

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № PPN-01-38 / 30.08.2017 Decision on appeal with registration № PPN-01-38 / 30.08.2017 DECISION» PPN-01-38 / 2017 Sofia, 08.05.2018 Personal Data Protection Commission (CPDP) composed of Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva at a regular meeting held on 14.03 .2018 and objectified in protocol № 12 / 14.03.2018, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act, considered on the merits a complaint reg. № PPN-01-38 / 30.08.2017, filed by P.M. and I.T. against V.J. and I.Y. for violating the Personal Data Protection Act. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). P.M. and I.T. have lodged a complaint with the Data Protection Commission alleging the installation of a video surveillance camera. The complaint alleges that on the outer wall of the terrace, owned by V.J. and I.Y. in the town of \*\*\*\*\* a video surveillance camera was installed, aimed at the road, the front door and the garage cells, and according to the applicants, the scope of the camera "covers public places outside the property of the owners ". The applicants stated that they had not consented to "spying on, photographing or photographing". They believe that their rights have been violated. They are asking for an end to the video surveillance of the front door and the garage cells. 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 for the case with a letter with ref. № PPN-01-38 / # 1 / 24.10.2017 of the CPDP to the respondent parties and was given a 5-day period for a written opinion and presentation of relevant evidence. The letter was duly received and an opinion on the subject of the complaint was filed within the given deadline. In view of the obligation of the administrative body to establish the preconditions for admissibility of the request, regulated in the provision of art. 27, para. 2 of the Code of Administrative Procedure (APC), on 17.01.2018 the Commission has ruled on the admissibility of the complaint № PPN-01-38 / 30.08.2017, given the considerations of jurisdiction of the parties, competence of the CPDP, the presence of legal interest of the applicants, compliance with the provisions of Art. 38, para. 1 of LPPD term. In view of the said ruling, the appeal was declared admissible, the parties in the administrative proceedings were constituted and a date was set for consideration of the appeal on the merits. The parties are regularly notified. They do not appear, they do not send representatives to the meeting before the commission. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, reflected in Protocol № 4 / 17.01.2018, an Order № RD-14-20 / 26.01.2018 was issued to the Chairman of the CPDP to conduct an inspection in connection with clarifying the facts and circumstances on the complaint, objectified in the Findings Act № PPN-02-101 / 09.02.2018. As a result of the inspection it was established that

at the address indicated in the complaint there is an eight-storey residential building with nine entrances. The inspection team found that for the purposes of preventive security activities, two years ago, a video surveillance system was built, consisting of two video cameras, DVR-device "Hikvision" - located in the house of J., as well as a monitor which monitors the output image and video recordings. The system was installed by a company with which the defendants had not entered into an installation contract. It was established that the footage taken by the video cameras was accessed remotely through a web application installed on J.'s mobile phones, and according to the defendant, no one else had access to the videos or the DVR device. It was found that through the DVR-device, the video surveillance system allows the storage of video recordings for a period of about thirty days, after which they are automatically deleted in the order of their receipt. The inspection team found that the video cameras were located as follows: one was located above the front door of J.'s apartment and filmed the landing on the second floor, including the entrances to the neighboring homes; the second camera is located on the facade of the defendants' balcony and captures the street and parking lots adjacent to the residential building. The inspection team did not establish the presence of information boards warning about the video surveillance. The defendants provide the inspection team with a "List of residents in the town of \*\*\*\*\* who agree (do not mind) the installed security cameras of the J. family", which is attached to this statement of findings. To document the results of the inspection, a statement of findings was drawn up, and graphic images (photos) of the video surveillance system were attached to this statement of findings. 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. In order to exercise its powers, the Commission must be properly seised. The complaint is directed against illegal processing of the personal data of the complainant, which is expressed in the illegal installation of video surveillance cameras. 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. 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 the LPPD gives a legal definition of the concept, namely: personal data controller is a natural or legal person, as well as a body of state power or local government, which alone or together with another person determines the purposes and means of personal data processing, as well as when the type, purposes and means of processing are determined by law. Lack of consent for 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, it is necessary to establish the absence of any of the other grounds in Art. 4, para. 1, item 1 - item 7 of 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, item 10, letter "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, item 10, letter "a" of the ZUES, the general meeting also adopts decisions for the execution of 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 evidence presented in the file there is no evidence from which it is evident that a valid general meeting of the condominium was held, which decided with the necessary majority for the installation of CCTV cameras. From the list of residents at the address: \*\*\*\*\* , who agreed to install CCTV cameras, it is clear that explicit written consent for the installation of CCTV is expressed by 14 of the owners of apartments in the entrance, of a total of 24. Although no document was presented for a general meeting, which can clearly establish the implementation of the legal requirements for quorum and majority, the additional list provides proof of knowledge and consent of the residents of the cooperative for the installation of cameras for video surveillance for security purposes. As can be seen from the handwritten names and signatures of the persons, it can be assumed that the necessary legal majority has been formed, although in violation of the procedure specified in the ZUES. Regarding the scope of video recording of the cameras, the findings in the Findings Act H PPN-02-101 / 09.02.2018 are noted, namely: one camera is located above the front door of the apartment of J. and captures the landing on the second floor, and the second camera is located on the facade of the defendants' balcony and captures, and part of the street and the parking lots fall within its scope. In connection with the camera located on the facade of the balcony and evident from the attached photo material to the Statement of Findings № PPN-02-101 / 09.02.2018 it is evident that it captures neighboring properties and public areas, given that the principles are considered of processing of the personal data, indicated by 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 complainant 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, is motivated the assessment of partial validity of the complaint № PPN-01-38 / 09.02.2018, in the part where video surveillance is carried out in public places. 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 for the installation of the video cameras established in the proceedings before the Commission, namely: protection of the personal and property inviolability of the apartment owners, lead to the need to consider the admissibility of the video surveillance through the prism of Art. 4, para. 1, item 7 of the LPPD.

The cited content of the provision of 4, para. 1, item 7 of the LPPD is also connected with the knowledge and consent expressed by a large part of the residents in the residential building for the installation of video cameras. It is noted that the crediting of the consent of the co-owners of the building, objectified in a notarized document - a list of residents of the apartment building, refers to their decision to build a video surveillance system in and around the entrance to reduce crime and personal security. .

In view of the above and on the grounds of Art. 38, para. 2 of the Personal Data Protection Act, it is proposed that the Commission for Personal Data Protection rule with the following

ANSWER:

1. Respects as a well-founded complaint with registration № PPN-01-38 / 30.08.2017, filed by P.M. and I.T. against V.J. and I.Y. regarding the video surveillance camera, located on the facade of the balcony, filming public territories, 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;

2. In connection with item 1 issues a mandatory prescription to V.Y. and I.Y. within one week of the entry into force of the decision to dismantle the camera capturing public territories, the implementation of which to notify the Commission with the submission of 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

Tsvetelin Sofroniev / p /

Maria Mateva / p /

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