

Decision on appeal with registration № PPN-01-242 / 17.04.2018 DECISION» PPN-01-242 / 2018 Sofia, 23.10.2018

Commission for Personal Data Protection (CPDP, Commission) composed of, Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov on a regular basis meeting, held on 05.09.2018 and objectified in the minutes № 34 / 05.09.2018, 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-01-242 / 17.04.2018, filed by B.M. against "L.D. "Ltd. The administrative proceedings are by the order of art. 38 of the LPPD. The complainant referred a complaint to the Data Protection Commission concerning video surveillance. It is stated that on March 1, 2018 she started working in the company "L.D. Ltd. in the position of "assistant - seller" in a store with address: *****. When she started working, she was acquainted with the internal regulations, as well as with the fact that the site is under constant video surveillance. Mrs. B.M. points out that the performance of official duties requires work clothes, which according to the rules of the company is not allowed to leave the store. It is stated that there is no separate locker room, as a result of which the applicant was forced to undress in the store's warehouse, and that video surveillance cameras were installed in the store's warehouse, which were not sham and monitored in real time and recorded. Concerns have been expressed that the cameras are being monitored by a male employee of the company, and that "other company employees" have access to the recordings. The applicant stated that she had not given her consent to be "monitored and recorded". He asks for an investigation into the case, as well as for the deletion of the records. Considers that the actions of "L.D. "EOOD constitute a violation of her rights granted under the LPPD. 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-01-242 # 1 / 10.05.2018 of the CPDP, the manager of "L.D. EOOD (the Company) was granted a term for a written statement on the subject of the complaint and presentation of relevant evidence. In response, an opinion was received, filed with Reg. № PPN-01-242 # 2 / 21.05.2018, stating that in the period from 01.03.2018 to 10.04.2018 between "L.D. . "EOOD and Mrs. B.M. An employment contract № **** dated 22.02.2018 was concluded and was in force for holding the position of "sales assistant" from the latter in its capacity as an employee in a commercial site of the Company, located in *****. They point out that in the complaint filed by Ms. B.M. It is reflected that upon entering the job she was acquainted with the Rules of Procedure of the Company, as well as with the fact that the commercial site of the Company, in which the applicant worked, is under constant video surveillance. They inform that

the Company has fulfilled all legal obligations by providing Ms. B.M. declaration by which the employee has confirmed in writing that she is aware of all internal acts of the Company and has given her explicit written consent that the employer has the right to store, process and provide her personal data under the Personal Data Protection Act to third parties in connection with the implementation of the clauses of the concluded employment contract. It is also stated that by signing the employment contract and according to the agreement in Art. 21 of the same, Ms. B.M. has again given its explicit written consent for her personal data to be processed and stored by the Company in its capacity as a controller of personal data. Next, they inform that in compliance with all legal requirements the Company is registered by the Commission for Personal Data Protection as a controller of personal data, under identification number 396878 and maintains 3 registers - "Personnel", "Contractors" and "Video Surveillance". In the Video Surveillance Register, the Company has stated that the processing of personal data in it is carried out by video-technical means. In a prominent place in all commercial sites, including the one located on *****, there are information boards for the video surveillance performed in them, so that both employees and visitors are duly informed about the filming. They consider that Ms BM's allegations that she noticed that "there are also CCTV cameras in the warehouse in question" contradict the written evidence and facts presented in the opinion that as of the date of entry into service - March 1, 2018, Ms. B.M. has been duly informed and has given its explicit consent through the signing of the Declaration of 01.03.2018 to be recorded and her personal data to be processed and stored by the Company in his capacity as controller of personal data. It is also stated that the decision to install video cameras in the commercial sites of the Company was taken in order to control labor discipline, on the one hand, and to prevent theft, on the other. In this regard, it should be noted that in the present case the misappropriation of funds by the employee was the reason for the termination of her employment contract with the Company. As a proof of these facts, an agreement for set-off of monetary obligations from 10.04.2018 is attached (Appendix № 4 to the opinion), evident from which in Art. 3, Ms. B.M. has explicitly declared and stated that the amount due from her to the Company in the amount of BGN 568.14 was misappropriated by her in the period from 04.04.2018 to 09.04.2018, by exporting goods by disposing of waste from the store of the employer located in *****. Next, it is stated that the consent and declaration of these facts by B.M. lead to the only conclusion about the unscrupulous and incorrect behavior and attitude towards the Company during the performance of the applicant's labor duties. An opinion was also taken regarding the requirement for work clothes, stating that for its implementation according to the provision of Art. 17, para. 1, item 6 of the Rules of Procedure of "L.D. "EOOD, the employer is obliged to create normal conditions for the employees to

perform the work under the employment contract by providing them with work clothes, including an apron, two T-shirts and a badge. At the same time in Art. 20, item 2 of the Rules of Procedure of "L.D. "EOD is an obligation of the employees to come to work in work clothes. ie none of the adopted and effective internal regulations of the Company prohibits the employees from leaving the commercial premises of the Company with the work clothes provided to them. The allegations about changing the employee in the warehouse of the commercial site, where she knew that there were installed and recording automated devices and her decision was not based on rules adopted by the management of the Company, but only on personal decision. They inform that the purpose of the warehouses of the commercial sites of the Company is to store the goods received from the various suppliers, which should be sold in the commercial hall of the site. Please note that the Company does not tolerate this type of behavior and contrary to what is stated in the complaint, there is no restriction on employees not to leave the store with work clothes, circumstances that make the facts set out in the complaint irrelevant to the dispute and consider that the same do not affect the violation of the rules for the collection, processing and storage of personal data of the employee of the Company. Next, they submitted that the applicant's allegation that the suppliers of "L.D. "Ltd. have free access to the store's warehouse. They inform that the access to the warehouse in the store of the Company is absolutely forbidden for outsiders, such as the suppliers of goods. Each of the employees entering the Company is informed and instructed about the rules for access to the premises of the commercial site, for which he signs a special document. Moreover, each employee receives a key from the warehouse and has the obligation to ensure that the door to the warehouse is closed throughout the working hours of the store so that outsiders do not have access to it. In view of the above, the opinion of the company is for unfoundedness of the complaint and termination of the initiated administrative proceedings. In order to exercise its powers, the Commission must be properly seised. Complaint reg. № PPN-01-242 / 17.04.2018 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. 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 Law. The complaint is referred to a competent body to rule - the Commission for Personal Data Protection, which according to its powers under Art. 10, para. 1, item 7 of the LPPD considers complaints against acts and actions of the personal data controllers, which violate the rights of individuals under the LPPD. At a meeting of the Commission held on 04.07.2018 the complaint was declared admissible and as parties in the administrative proceedings were constituted: complainant - B.M. and respondent - "L.D. "Ltd. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for 05.09.2018. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, reflected in Minutes № 30 / 04.07.2018 and Order № RD-14-253 / 13.08.2018 of the Chairman of the CPDP an inspection was carried out in connection with clarifying the facts and circumstances of the complaint, objectified in the Statement of Findings № PPN-02-671 / 30.08.2018. As a result of the inspection it was established that on the territory of the commercial site indicated in the complaint there is a built and functioning video surveillance system consisting of thirteen video cameras, recording device - DVR video recorder connected to two video displays (monitors) to monitor the output image of the same. The video cameras are located as follows: ten capture different areas of the trade hall, two capture the warehouse indicated in the complaint and one camera captures the site of the common entrance of the building and the rear entrance of the warehouse to the store. The VCR and one of the surveillance monitors are stored in the warehouse, which has controlled access. A second monitor is installed next to the cash register in the trade hall, and the output image of all thirteen video cameras is monitored in real time and it is visible to all visitors and employees of the trade site. Using the VCR, the system allows the recording of video recordings for a period not exceeding thirty days, after which they are automatically deleted in the order of their receipt. The VCR operating during the period in which the applicant was an employee of the company was defective due to an electric shock and the information contained therein with video footage for the period 15.03.2018 - 14.04.2018 was destroyed and is not recoverable. To document this circumstance, on April 15, 2018, a protocol was drawn up by I.B. - Head of the Inventory and Internal Control Department of LD Ltd. According to the Instruction for the measures for personal data protection, adopted on 15.02.2013 in force until 25.05.2018, as well as the Video Surveillance Policy, approved on 28.05.2018 by the manager of the company, the access to the video recordings is limited to a small

number of authorized employees of the administrator, based on the principle of "need to know" and trained in data protection. Access to the data in the video surveillance system, including remote one, is carried out by means of identification by username and password. The system was built in 2015 by an external contractor - "C." Ltd. on assignment by order, as the company has no rights for uncontrolled access to the video surveillance system and video recordings. The presence of video cameras and / or other types of technical means for video surveillance installed in the sanitary premises has not been established. Information boards informing about the use of technical means of monitoring in the site, as well as information about the controller of personal data in order to exercise the rights of data subjects are placed in places visible to all employees and visitors of the commercial site. According to the representatives of "L.D." EOOD, the goals and the legal basis for the performance of video surveillance in the commercial sites is a legitimate interest of the company, incl. as an employer, security and safety, asset protection, optimization of business processes and protection of its employees. In the course of the inspection, the inspection team requested the employment file of the applicant B.M. It was established that upon entering the job, she signed a Declaration of 01.03.2018, that she gave her consent, the employer to store and process her personal data, and that she is familiar with the Rules of Procedure of the company from 01.03 .2012, amended with Order № 8039 / 28.06.2017, which explicitly states that employees are required to come to work in work clothes. According to Order № 3648 / 01.05.2016 of the manager of the inspected company, it is prohibited to change the work clothes of employees in the commercial areas and warehouses of the stores of "L.D." EOOD, with the obligation to bring the same order to the notice of all managers of commercial sites. At the time of the inspection, the company had not received a request from B.M. to provide information about the processing of her personal data by the administrator. 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. As not every person who processes personal data has the status of "personal data controller" with the provision of Art. 3, para. 1 and para. 2 of LPPD, respectively Art. 4, item 7 of Regulation 2016/679 gives a legal definition of the concept, namely: personal data controller is a natural or legal person, public authority, agency or other entity that alone or jointly with another determines the purposes and means of processing personal data, where the purposes and means of such processing are determined by the law of the Union or the law of a Member State. Given the entry into force on 25.05.2018 of Regulation 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". It is not disputed in the file that between the applicant B.M. and "L.D. "EOOD had a valid legal relationship, according to an employment contract № ****, which was terminated, as well as that it is familiar with the rules of internal labor order and that the site is under constant video surveillance. From the documents submitted as evidence by "L.D. "EOOD found that Ms. B.M. has signed on 01.03.2018 (upon entering work) a declaration by which she gives her consent to the employer to store and process her personal data within the meaning of the LPPD to third parties in connection with the implementation of the employment contract. From the provision of art. 20, para. 2 of the provided regulations for the internal labor order in "L.D. "EOOD, the obligation of the employees to come to work in work clothes is obvious. The submitted internal rules did not establish the applicant's allegations that according to the company's rules she was not allowed to leave the store with work clothes and given the fact that there was no separate locker room she was forced to change into a storage room with cameras. video surveillance. It should be pointed out that the processing of personal data is admissible when necessary for the performance of obligations under a contract to which the natural person to whom the data relate is a party), according to the provision of Art. 4, para. 1, item 3 of the LPPD. The processing of personal data by the employer is in view of the fulfillment of labor rights and obligations. The provided order № 3648 / 01.05.2016, by which "L.D. EOOD prohibits the change of clothes of employees in the commercial areas of the warehouses of the stores of "L.D. "EOOD should not be credited as valid evidence, given the fact that it was issued on the basis of Regulation 2016/679 on the protection of individuals with regard to the processing of personal data, whose first publication in the Official Journal of the European Union is on 04.05. 2016 and the same enters into force on 24.05.2016. Regarding the requests of Ms. B.M. to delete the records in which he is present, it should be noted that evident from the objectified in the statement of findings № PPN-02-671 / 30.08.3108, the video recorder operating in the period in which the applicant was an employee of the company, has been defective due to electric shock and the information contained in it with video footage for the period 15.03.2018 - 14.04.2018 has been destroyed and is not subject to recovery, and to document this circumstance, on 15.04.2018 a protocol was drawn up by I .B. - Head of the Inventory and Internal Control Department of LD Ltd. Paragraph 1, item 1 of the LPPD contains a definition of the term "processing of personal data", namely: any action or set of actions that can be performed on personal data by automatic or other means, such as collection, recording, organizing, storing, adapting or modifying, restoring, consulting, using, disclosing by transmitting, distributing, providing, updating or combining, blocking, deleting or destroying. As a result of the established during the

inspection, substantiated, with evidence attached to the Finding Act, as well as evident from the evidence provided in the administrative file, it follows that the video surveillance subject to the complaint was installed to protect security and safety, protection of tangible assets and protection of employees. In view of the presence of information boards in a conspicuous place and the fact that the employees were aware of the video surveillance carried out, as the complainant herself claimed in the complaint, it follows that the same is done lawfully. It is evident from the evidence attached to the administrative file that the purpose for which the video surveillance cameras were installed was security with respect to the property and material integrity of the defendant's property, as well as with regard to the physical integrity of the citizens. The pronouncement of the collegial body is related to the principles of personal data processing, indicated by the norm of art. 2, para. 2, item 1 - item 6 of LPPD. According to the above provision, personal data must be processed lawfully and in good faith; to be collected for specific, well-defined and legitimate purposes and not to be further processed in a way incompatible with those purposes; be relevant, relevant and not exceeding the purposes for which they are processed. In view of the above, it follows that the video surveillance performed by the cited video cameras does not exceed the purposes for which it was installed, namely: protection of property of the respondent and personal property of individuals, therefore it is concluded that the complaint is unfounded. In view of the outcome of the dispute, the personal appearance of the procedural representative of the respondent party in the open hearing and the timely request for costs, the Commission considers that the prerequisites of the provision of Art. 47, para. 2, sentence two of the APC and recognizes the costs incurred by LD EOOD for procedural representation in the minimum provided in Ordinance № 1 for the minimum amounts of attorneys' fees, namely in the amount of BGN 300 (three hundred levs).

In this regard, the Commission for Personal Data Protection ruled as follows

ANSWER:

1. Disregards as unfounded the complaint with registration № PPN-01-242 / 17.04.2018, filed by B.M. against LD EOOD.
2. On the grounds of art. 47, para. 2, assoc. 2 of the APC in connection with Art. 8, para. 3 of Ordinance № 1 on the minimum amounts of attorney's fees, granted the request and acknowledged the costs incurred by LD EOOD for attorney's fees in the amount of BGN 300 (three hundred), which should be paid to the company by the applicant B .M.

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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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