a person named G.G.K. has not been registered and has not been registered in TRRYULNZ, kept by the Registry Agency. During a search in TRYULNC on a natural person it was established that at the moment regarding the person G.G.K. there is no data in the information system of the commercial register and the register of non-profit organizations that it has been entered and has not been entered. During an inspection in the case of the account of the Cooperative "PBP" with UIC ***** it was established that in some of the documents attached to the case under Art. 2, para. 3 ZTRRLIONTs, contains the name of G.G.K., and PIN is indicated, but access to them is not free, but registered. Complaint with registration № PPN-01-408 / 05.06.2018 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. The complaint is fully compliant with the requirements of the CPDP, according to the Rules of Procedure of the Commission for Personal Data Protection and its administration and contains the necessary statutory details for regularity. The norm of art. 38, para. 1 of the LPPD provides for a limitation period for referral to the Commission - within one year of learning of the violation, but not later than five years from its commission. Less than one year has elapsed since the alleged infringement became known or five years have elapsed. The provisions of Art. 38, para. 1 of LPPD deadlines are met, given par. 44, para. 2 of the Transitional and Final Provisions of the LPPD. 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 "personal data controllers" within the meaning of the legal definition of Art. 4, item 7 of Regulation (EU) 2016/679. At a closed meeting of the Commission held on March 27, 2019, the

complaint was declared admissible and an inspection was ordered. Parties have been constituted: G.G.K. and the respondent party - Cooperative Association "P.B.P.", regularly notified of the open meeting scheduled for 22.05.2019. Account is taken of 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 individuals with regard to the processing of personal data and on the free movement of such data applies Data and repealing Directive 95/46 / EC (General Data Protection Regulation, Regulation) governs the rules on the protection of individuals with regard to the processing of personal data, as well as the rules on the free movement of personal data. It is noted that according to Art. 288 TFEU "The Regulation is an act of general application. It shall be binding in its entirety and directly applicable in all Member States. ' 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 Personal Data Protection Act regulates the protection of the rights of individuals in the processing of their personal data. The purpose of the law is to guarantee the inviolability of the person and private life by ensuring the protection of individuals in the event of improper processing of related personal data in the process of free movement of data. Regulation (EU) 2016/679 of the European Parliament and of the 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 and repealing Directive 95/46 / EC (General Regulation on Data Protection) regulates the rules on the protection of individuals with regard to the processing of personal data, as well as the rules on the free movement of personal data. The purpose of the Regulation is to protect the fundamental rights and freedoms of individuals, and in particular their right to the protection of personal data. According to the legal definition given in Art. 2, para. 1 (repealed) of LPPD, personal data are any information relating to the natural person who is identified or can be identified directly or indirectly by identification number or by one or more specific features. The scope of the concept of personal data is further developed in Art. 4, para. 1, item 1 of Regulation (EU) 2016/679 - "personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more features specific to the natural, the physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. According to the provision of § 1, item 4 of the Additional Provisions of the LPPD, the processing of personal data is the concept regulated by Art. 4, item 2 of Regulation (EU) 2016/679, namely "any operation or set of operations carried out with personal data or a set of personal data by automatic or other means such as collection, recording, organization, structuring, storage, adaptation or altering, retrieving,

consulting, using, disclosing, transmitting, disseminating or otherwise making the data available, arranging or combining, restricting, deleting or destroying '. It is not disputed in the administrative file that Ms. G.G.K. was a member - cooperator in the Cooperative Association "P.B.P. ". It should be noted that according to the provision of Art. 3, para. 3 (as amended by SG No. 101 of 21 December 2011, effective as of the date of entry by the cooperative association) of Ordinance № 1 on keeping and storing and access to the commercial register and the register of non-profit legal entities, "For a trader and a branch of a foreign trader a case is conducted in electronic form, in which the applications, the documents certifying the entered circumstances, the announced acts, the issued motivated refusals and other documents are attached, which may contain personal data for identification of the persons representing or managing the trader, in para. 4 of Art. 3 states that "The Agency shall provide registered access to the trader's file. Access can be granted in the territorial units of the agency upon presentation of an application and an identity document. The person requesting electronic access should be identified by an electronic signature or by a digital certificate issued by the Agency. In the provision of art. 6 (from SG No. 53 of 27 June 2014, applicable as of the date of the entry made by the CC) it is stated that entry and deletion in the commercial register is made on the basis of an application form according to Annexes № A1-A1, B1 -B7, B1, B2-1, B2-2, B2-3, B2-4, B3-1, B3-2, B3-3. Announcement of acts in the commercial register is made on the basis of an application form according to Annexes № D1 and D2. Retention of a company in the commercial register is done on the basis of an application form according to Annex № E1. Issuance of a certificate of legality is carried out on the basis of an application form according to Annex № E1. Implementation of the instructions under Art. 22, para. 4 of the Commercial Register Act shall be made on the basis of an application according to a sample in accordance with Annex № G1. Where there is not enough space for applicants to fill in the forms listed above, additional Annex H1 shall apply. From a review of the necessary applications for entry, it is established that they contain a requirement for filling in personal data. Upon review of Section IX "g" of Ordinance No. 1 on keeping and storing and access to the commercial register and the register of non-profit legal entities - "application for entry of circumstances concerning an association", it is established that it is new, entered in force with SG, no. 77 of 2017, in force from 01.01.2018), ie the provision has not been in force as of the date of submission of the documents in the commercial register by the Cooperative Association (CC) "P.B.P. ". In view of the above, it follows that the data of Ms. G.G.K. are submitted for publication in the Commercial Register to the Registry Agency in fulfillment of a normatively established obligation of the administrator arising from the provision of Art. 2, para. 2 of the Law on Non-Profit Legal Entities (as amended by SG No. 34 of 29 April 2011), in respect of

which the legislator has not provided for its application retroactively, which means that it could not be applied to published personal data, in fulfillment of the obligation set out in the provision of Art. 4, para. 1, item 1 (in the wording of SG No. 91 of November 10, 2006) of the LPPD, corresponding to the provision of Art. 6, para. 1, p. "C" of the Regulation. Insofar as the administrative file with an opinion filed with Reg. systems, without ensuring an adequate level of security and confidentiality, it should be noted that the allegations are not supported by evidence from the complainant. Moreover, as is evident from the evidence provided between the applicant and the PBP Constitutional Court, there is a civil dispute, there is an obligation for the controller to store the data until the end of the dispute. As can be seen from the reasons of Interpretative Decision № 2 of 26.06.2015 of the Supreme Court of Cassation under Interpret. e. № 2/2013, OSGTK is that both under the Prescription Act and under the CPA, the prescription is interrupted only by the commencement of proceedings in which the debtor participates. The limitation period cannot be interrupted without the debtor's knowledge. All terms for storage of documents are in accordance with the limitation period. If the limitation period may be interrupted without the knowledge of the debtor, he is at risk of destroying or at least ceasing to keep the documents for the payment of the debt or for its repayment in another way. According to Art. 20 to Art. 23 of the Statute of Limitations in force from 1898 to 1950. It is interrupted for civil reasons by filing a lawsuit in court, by summoning a voluntary payment or by imposing a sequestration or injunction communicated to the person against whom it is requested to interrupt the course of prescription. It is not considered interrupted: if the plaintiff withdraws his claim; if the instituted proceedings are destroyed due to its termination in court or due to its failure to seek it within 3 years; as well as if the claim is rejected. The limitation period is also interrupted for civil reasons when the debtor recognizes the right of the person against whom it has begun to run. According to Art. 116, p. "B" of the CPA, the statute of limitations is interrupted by filing a claim or objection or a request to initiate conciliation proceedings; if the claim or objection or the request for the initiation of conciliation proceedings is not upheld, the limitation period shall not be considered interrupted. From the provision of art. 38 of the Tax and Social Security Procedure Code (TSPC) it is evident that the accounting and commercial information, as well as all other information and documents relevant to taxation and compulsory social security contributions are kept by the obligor in accordance with the National Archives Fund Act. , in the following terms: payroll - 50 years; accounting registers and financial statements - 10 years; documents for tax and social security control - 5 years after the expiration of the limitation period for repayment of the public debt to which they are related; all other carriers - 5 years. In para. 2 of Art. 38 of the TSSPC it is stated that after the expiration of the term for their storage the information carriers under

para. 1 (paper or technical), which are not subject to transfer to the National Archive Fund, may be destroyed. From the evidence gathered in the administrative file it is evident that the membership of the complainant was terminated on 19.02.2016, given that for the Cooperative Association "P.B.P." the term under Art. 38, para. 1, item 5 of the TSSPC. Given the above, pursuant to Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "E" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled with the following DECISION: Disregards as unfounded the complaint with registration № PPN-01-408 / 05.06.2018, filed by G.G.K. against the P.B.P. Cooperative Association. 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 Karadzhov / n / Tsanko Tsolov / n / Tsvetelin Sofroniev / n / Veselin Tselkov / n / Files for download Decision on appeal with registration № PPN-01-408 / 05.06.2016 print