

Decision on appeal with registration № PPN-01-267 / 13.09.2020 DECISION» PPN-01-267 / 2020 Sofia, 19.11.2020

Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 30.09. 2020, on the grounds of Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1 (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), considered on the merits a complaint № PPN-01-267 / 13.09.2020 filed by X. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was approached with a complaint filed by X. alleging illegal processing of personal data through their dissemination through television, the same available on the e-mail address on the platform youtube.com. The complainant informed that during an interview on air, "for a rather long period" her personal data, including a unique civil number, were shown. No evidence was attached to the complaint, it was also addressed to the respective electronic media (EM) and the Electronic Media Council. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, on 28.04.2020 a screen printout of the contents of the e-mail address indicated in the complaint was made. Protocol PPN-01-267 # 1 / 28.04.2020. The Council for Electronic Media requested information about the inspection carried out in the case, given the fact that the complaint was addressed to this body. In response, the CEM attached a recording of the trial broadcast broadcast by the media service provider, specifying that the recording provided differed from the archival recording of the broadcast available on EM's website, in which Ms X's unique civil number has been deleted with a TV mask, and at the end of the conversation with the interlocutor only a part of the figures can be seen briefly. They point out that in the original recording of the broadcast, the single civil number is fully visible and stays on the screen for almost a minute. In this regard and in accordance with the principles of equality of arms in administrative proceedings and truthfulness, E.M. was informed of the proceedings instituted, was given the opportunity to engage in a written statement on the allegations set out in the complaint and to provide relevant evidence regarding the lawful processing of the applicant's personal data. In a written response PPN-01-267 # 5 / 01.06.2020, with relevant evidence attached to it, the company does not dispute the allegations set out in the complaint. They point out that an internal investigation was carried out in the case, the report was immediately downloaded and made inaccessible to viewers of

E.M. on all distribution channels, including YouTube. Inform about implemented and used by the company software products, in this case Fast blur of Adobe Premiere Pro processing software, for automatic deletion of some frames with the so-called "mask". They added that the applicant's broadcasting of her personal identification number was the result of a human error in using the product, for which the installer had been sanctioned under the Labor Code. At a meeting of the CPDP held on 26.08.2020 the complaint was accepted as regular and admissible - it contains mandatory details, it was submitted within the term under Art. 38, para. 1 of LPPD, by a natural person with legal interest, against a competent party controller of personal data within the meaning of Art. 4, para. 7 of the Regulation. The body competent to rule is the CPDP, which according to its powers under Art. 10, para. 1 of LPPD in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of data subjects related to the processing of personal data, as there are no the exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of the Regulation in view of the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by the courts in the performance of their judicial functions. The negative prerequisites specified in Art. 27, para. 2 of the APC. As parties in the proceedings are constituted: complainant - H. and respondent - EM, administrator of personal data within the meaning of Art. 4, para. 7 of the Regulation, provider of the media service television. An open hearing on the merits has been scheduled for 30.09.2020, of which the parties have been regularly notified. In order to clarify the case on the factual side and according to the distribution of the burden of proof in the process, the respondent requested: a certified copy of technical and organizational measures introduced by the company regarding the processing of personal data, in particular those related to the use of automatic deletion software of frames containing personal data; the results of the inspection carried out in the case; information on the specific date on which the alleged infringement ceased; information on the date on which the applicant's PIN was deleted from the broadcast distribution channels, as well as internal rules and / or procedures regarding the distribution of the broadcast on YouTube. In successive answers PPN-01-267 # 11 / 23.09.2020 and PPN-01-267 # 12 / 24.09.2020 from the company inform that on 10.04.2020 the person responsible for personal protection, data processed by the administrator, it was reported for the procedural violation - unregulated broadcasting of personal data - PIN of the complainant, and on the same day a complaint was received from Ms. H. with identical subject. They informed that the commissioned and carried out immediate inspection had established that the applicant's PIN had been broadcast on the media and the specific broadcast in a time interval of 40 seconds. On the same

day, the material in question was downloaded from the broadcast channels of the show, including You Tube, and corrected.

They specify that the program was broadcast on television in the form containing personal data - PIN of Mrs. X. only once, on 01.04.2020. Inform about introduced by the administrator Technical and organizational measures for personal data processing and Action Plan in case of data security breach, a copy of which is attached, together with the Instruction of 11.04.2020 for the processing of audio-visual materials in order to prevent the unauthorized broadcasting of personal data on the television programs of E.M. Regarding the distribution of the show on YouTube, they point out that "the broadcast of the show on April 1, 2020 takes place simultaneously on the YouTube channel, and subsequently it remains in the same, as available to users", according to the general rules and conditions of the channel. They specify that "the administration of the process of uploading content and respectively correction of the same is done by the administrator E.M. At a meeting of the commission held on 30.09.2020, the complaint was considered on the merits. The applicant - regularly notified, did not appear, did not represent herself. The respondent party - regularly notified, is represented by lawyer N. and PS, with powers of attorney presented at the hearing. The procedural representatives declare that they are acquainted with the materials collected in the file, do not point to new evidence, do not have requests for evidence. They alleged that the document shown on the air containing the applicant's personal data was part of a public register, given that the personal data contained therein were publicly available. They indicate that the administrator acted in good faith and after finding a technical error he took immediate measures to eliminate the violation, and subsequently introduced additional organizational measures related to preliminary control over the materials presented to the media broadcast. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the APC, requiring the existence of established actual facts and given the evidence gathered and the allegations, the commission considers that considered on the merits of the complaint № PPN-01-267 / 13.04.2020 is justified. The subject of the complaint is illegal processing - dissemination of personal data - a single civil number of the complainant through its broadcast on television. There is no dispute between the parties on the facts. It is notorious that E.M. is a provider of media services - television program. As can be seen from a reference in the Public Register to the CEM, the Certificate for registration of the service was issued with a starting date of distribution of November 1, 2001 and a scope - national. It is also undisputed that on the air of the media on 01.04.2020 a TV show was broadcast, the same was broadcast on the YouTube channel of the show, where it was subsequently available to the users of the platform at *** 1. An archival recording of the program is also available on the

media's website at *** 2. It is not disputable and evident from the CEM recording of the broadcast broadcast on the media that within the same, in a time interval of about a minute, a document was shown on the air containing personal data of the applicant is a volume of three names, a single civil number and position held. The document was provided by a guest on the program, and it is not disputed between the parties that the applicant's personal data were processed, disseminated to an unlimited number of persons by showing them on the media without her knowledge and consent. It should be noted that the information about the names and the position held by Ms. X. is well known, which is why its distribution is not the subject of the complaint. television broadcast, a fact that is indisputable. The processing is illegal, and this conclusion is not changed by the fact that it concerns the processing of the PIN by the media in the framework of journalistic activity, exercise of freedom of expression and right to information, as long as respect for privacy is not complied with. of the person and insofar as the person's PIN is irrelevant to the debate in the show concerning innovations in the treatment of the COVID-19 pandemic. The violation was committed once on 01.04.2020 with regard to the display of data / PIN on the media. However, the show was broadcast simultaneously on the YouTube channel, and subsequently it remained in the same, as available to users of the platform, in the form in which it was broadcast. In this regard, it must be concluded that the violation continued with regard to the dissemination of personal data through the You Tube platform, in the period 01.04 -10.04.2020, when the material was downloaded and corrected.

The evidence gathered in the file and the allegations of the parties testify that the administrator of personal data contained in the broadcast on the media and available through the You Tube platform is E.M. - the company determines the purposes and means for data processing, and with regard to the platform is responsible for the process of uploading content and respectively correction of the same. The latter is evidenced by the measures taken subsequently to stop the violation, the internal inspection and the Instruction of 11.04.2020 for processing audio-visual materials in order to prevent the unauthorized broadcasting of personal data on the television programs of EM .

As can be seen from the presented evidence, their administrator signed a privacy policy, adopted in May 2018, supplemented on 22.05.2020 in a separate document Technical and organizational measures for personal data processing and Action Plan in case of data security breaches from 15.05.2018 The mechanism of work with documents containing personal data regarding their broadcasting on television is described in detail. Item 3 of the same states that in order to prevent the transmission of personal data in broadcast programs, training should be provided to all operators working in television to work with the

software product Adobe Premier Pro. Before the broadcast of each program, the same should be reviewed by the video editor on duty in order to prevent a violation of the LPPD. If there is personal data in the broadcast, use the above software product and the Fast Blur effect to delete the relevant personal data by blurring it. "

In this case, however, the instructions of the administrator are not followed, an error was made, which the respondent admits when working with implemented and used by the company software products, in this case Fast blur of Adobe Premiere Pro processing software, to automatically delete part of footage with the so-called "mask", as a result of which the personal PIN of the person is not deleted from the document shown on the air of the program. The installer was sanctioned under the Labor Code with a "Note", as evidenced by Order № 01-10 / 10.04.2020, on 10.04.2020 the violation was stopped, and additional briefing was held on 11.04.2020. actions of the company in this direction, however, do not remedy the violation, as far as it is effective, and the administrator should have taken steps any individual acting under his leadership, who has access to personal data to process them only in a manner specified by the administrator - Art. 32, § 4 of the ORD.

The fact is that the company before establishing the violation has written a procedure for processing personal data, technical measures have been introduced for their protection, and subsequently conducted additional training, but they are clearly insufficient from the organizational point of view of preventive and ongoing control , it should be noted that there are no protocols for acceptance and verification of the submitted materials containing personal data, no developed and implemented forms or checklist regarding the necessary and mandatory actions to verify the content of the materials and their content, broadcast on air, in accordance with the legal framework for personal data protection.

Given the materials collected in the file and in view of the nature of the violation, its duration, the type of personal data processed, the measures taken by the company to stop the violation, the CPDP assistance in clarifying the case and last but not least the fact that the violation is first for the controller , as well as in view of its activity, the commission considers it expedient to issue an order under Art. 58, § 2, letter "d" of the ORD, finding that the imposition of a pecuniary sanction for the established violation would be excessive and in violation of the principle of proportionality under Art. 6 of the APC, according to which "when the administrative act affects the rights or creates obligations for citizens, apply those measures that are more favorable to them, if in this way the goal of the law is achieved." Considers that the exercised corrective power meets the effectiveness and deterrent effect required by the LPPD and Regulation 2016/679, while not violating the principle of proportionality and the requirement of proportionality.

Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Declares the complaint № PPN-01-267 / 13.04.2020, filed by H. against electronic media, to be well-founded.
2. On the grounds of art. 58, § 2, letter “d” of EU Regulation 2016/679 and for violation of Art. 32, § 4 of the Regulation issues an order to the electronic media to comply with the processing of personal data with the provisions of the ORD, taking and prescribing additional measures and steps on current, preliminary and subsequent control over the processing of audiovisual materials, including through introduction of protocols for actions and reporting when checking their content, in order to prevent the unauthorized broadcasting of personal data on the air of television programs on electronic media and on the You Tube platform.
3. Deadline for execution of the order - three months from the entry into force of the decision, after which to notify the commission of the execution, presenting the relevant evidence.

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

Maria Mateva / p /

Veselin Tselkov / p /

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