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OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSPO-17-865 / 12.10.2018

Sofia, October 31, 2018

SUBJECT: Application of Regulation (EU) 2016/679 (General Data Protection Regulation) to the judiciary.

The Commission for Personal Data Protection (CPDP) composed of members: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva, at a meeting held on 31.10.2018, considered a letter / ent. № NDMSPO-17-865 / 12.10.2018 / by the Committee on Legal and Institutional Affairs at the Plenum of the Supreme Judicial Council (SJC), informing that they have been referred by the District Court - Plovdiv with a request for clarifications and instructions on the implementation of Regulation (EU) 2016/679, as well as on setting deadlines for the storage of personal data in the process of their processing by the judiciary. The letter in question is related to a previous request from the SJC to issue instructions to all judicial bodies in the country, with a view to uniform and accurate processing of personal data of individuals in pre-trial and court proceedings, as well as magistrates and court staff. system, in response to which, the CPDP has issued an opinion with registration № NDMSPO-17-192 / 21.03.2018.

Legal analysis:

Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been directly applicable since 25 May 2018, is the normative act laying down rules relating to the protection of individuals with regard to the processing of personal data and on the free movement of data. this data. The General Regulation builds on the previous data protection regime introduced by Directive 95/46 / EC, transposed into the Bulgarian Personal Data Protection Act of 2002, while taking into account the dynamics of the development of new technologies and data processing activities. personal data.

The letter of the District Court - Plovdiv expressed the opinion that the processing of personal data in connection with the judicial activity of the court is excluded from the scope of the Regulation. That assertion is incorrect and is the result of a

misinterpretation of the provisions of the Regulation. The systematic interpretation of recital 20 and Art. 55, § 3 of the Regulation, leads to the conclusion that it applies to the activities of courts and other judicial bodies.

It should be noted here that the Regulation provides for a specific legal regime for the courts, which is characterized by a pronounced dualism in their capacity as controllers of personal data.

On the one hand, they process personal data in the performance of their "judicial" functions (judicial activity), and on the other as "ordinary" administrators (administrative activity) of personal data, such as: data processing of court staff, in connection with their employment relationship; concluding contracts with contractors; conducting competitions for the appointment of judicial officers; financial and accounting activities related to the payment of wages and amounts to various types of entities (experts, jurors, witnesses, etc.); carrying out inspections and giving an answer / opinion on received complaints, signals and other requests to RS - Plovdiv, as well as all other activities outside the main judicial activity of the court.

The processing of personal data by the courts in the performance of their judicial functions should cover the rules provided for in the procedural laws - CPC, APC, PPC, etc.

The dualism referred to above is also reflected in the supervisory mechanism for the application of personal data protection rules.

The CPDP is the body that monitors and ensures the application of the rules for the processing of personal data by the courts in their capacity as "ordinary" administrators (the so-called general supervision). It should be clarified that the competence of the CPDP does not cover the processing of personal data when courts act in the performance of their judicial functions in order to ensure the independence of the judiciary in the performance of its judicial duties, including the issuance of decisions / arg. Art. 55, § 3 in conjunction with rec. 20 of the Regulation.

In this regard, § 30 of the Transitional and Final Provisions of the Bill on Amendments to the Personal Data Protection Act (PDPA) provides for the amendment of Art. 54, para. 1 of the Judiciary Act (JSA), adding a new power of the Inspectorate to the SJC, namely "to supervise the processing of personal data by courts, prosecutors and investigative bodies when acting in the performance of their functions as judicial bodies. authority, including dealing with complaints from individuals regarding the processing of their personal data. "(so-called special supervision).

The Law on Amendments to the LPPD is to be considered by the National Assembly at second reading.

Regarding the determination of the terms for storage of personal data, the principle of "restriction of storage", referred to in Art.

5, § 1, letter "e" of the Regulation. As long as the deadlines are not defined by law, personal data should be stored for a period not longer than necessary for the purposes for which they are processed.

In view of the above and on the grounds of Art. 58, § 3 (b) of Regulation (EU) 2016/679, the Commission for Personal Data Protection expresses the following

OPINION:

1. Regulation (EU) 2016/679 provides for a specific legal regime for courts, characterized by a pronounced dualism in their capacity as controllers of personal data. On the one hand, they process personal data in the performance of their "judicial" functions, and on the other hand, as "ordinary" administrators of personal data.

2. Legal dualism is also reflected in the supervisory mechanism for the implementation of Regulation (EU) 2016/679. The Commission for Personal Data Protection is the body that monitors and ensures the application of the rules for the processing of personal data by the courts in their capacity as "ordinary" administrators (so-called general supervision). The draft law amending the Personal Data Protection Act (PDPA), which is to be considered at second reading by the National Assembly, stipulates that the SJC Inspectorate shall supervise the processing of personal data by courts, the prosecutor's office and investigative bodies. , when acting in the performance of their functions as judicial authorities, including to consider complaints of individuals in connection with the processing of their personal data (so-called special supervision).

3. In determining the terms for storage of personal data, the principle of "restriction of storage", referred to in Art. 5, § 1, letter "e" of the Regulation, namely, insofar as the deadlines are not legally defined, personal data should be stored for a period not longer than necessary for the purposes for which they are processed.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

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