

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-231 / 23.05.2017 Decision on appeal with registration № Ж-231 / 23.05.2017 DECISION № Ж-231 / 2017 Sofia, February 23, 2018 The Commission for Personal Data Protection (CPDP) composed of Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on January 17, 2018. , objectified in protocol № 4/2018, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered on the merits a complaint reg. № G-231 / 23.05.2017, filed by N.D. (complainant) for violating the Personal Data Protection Act. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). N.D. has lodged a complaint with the Commission for Personal Data Protection, containing allegations of illegal installation of CCTV cameras. In the complaint he claims that the neighbor G.K. has installed video surveillance cameras in the entrance area and the floor areas of bl. *****. The complainant has no data on who and where collects and stores the data. In this regard, Mr. N.D. considers that the video surveillance violates his rights under the LPPD, and asks the Commission to conduct an inspection. 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. № P- 5234 / 20.07.2017 of the CPDP, of G.K. a deadline was given for a written statement and presentation of relevant evidence and by letter ref. № PPN-01 / Ж-231/2017 # 21 / 14.12.2017 of O.C. a deadline was given for a written opinion and submission of relevant evidence. In order to exercise its powers, the Commission must be properly seised. Complaint reg. № Ж-231 / 23.05.2017 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 filed by N.D. 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 Personal Data Protection Act (PDPA) 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 mu. 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 Act. In view of the said ruling, the appeal was declared admissible and the parties in the administrative proceedings were constituted and a date was set for consideration of the appeal on the merits. The complaint with registration № ЖК-231 / 23.05.2017 was filed by N.D. against the natural person GK, who does not have the quality of a personal data administrator. In connection with the official beginning and the evidence gathered in the administrative proceedings, at an open meeting, objectified in the minutes № 67 / 13.12.2017, the Commission constituted the manager of the condominium - OS as a respondent in the proceedings, given its quality as a controller of personal data. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, reflected in Protocol № 59 / 18.10.2017 and Order № RD-14-326 / 03.11.2017 of the Chairman of the CPDP to conduct an inspection in connection with clarifying the facts and circumstances on the complaint, objectified in the Statement of Findings № PPN-02-591 / 23.11.2017. As a result of the inspection it was established that at the address indicated in the complaint is an eight-storey residential building with five entrances, as the video surveillance system - subject to the inspection was built in ent. D, where the applicant's home is located on the second floor. The inspection team found that a video surveillance system was built at the address, which consisted of seven video cameras and two recording devices - DVR-video recorders. Two of the cameras are installed at the entrance of the building - on the outside and inside of the door, and another camera is installed on the landing on the first floor. These three cameras are connected to a VCR, which is located in an isolated room. The built-in video surveillance system allows monitoring of the output image from the cameras in real time and automatic recording of the images when moving an object within the range of the cameras. Only Mr. G.K. has access to the recorder, video recordings and video output. The DVR is connected to a local network via a router, which is accessed only by Mr. G.K. Real-time images as well as video recordings can be viewed on Mr. GK's computer, and the DVR is controlled remotely via the local network. The recordings from these cameras are stored for a period of about 20 days, after which they are automatically deleted from the system in the order of their receipt. At the entrance there is a second system installed, including four cameras, located on the landing sites on the 4th, 5th, 6th and 7th floors, respectively. The cameras are connected to a video recorder stored in the housekeeper's apartment. At the time of the test, the VCR is not connected to a network, there is no possibility of remote access to it and the output image from the cameras is not monitored by anyone. The second video surveillance system also allows automatic recording of images when moving an object within range of the cameras. Recordings from these 4 cameras are stored for a period of about 15 days. All cameras in the entrance are installed

by Mr. G.K. about 1 year ago, in connection with cases of vandalism and after discussion and adoption of a decision of the General Assembly of condominiums (Minutes № 15 / 13.01.2016), as well as with the express written consent of the installation of video surveillance system living in the entrance for security purposes (attached to the letter with entry № G-231 # 7 / 05.09.2017). There are no information boards at the entrance to warn about the video surveillance. To document the results of the inspection, the inspection team draws up a statement of findings, 5 graphic images from the video surveillance system, as well as 9 pieces - of the cameras installed in the entrance. 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. The complaint is directed against illegal processing of the personal data of the complainant, which is expressed in the illegal installation of a video surveillance camera. According to Art. 10, para. 1, item 7 in connection with Art. 38 of the Personal Data Protection Act, when referring it, the Commission considers complaints against acts and actions of personal data controllers, which violate the rights of individuals under this law, as well as complaints of third parties in connection with their rights under this law. It should be noted that at a regular meeting of the Commission held on 24.02.2010, the CPDP adopted a decision releasing the managers of condominiums (chairmen of management boards) from the obligation to register as administrators of personal data pursuant to Art. 17a, para. 2 of the LPPD. In this case, the lack of explicit consent of the applicant is undisputed - N.D. The applicant's allegation of lack of consent to the installation of video cameras does not lead to the mechanical conclusion that it is illegal, as consent is one of the conditions for admissibility of processing, but in order to accept inadmissibility or illegality, the lack of consent must be established. and be one of the other grounds in Art. 4, para. 1, item 1 - item 7 of LPPD. On the occasion of clarifying the circumstances in the administrative proceedings, the opinion expressed by the respondent party is considered. In the statement with reg. № Ж-231 # 3 / 14.08.17. by Mr. G.K. It is alleged that at the end of October and the beginning of November 2016 he installed 4 (four) CCTV cameras - "two in front of the entrance and two in the stairwell behind the front door." He informs that the installation of the cameras has been accelerated after three cases of mercury spillage in front of the doors of three apartments, for which cases the Civil Protection and the Ministry of Interior have been notified. He informed that after the installation of the CCTV cameras "there are no more such cases". The opinion states that before the cameras were installed, there were cases of vandalism and damage to the common areas, which were stopped after the installation of video surveillance. Mr. G.K. informed that due to the concern about mercury, the residents of the IV, V, VI and VII floors "requested

that there be cameras on their floors as well. During personal conversations with the chairman of the management board of the condominium with the residents in the entrance (24 apartments) it was established that "only those living in the apartment. 52, fl. II and ap. 57, fl. III did not want to have cameras on their floors and no cameras were installed on those two floors. " The video surveillance system is set to record for 10 seconds when recording traffic, and the recordings are stored for a period of about 60 hours, depending on the amount of recorded information. The recording software is protected by a username and password, and the cameras are monitored only when needed. Mr. G.K. informed that the applicant, Ms N.D. was present at the General Meeting held on 13.01.2016, and agreed to install video surveillance cameras for security purposes. living in bl. *****, who handwritten the names and signed by agreeing to the installation of a video surveillance system at the entrance for security purposes. In the administrative proceedings, Minutes № 22 / 05.10.2017 were submitted by a general meeting of the owners and users of homes in bl. ****. It is evident from item 5 of the cited document that a wish was expressed to the residents of floors 5 and 8 to install cameras, as all of them voted in favor, only the complainant voted against.

The Chairman of the Management Board, Ms. OS did not file an opinion on the case.

Relevant legal provisions are considered in connection with the evidence discussed above attached to the administrative file. According to Art. 4, para. 1 of the LPPD, the processing of personal data is admissible only in the cases when there is at least one of the conditions specified in item 1 - item 7 of the LPPD.

In the specific case, given the established regime of condominium ownership in the residential building, regulated by the provisions of the Condominium Management Act (ZUES), the legal basis of Art. 4, para. 1, item 1 of the LPPD - the processing is in fulfillment of a normative obligation of the personal data controller.

When performing video surveillance inside the residential building, the provisions of Art. 11, para. 1, vol. 10, p. a / and art. 17, para. 3 of ZUES, which regulate the powers of the general meeting as a body of condominium management.

According to Art. 11, para. 1, vol. 10, p. a / from ZUES the general meeting adopts decisions for making expenses, which are necessary for the maintenance of the common parts.

Pursuant to Art. 17, para. 3 of the LSMA, the legality of the cited power is guaranteed by providing a majority of more than 50 percent of the presented ideal parts of the common parts of the condominium.

From the submitted documents for the General Meeting held on 13.01.2016 it is evident that in item 4 of the same, as a proposal recorded under number 3 is the installation of security cameras in order to ensure the fleet., And by letter ent. №

G-231 # 7 / 05.09.2017, a list with explicit written consent for installation of a video surveillance system was provided to 17 of the apartment owners out of a total of 24.

Although the submitted document for the general meeting cannot establish the fulfillment of the legal requirements for quorum and majority, the additional list proves the knowledge and consent of the residents of the cooperative for the installation of CCTV cameras for security purposes.

It should be noted that personal data collected as a result of video surveillance must be processed by a personal data controller in accordance with the legal requirements of the LPPD. Natural person - GK, does not have the quality of personal data controller. Therefore, the manager of the condominium - Ms. OS, must take the necessary steps to ensure that the data collected as a result of the video surveillance of a divar stored by GK is lawfully processed. Internal rules should be developed to specify the manner of processing personal data in accordance with the Personal Data Protection Act.

Regarding the scope of video recording of the cameras, the findings in the Findings Act № PPN-02-591 / 23.11.2017 are noted, namely: two of the cameras are installed at the entrance of the building - on the outside and inside of the door, and another a camera is installed on the landing on the first floor. The other four video cameras are located on the landing sites on the 4th, 5th, 6th and 7th floors.

In connection with the camera mounted on the outside of the front door of the building, capturing neighboring properties, the principles of personal data processing, specified in the norm of Art. 2, para. 2, item 1, item 2, item 3 of LPPD, namely: personal data to be processed lawfully and conscientiously, for precisely defined and legal purposes, to be relevant, related to and not exceeding the purposes for which they are processed.

Given the need to find a balance between the interests of the controller of personal data and those of the complainants in compliance with the principle regulated in Art. 30, para. 1 of the Constitution of the Republic of Bulgaria for personal freedom and inviolability of every Bulgarian citizen, the assessment of partial validity of the complaint № Ж-231 / 23.05.2017 is motivated, in the part in which the video surveillance in public places is proved.

The established filming of public areas goes beyond the purposes for which the video surveillance was installed, namely: the protection of the personal and property inviolability of the respondent.

According to Art. 4, para. 1, item 7 of the LPPD, the processing of personal data is admissible when necessary for the realization of the legitimate interests of the personal data controller or a third party to whom the data is disclosed, except when

the interests of the natural person take precedence over these interests. which the data is disclosed.

This condition for the admissibility of the processing of personal data implies equal rights and interests of citizens, except when the interests of the data subject take precedence over the interests of the person processing personal data, in this case video surveillance.

Given the dynamic development of technological and social relations in general and the growing relevance of issues related to peace, health, security and life of the individual in modern reality is increasingly necessary trend to consider the rights and interests of citizens namely in terms of their equality, as well as applying the meaning of the spirit of the law and its conformity to reality.

The reason given for the installation of video cameras in the proceedings before the Commission, namely: problems in the relations between the parties, leading to concerns and concerns about the peace, health and life of apartment owners in *****, lead to the need to consider the admissibility of video surveillance through the prism of the provision of Art. 4, para. 1, item 7 of the LPPD.

In connection with the above and on the grounds of Art. 38, para. 2 of the Personal Data Protection Act, the Personal Data Protection Commission ruled as follows

ANSWER:

1. Dismisses as unfounded the complaint reg. № Ж-231 / 23.05.2017, filed by N.D. with respect to G.K. and terminates the administrative proceedings.
2. Dismisses as unfounded the complaint with reg. № Ж-231 / 23.05.2017, filed by N.D. with respect to OS in her capacity of manager of the condominium and administrator of personal data in view of the established on the grounds of art. 4, para. 1, item 7 of the LPPD admissibility of the processing of the applicant's personal data through the video surveillance carried out by the respondent by cameras mounted on the inside of the door, the camera installed on the landing on the first floor and the four video cameras located on the landing on the 4th floor. , 5th, 6th and 7th floor, in a way that does not establish an advantage in the interests of Mr. N.D. in compliance with the principles regulated in Art. 28 and Art. 30, para. 1 of the Constitution of the Republic of Bulgaria for the right to life, personal liberty and inviolability of every Bulgarian citizen, due to which there is no violation of the complainant's rights in accordance with the provisions of the LPPD;
3. Respects as a well-founded complaint with registration № Ж-231 / 23.05.2017, filed by N.D. with respect to OS in her

capacity of condominium manager and personal data administrator in the part related to the video surveillance from the camera installed on the outside of the front door of the building, filming public places and neighboring properties according to the established factual situation due to violation of the principle regulated in Art. 2, para. 2, item 3 of the LPPD, the personal data to be relevant, related to and not exceeding the purposes for which they are processed;

4. In connection with item 3 issues a mandatory prescription to OS - manager of the condominium to take the necessary technical and organizational measures, the data collected as a result of video surveillance of the divar stored in the home of GK, to be lawfully processed, developing internal rules to indicate the manner of processing of personal data in accordance with the Personal Data Protection Act.

6. Deadline for implementation of the mandatory prescription - one month from the entry into force of the decision, after which to inform the commission for the implementation by presenting the relevant evidence.

The decision of the Commission for Personal Data Protection may be appealed to the Administrative Court of Sofia - city within 14 days of receipt.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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