

Home »Practice» Decisions of the CPDP for 2019 »Decision on appeal with registration PPN-01-202 / 02.04.2018 Decision on appeal with registration PPN-01-202 / 02.04.2018 DECISION № PPN- 01-202 / 2018 Sofia, 27.06.2019 Commission for Personal Data Protection (CPDP, Commission) composed of, Chairman - Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 17.04 .2019 and objected in protocol № 18 / 17.04.2019, on the grounds of art. 10, para. 1 of the Personal Data Protection Act (PDPA) in conjunction with Art. 57, § 1, b. "E" of Regulation (EU) 2016/679, considered on the merits a complaint with reg. № PPN-01-202 / 02.04.2018, filed by ML against "F." and "B.24". The administrative proceedings are by the order of art. 38 of the LPPD. The Commission for Personal Data Protection has been seised with a complaint Reg. articles of the electronic media "F." and "B.24" published a reference from GRAO, which contains the personal data of her minor child ER, in addition to the three names of Mrs. ML and those of the father - H.R. Considers that the presence of the child's personal data in these articles is a violation of the rights of the child and his parents, provided by the LPPD. It is also stated that the child's parents did not give their consent for public disclosure of personal data. With a letter ex. № PPN-01-202 # 1 / 30.05.2018 media "B.24" was notified pursuant to Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion and present evidence. The company is engaged in an opinion with reg. of 25.05.2018 and the rules that it introduces are not applicable to situations that took place before 25.05.2018, and the current Personal Data Protection Act is applicable to them. It is also stated that the three names of a person do not necessarily represent personal data in the sense of the LPPD, as it is not necessary for three names to be associated with a specific person, it is even possible that the three names can not to make a connection with a person. With regard to the complaint of Ms M.L. state that they respect the personal integrity of everyone, as well as the opinion of the parents, but specify that they wrote the names of the child in favor of the public interest, believing that this is a case of revealing a vicious practice in the Municipality of M.L., K.L. is chairman of the Municipal Council. As such, he was a supporter of the proposal to change the municipal Ordinance on movable sites. They point out that two of the associations of traders in B. provided disturbing data, supported by documents which show that H.R. has interests in the sector of relocated sites and has applied with one of his companies. "He is not married to ML, but they have a child together." They inform that the public interest requires that when certain allegations are made, documents certifying them are attached, so that there is no suspicion of defamatory allegations. They point out that the girl's PIN and address were hidden in the publication, but her three names were published to prove that ML, the daughter of the chairman of the Municipal Council in B.K.L. is related to HR, owner of one

of the companies interested in this sector. It is also stated that the public interest requires this action, because the grandfather of E.R., K.L. was among the supporters of the changes in the ordinance for movable sites, which transfer the responsibility for determining the selection of tenants of movable sites in the Municipality of B. from the administration to the Municipal Council, whose chairman is the aforementioned Mr. K.L. It is stated that Mr L. was given the opportunity to reply, claiming that he was quoted correctly and that they were accurate in all the circumstances of the case. They point out that the data "along with the names of the girl and the GRAO report were posted on the sidelines of ObS-B. and became public. " When considering the complaint, they ask that the specifics and importance of investigative journalism be taken into account, as well as the nature of the work of investigative journalists. They also ask that the case law of the Court of Justice of the European Union with regard to the work of investigative journalists and the information they provide be taken into account. They inform that the Court of Justice has ruled that in cases where the information provided is of public importance or affects the public interest, it may be declared public and may be freely reflected. The case law of the Court of Justice of the EU is in line with the text of Art. 4, para. 1, item 5 of LPPD. They also point out that the information used is proportional to the intended result - ie. in order to prove the existence of a connection between certain persons, it is stated that they have a child. According to the law, the names of each person consist of their own, father's and family name - ie. by providing this information, the media, in addition to proving the information provided to the public, is also protected from accusations of defamation. With a letter ex. № PPN-01-202 # 8 (18) /18.01.2019, the media "F." was notified on the basis of Art. 26 of the APC for the initiated administrative proceedings. There is an opportunity to express an opinion and present evidence. In response, a statement was received, filed with Reg. № PPN-01-202 # 9 (18) /29.01.2019, which states the following: On March 27, 2018, a media reporter attended the session of the Municipal Council - B., whose chairman is K.L. "The hottest item on the agenda is related to the change of the Ordinance on movable sites on the territory of Municipality B. This change envisages that in the future the sites will be distributed not by an expert commission in mixed composition, as it was before, but by a new commission from the prevailing quota of the Municipal Council with purely political figures ". It is described that about 30 traders and representatives of branch organizations are present in the hall, worried that their sites may be distributed in a non-transparent manner. After the changes were voted on, the traders organized a press conference, announcing that "the son-in-law of the chairman of the Municipal Council wants their business." It is stated that this statement belongs to VS, deputy. Chairman of the "Association for the Protection of Small and Medium Business" in B. was given the opportunity to comment on KL, who explained that there is no "son-in-law". The

statement also described that his statement had been published on a number of websites. They inform that "about an hour after the statements of Mr. K.L. VS returns to the meeting hall of the Municipal Council in the town of B., carrying with him a folder with evidence of his allegations, including a reference from GRAO, to prove that the person H.R. - candidate for the 3 most profitable sites - is the father of the child of ML, daughter of KL. The child's parents do not have a civil marriage and the only way to prove the denied by Mr. K.L. connection with HR, according to Mr. VS, is the reference to the above data. The aim is to prove the coherence and conflict of interests, claiming that the Ordinance is illegal. " It is also pointed out that the statement of Mr. V.S. is quoted in the article: "It is about HR, who is the sole owner of the company" F.88 "EOD. And "from our reference in GRAO it can be seen that he is recognized as the father of the child of ML, daughter of KL. The two are not married, but he is the father of the grandson of the chairman of the Municipal Council. In view of the above facts, they consider that there is no violation of the law on personal data protection and the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, which is not applicable because it is not effective as of the date of publication. It is also stated that Art. 40 and 41 of the Constitution of the Republic of Bulgaria declare that the press and other mass media are free and not subject to censorship, that every citizen has the right to seek, receive and disseminate information, and according to Art. 11 of the Charter of Fundamental Rights of the European Union, everyone has the right to freedom of expression, which includes the freedom to receive and impart information and ideas without interference by public authority. The right and obligation of journalists to provide information, ideas, opinions on issues of public interest related to public relations and the work of institutions, largely ensures the democracy of social processes and the construction of correct and legitimate opinions and civic positions. Takes the view that interference in journalism is an expression of censorship, as well as a restriction on the right to disseminate information, and the ECtHR case law recognizes that a careful balance should be struck between restrictions and freedom of expression, given the requirement of proportionality freedom of expression, as the role of the press as a "public watchdog" is to communicate information and ideas on all matters of public interest, and the right of society is to receive such information (De Haes and Gijssels v. Belgium, Thorgerir Thorgeirson v Iceland). According to Art. 9 of Directive 95/46 / EC, entitled 'Processing of personal data and freedom of expression', 'Member States shall provide for exceptions or derogations from the provisions of Chapter 11, Chapter IV and Chapter VI on the processing of personal data where this takes place. solely for the purpose of journalistic activity or of literary or artistic expression. In each case, national authorities under the control of national courts should consider and strike a balance between the fundamental right to privacy

in relation to the processing of personal data of the individual or persons concerned and the fundamental right of freedom of expression of the data controller. . They believe that in this case the facts of a debate of significant public interest have been clarified. The publication is intended only to provide information to the public about the commitment and conflict of interest. The Ordinance for movable sites on the territory of the Municipality of B., on the occasion of which a dispute arose with Mr. K.L. whether he has a son-in-law, caused a strong public response in B. and the country. It has been appealed administratively by non-governmental organizations, and the cases are still pending. They point out that the clarification of the facts was caused by the statements of a person holding a public office - Mr. K.L. - Chairman of the General Assembly. and as a consequence of journalistic coverage of the right to express an opinion exercised by individuals - representatives of public organizations. There is also an opinion that Mr. K.L. holds a public office, and the Supreme Administrative Court and the Constitutional Court of the Republic of Bulgaria consistently accept that "the protection of personal data of persons holding public office is much lower than the protection of personal data of other citizens." According to the Constitutional Court, the right of access to information, which is a constitutional right of every citizen, exercised through the media - media, television, radio, etc., prevails over the protection of privacy and information. In this case, with his speech, Mr. K.L. has encouraged the disclosure to the media of information about his relatives - daughter, granddaughter, etc. It is explained that the case law on the application of EU law is clear that for the purposes of journalism or literary or artistic expression, the publication of data is permissible in order to guarantee the right to freedom of expression and the right to freedom of expression. information. According to the EP and the Council, "in order to take into account the importance of the right to freedom of expression in any democratic society, concepts related to this freedom, such as journalism, need to be interpreted broadly. In addition, it was mentioned that on the occasion filed by Ms. ML complaint to the State Agency for Child Protection with subject - the same article, a decision was issued by which the complaint was not upheld. Consider that M.2015 OOD has introduced and complies with all the requirements 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 and for the repeal of Directive 95/46 / EC (General Data Protection Regulation) and request that it be accepted that no breach of the LPPD has been committed and that the complaint of M .L. against the site "F. ". At a meeting of the Commission held on 27.02.2019 the complaint was accepted as procedurally admissible and as parties in the administrative proceedings were constituted: complainants ML, personally, and ER, through their legal representative (according to the provision of Art. 28, para

4 of the Civil Procedure Code) - M.K.R., respondent parties - "M.2015 OOD", in the capacity of representing "F." and "M.G.24" OOD, as owner of "B.24 ", According to the policy for confidentiality and protection of personal data. The parties have been regularly notified of the meeting of the Commission for consideration of the complaint on the merits scheduled for April 17, 2019. The complaint is fully compliant with the requirements for regularity, according to 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. The norm of art. 38, para. 1 of the LPPD (as amended by SG No. 91/2006) provides for a limitation period for referral to the Commission - within one year of learning of the violation, but not later than five years from its commission. The provisions of Art. 38, para. 1 of the LPPD deadlines have been met. In Art. 27, para. 2 of the APC, the legislator binds 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 "personal data controllers" within the meaning of the legal definition of Art. 3 of LPPD (as amended by SG No. 91/2006), which qualities are undoubtedly possessed by M.2015 OOD, in the capacity of representing F. and MG24 OOD, as owners of B .24 ", according to the privacy and data protection policy. This requirement is an absolute procedural prerequisite, in the light of which the admissibility of the action must be assessed. Regulation (EU) 2016/679 and the LPPD set out the rules regarding the protection of individuals with regard to the processing of their personal data. The aim is to protect the fundamental rights and freedoms of individuals, in particular their right to protection of personal data. According to recital 4 of Regulation (EU) 2016/679, the right to the protection of personal data is not an absolute right, but is considered in relation to its function in society and is applied on an equal footing with other fundamental rights, in accordance with the principle of proportionality. The Regulation respects all fundamental rights and respects the freedoms and principles recognized by the Charter of Fundamental Rights of the European Union, in particular respect for freedom of thought, freedom of expression and freedom of information. Recital 153 of the Regulation states that the law of the Member States should reconcile the provisions governing freedom of expression and freedom of information, including for journalistic, academic, artistic and literary purposes, with those protecting personal data. The term "journalistic goals" is not defined by the legislator, but is interpreted in case law. The essential thing for the journalistic activity is the collection, analysis, interpretation and dissemination through the mass media of up-to-date and socially significant information. Every journalistic activity is a manifestation of freedom of speech in the rule of

law. Restriction of freedom of expression and information is permissible only within the limits necessary in a democratic society according to Art. 10, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In essence, journalism requires the dissemination of information on issues of public interest. The publication of information on the media's website constitutes its public disclosure. The public dissemination of information for these purposes is a journalistic activity, as the very fact of dissemination is an expression of opinion, opinion, view, assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalism, the information must address issues of values that are genuinely socially important in view of the relationships involved. The official reference of "F." and "B.24" established that the mentioned sites are electronic media, whose tasks are to disseminate information, ie. to carry out journalistic activity, according to the reasons set out above. This conclusion is supported by the articles themselves, which are grounds for referral to the supervisory authority. In view of the above, the processing of personal data should be viewed through the prism of processing for journalistic purposes and the right to freedom of expression and information. With Art. 85 of Regulation 2016/679 gives Member States the opportunity to harmonize the right to protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes. When considering the complaint, it should be noted that the processing was performed before the application of Regulation (EU) 2016/679 - 25.05.2018, but also the obligation to comply with the individual administrative act with substantive law at the time of its issuance - Art. 142, para. 1 APC. In this case, there is a similarity between the provisions of the LPPD and the Regulation. According to the provision of art. 142, para. 1 of the APC, however, the compliance of the administrative act with the substantive law is assessed at the time of its issuance, which does not mean that the qualification of the violation complies with the substantive law in force at the time of issuance of the act. It should be noted that in order to accept that an act is a violation, it must be declared as such with a legal norm in force at the time of its commission, which must be considered violated, given that in this case the qualification should be made to the provision in force at the time of the infringement. With the provision of art. 4, para. 2 of the LPPD (as amended by SG No. 91 of 10 November 2006) it is stated that the processing of personal data is admissible also in cases when it is carried out solely for the purposes of journalistic activity, literary or artistic expression, insofar as such processing does not infringe the right to privacy of the data subject. In such cases, the provisions of Chapter Three shall not apply. The processing of personal data for the purposes of journalism must meet conditions which strike a balance between the fundamental rights of the individual and freedom of information (freedom of expression), and in particular the right of every

person to receive and impart information, as explicitly guaranteed in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In order to take into account the importance of freedom of expression in any democratic society, it is necessary, on the one hand, to give a broad interpretation of the concepts associated with it, including the concept of journalism. On the other hand, and in order to find a balance between the two fundamental rights, the protection of the fundamental right to privacy requires that the restrictions on data protection provided for in those regulations be introduced within the limits of what is strictly necessary. Therefore, the activities related to the processing of personal data originating from documents provided as evidence should be considered as personal data processing activities carried out "solely for the purposes of journalistic activity" within the meaning of the LPPD, if the sole purpose of these activities are the public disclosure of information, opinions or ideas, which the data controller should consider on a case-by-case basis. In this regard, Art. 2, para. 2, item 5 of the LPPD, namely that personal data should be deleted or corrected when it is established that they are disproportionate in relation to the purposes for which they are processed. From the evidence provided in the administrative file, it is evident that in the published articles, data from the birth certificate of E.R. The document shows the child's name, gender, and the names of his parents.

It should be noted that the processing of personal data through their public disclosure in the electronic media is in accordance with the principles of personal data processing set out in the provision of Art. 2, para. 2 of LPPD (as amended by SG, issue 103 of 2005), effective as of the date of publication of the information in the electronic media. With the provision of art. 2, para. 2. item 1 of the LPPD states that personal data are processed lawfully and in good faith. Pursuant to this principle by the electronic media, it should be pointed out that by publishing the birth certificate of the child, from which the names of his parents are visible, is the only way in which a connection can be made between the mayor. council in B., his daughter and son-in-law, given the lack of marriage and compliance with the surnames of both parents. The processing is also in accordance with item 2 and item 3 of art. 2, para. 2, personal data are collected and published for a specific purpose, are relevant and do not exceed the purpose for which they were collected, namely to provide transparency in society. The processing of personal data by the two electronic media is in accordance with items 4,5,6 of Art. 2, para. 2 of LPPD, given the fact that only the names of both parents and the child are left, so that a connection can be made from the names of the parents and the child's surname with those of the municipal councilor of B., and the rest of the information is deleted.

In Art. 85 of Regulation 2016/679 provides for the possibility for Member States to provide for derogations from some of the

chapters of the Regulation. In 25z, para. 3, item 1 of LPPD states that Art. 6, 9, 10, 30, 34 and floating fifth of Regulation 2016/679. As stated in the provisions of Art. 6 of Regulation 2016/679 grounds for processing do not apply, but in Art. 25h, para. 1 of the LPPD provides an independent basis for processing personal data for journalistic purposes.

Regarding the stated allegation of unscrupulous data processing within the meaning of Art. 5, paragraph 1, letter "a" of Regulation 2016/679, the same should be considered through the criteria for balance between freedom of expression and protection of personal data referred to in Art. 25h, para. 2 ZZLD.

1. the nature of the personal data - three names and sex. The published data do not reveal "biometric data" within the meaning of Art. 4, item 14 of Regulation 2016/679, insofar as in this case there is no specific technical processing that would allow or confirm the unique identification of the person to third parties who do not know and do not have other information about the person.

2. the impact that the disclosure of personal data or their public disclosure would have on the privacy of the data subject and his good name. Disclosure of personal data - names and gender, does not adversely affect privacy, as long as names and gender are basic data for the identification of an individual. The names of the child were announced at a press conference, and their publication is proof that the person allegedly interested in changing the ordinance is the child's father, whose data to be published and son-in-law of the chairman of the municipal council B.

3. the circumstances under which the personal data have become known to the administrator - at a press conference;

4. the nature and the nature of the statement, through which the rights under para 1 are exercised. 1 - the processing is for journalistic purposes in a professional sense;

5. the importance of the disclosure of personal data or their public disclosure for the clarification of an issue of public interest - the disclosed personal data are necessary for identification of the data subject, as the article refers to actions of public interest.

6. reporting whether the data subject is a person holding a position under Art. 6 of the Anti-Corruption and Confiscation of Illegally Acquired Property Act, or is a person who due to the nature of his activity or his role in public life has less protection of his personal privacy or whose actions have an impact on society - no is a person under Art. 6 of LCONPI;

7. reporting whether the data subject by his actions has contributed to the disclosure of his personal data and / or information about his personal and family life - the personal data have not been disclosed by the complainant;

8. the purpose, the content, the form and the consequences of the statement, through which the rights under para 1 are



exercised. 1 - in this case journalism is corrective;

9. the compliance of the statement through which the rights under para 1 are exercised. 1, with the fundamental rights of the citizens - corresponds to the other fundamental rights;

10. other circumstances relevant to the specific case - have not been established.

From the evidence gathered in the administrative file, it is not disputed that the data published in the two electronic media are aimed at clarifying facts related to conflicts of interest and that the specific data were published to clarify a problem of significant public interest.

Freedom of the press and other mass media are constitutionally guaranteed by the prohibition of censorship - Art. 40, para. 1 of the Constitution of the Republic of Bulgaria. Freedom of speech is one of the fundamental principles on which any democratic society is built. The society has delegated its right to information, to free expression, in professional engagement to journalists who, in the name of the public good, are engaged in the collection, arrangement and dissemination of information. The obligation of journalists to provide information and ideas concerning issues of public interest derives from the right of the public to receive it. In this sense, freedom of speech, freedom to disseminate information without censorship is justified to the extent that it guarantees the democracy of social processes and the ability of citizens to build opinions and positions on issues of public interest. These should be problems related to the governance of the state, problems of a social, political, economic, sporting or recreational nature, the consequences of which could directly or indirectly reflect in the legal sphere of each individual. Even the legislator in Art. 41, para. 1 of the Constitution of the Republic of Bulgaria limits the right to free dissemination of information, as it relates to other fundamental civil liberties. The extent to which a restriction on the right to freedom of expression is permissible depends on the importance of the interest which requires it.

In view of the stated reasons, it is necessary to conclude that the personal data of the complainant were lawfully processed for journalistic purposes, which are in the necessary correspondence between the protection of personal data and the freedom of expression and information. Ms. Mateva, a member of the Commission for Personal Data Protection, voted with a dissenting opinion, which is an integral part of this decision.

Given the above, pursuant to Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "E" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled as follows

ANSWER:

Dismisses as unfounded the complaint with reg. № PPN-01-202 / 02.04.2018, filed by ML against "F." and "B.24".

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 /

O.M. Maria Mateva / p /

Veselin Tselkov / p /

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