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ANSWER

No. PPN-01-209/2021

Sofia, 03/08/2022

The Commission for the Protection of Personal Data (CPDP) in composition: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 13.07.2022, on the basis of Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1, letter "f" of 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 (Regulation , GDPR), submitted for consideration a complaint PPN-01-209/10.03.2021 filed by S.K.

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

The Commission for the Protection of Personal Data has been referred to a complaint filed by S.K., with allegations of illegal processing of his personal data by ET "K.N.M." in connection with a registered in the National Revenue Agency (NAA) employment contract dated 21.12.2007, which he claims he did not sign.

The complainant points out that he discovered the violation in July 2020 during an inquiry at the NRA and asks the commission to investigate the case. He believes that there is a misuse of his personal data. It is categorical that he did not have employment-legal relations with the sole trader and did not receive remuneration from ET "K.N.M", despite the declarations submitted by the trader sample No. 1 and No. 6 for the period January 2008 - June 2009 Mr.

A copy of letter No. *** from the Executive Agency "Main Labor Inspectorate" is attached to the complaint.

In view of the principles of equality of the parties and truthfulness advocated in the administrative process, ET "K.N.M." was informed about the administrative proceedings initiated in the case, it was given the opportunity to engage in a written opinion on the allegations presented in the complaint and to present relevant evidence in the case, but such evidence has not been deposited in the CPLD.

In order to clarify the case from a legal and factual point of view, the NRA requested and in response provided a report on the current status of all employment contracts registered with the agency with the applicant.

The agency informs that during a check in their information system, it was established that a notification was submitted for the complainant under Art. 62, para. 2 of the Labor Code for an employment contract concluded on 21.12.2007 with ET "K.N.M.", the same terminated on the basis of Art. 327, para. 2 of the CT on 21.12.2021. They add that the notice of concluded employment contract was submitted on paper on 12.09.2009, and the storage period has expired and it was destroyed by Act No. ***.

The Commission for the Protection of Personal Data is an independent state body that protects individuals in the processing of their personal data and access to such data, as well as monitoring compliance with the GDPR and GDPR

In order to exercise its powers, the commission must be validly referred.

The complaint must contain the required details: data about the complainant, the nature of the request, date and signature, the passively legitimized party is indicated and the date of establishment of the violation, in view of which the complaint is regular.

According to Art. 27, para. 2 of the APC, applicable in the present proceedings by virtue of the referring provision of Art. 38, para. 7 of the Labor Code, the administrative body checks the prerequisites for the admissibility of the request with which it is referred, namely:

1. absence of an effective administrative act with the same subject and parties;
2. absence of pending administrative proceedings with the same subject, before the same authority and with the participation of the same party, regardless of whether it is in the issuing or contesting phase;
3. existence of a question within the competence of another authority, when the act cannot be issued without the prior resolution of this question;
4. legal capacity of citizens and procedural legal capacity of organizations;
5. existence of a legal interest of the applicant, the attracted and intervening citizens and organizations;
6. presence of other special requirements established by law.

The conditions are cumulative and not alternatively given, in the presence of which - negative procedural prerequisites or in the absence of which - positive procedural prerequisites, the administrative proceedings are terminated, as inadmissible for examination on the merits.

The procedural complaint satisfies the requirements of Art. 27, para. 2, items 1, 2, 3, 4 and 5 of the APC. The complaint was filed by a natural person with a legal interest against a proper party – a personal data controller, the authority referred to is

competent to adjudicate.

However, the complaint does not satisfy the requirements specified in the special law - WPLD regarding the deadlines for referral to the WPLD.

According to Art. 38, para. 1 of the GDPR, in the event of a violation of his rights related to the processing of personal data, the data subject has the right to refer the commission within 6 months of becoming aware of the violation, but no later than two years after its commission. In § 44, par. 2 of the Transitional and Final Provisions of the LLDP states that for violations committed before the entry into force of the law – March 2019, the deadline for referral to the commission under Art. 38 is one year from the knowledge of the violation, but no later than 5 years from its commission.

In the specific case, the terms specified in § 44, para. 2 of the PZR of ZZLD. It can be seen from the evidence collected in the case file that the alleged violation was committed in 2009 with a single action - submission of a notification under Art. 62, para. 5 from the CT to the NRA for a registered employment contract with the parties employer ET "K.N.M" and worker S.K.

Although the complainant referred the commission within the one-year period from learning of the alleged violation, more than 11 years have passed since its commission - provision of the data to the NRA, which is why the complaint is overdue, filed after the expiration of the 5-year limitation period, and in this regard, it is inadmissible for examination on the merits.

For the stated reasons and on the basis of Art. 38, para. 3 of the Personal Data Protection Act, the Personal Data Protection Commission,

RESOLVE:

Pursuant to Art. 27, para. 2, item 6 of the APC, in connection with Art. 38, para. 1 of the Labor Code and § 44, para. 2 of the PZR of the LLDP leaves appeal PPN-01-209/10.03.2021 without examination on the merits, as inadmissible - overdue and terminates the proceedings.

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 of Sofia - city.

MEMBERS:

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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