

11.11.2020

The Court of Justice of the European Union has confirmed the position of the ANSPDCP

In the litigation pending before the Romanian courts, having as parties Orange Romania SA and the National Authority for the Supervision of Personal Data Processing (ANSPDCP), the Court of Justice of the European Union confirmed the position of ANSPDCP regarding the illegal storage of children by Orange Romania SA identity documents of its customers, without their express consent, on the occasion of concluding contracts for the provision of telecommunications services.

Thus, the Court stated that "A contract for the provision of telecommunications services which contains a clause according to which the data subject has been informed and has given his consent for the collection and storage of a copy of his identity document for identification purposes, there is no evidence that this person has validly given his or her consent to this collection and storage:

when the box referring to this clause has been ticked by the data controller prior to the signing of this contract, or where the terms of the contract in question are such as to mislead the data subject into the possibility of concluding the contract in question despite his refusal to give his consent to the processing of his data, or

where the free choice to oppose such collection and storage is unjustifiably affected by this operator by requiring the data subject to complete an additional form stating the refusal to give his or her consent. "

Regarding the above-mentioned litigation, we show that the National Supervisory Authority, in the exercise of its investigative powers, sanctioned the operator Orange Romania SA, on March 28, 2018 with a fine in the amount of 10,000 lei.

The sanction was applied to the operator Orange Romania SA for the deed provided by art. 32 of Law no. 677/2001, in violation of art. 4 para. (1) lit. c) and art. 8 of Law no. 677/2001, corroborated with art. 2 and 6 of the Decision of the President of ANSPDCP no. 132/2011.

Thus, Orange Romania SA, by collecting and storing the copies of the identity documents, requested by the contracts of electronic communications services, has excessively processed personal data that fall under the incidence of art. 8 of Law no. 677/2001, without the express consent of the persons concerned, express legal provisions or the approval of ANSPDCP.

Therefore, the fine was imposed on the operator and it was ordered that as soon as possible he take measures to delete / destroy the copies of the identity documents of the natural persons with whom he concluded contracts for the provision of electronic communications services, collected and stored without had the express consent of the persons concerned, without

the processing being provided by a legal provision or without the approval of ANSPDCP according to art. 2 of Decision no. 132/2011.

Subsequently, the minutes by which the sanction of the fine was applied were challenged in court by Orange Romania SA, on which occasion Orange Romania SA submitted to the Bucharest Tribunal a request to refer to the Court of Justice of the European Union in order to issue a preliminary ruling.

The Bucharest Tribunal admitted the request formulated by Orange Romania SA regarding the notification of the Court of Justice of the European Union in order to pronounce a preliminary decision regarding the interpretation of art. 2 lit. (h) of Directive no. 95/46 / EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, ordering the suspension of the trial pending the ruling of the CJEU on the referral.

The dispute was the subject of Case C-61/19, pending before the Court of Justice of the European Union, in which the application was made by the Bucharest Tribunal.

The Court of Justice of the European Union ruled on 11.11.2020 on the preliminary questions asked by the Bucharest Tribunal, confirming the position of ANSPDCP.

In view of the above, the CJEU issued a press release which can be accessed at the following link:

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-11/cp200137en.pdf> .

Legal and Communication Directorate

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