 Decision on appeal with reg. No. PPN-01-1800/27.11.2019 DECISION no. PPN-01-1800/2019 Sofia, 13.01.2021 The Commission for the Protection of Personal Data (KPLD, the Commission) in composition, Chairman, Vencislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a regular meeting held on 14.10.2020 and objectified in protocol No. 44/14.10.2020, based on Art. 10, para. 1 of the Personal Data Protection Act (PPA) in conjunction with Art. 57, § 1, b. "f" of Regulation (EU) 2016/679, considered a complaint with reg. No. PPN-01-1800/27.11.2019, filed by V.N. against "M. Ltd. With his complaint, Mr. V.N. informs that on 14.11.2019 at 7.30 p.m. his personal phone was called by a friend who informed him that an article was published on the website of "www.******" in which his names, age , mine, place of work, position held and photo. The complainant points out that he did not give consent for the publication of the data, and that the articles are of a markedly negative nature, aimed at publicity and dissemination of "unproven shameful circumstances". The complainant considers that the content of the articles on www.****** "interprets illegally obtained information concerning an internal departmental disciplinary investigation initiated by order of the Minister of Justice". The complaint also states that after the articles were published on www.******, the information was also cited on other Internet sites. By letter ext. No. ППН-01-1800(19)#2/24.01.2020 CPLD instructed the complainant to specify the passively legitimized party against whom the complaint was filed. In response, an addendum to the filed complaint was filed, in which it is specified that the complaint is directed against the "natural or legal entity owner" of the addresses "www. ******". In the addendum, it is stated that by decision No. ***** on administrative case No. ******* of the Administrative Court B., order No. ЧР-03-98 of 27.09.2019, issued by the Minister of Justice, with which disciplinary punishment was imposed, was declared null and void By letter ex. No. PPN-01-1800(19)#3/24.01.2020 from "M. Ltd. is required to provide an opinion and relevant evidence on the allegations presented in the complaint. An opinion has been filed, with which they consider the complaint unfounded. The arguments are that on 11/13/2019, the newsroom received a report that VN, head of the "Supervisory and Security Activity" group in a prison dormitory, was systematically sexually harassing his female colleagues. In the case, the Ministry of Justice, General Directorate "Execution of Punishments" has appointed an immediate interdepartmental disciplinary review, and as a result of the established facts of V.N. a disciplinary penalty of "reprimand" was imposed by order of the Minister of Justice. On the basis of these data, two journalists were assigned to start work on the case, who contacted the director of the prison in B., who confirmed that the inspection had been carried out and the punishment imposed, but refused to give details, referring to the

internal rules of the managed institution . After the confirmation received from the director of the prison, the editors decided to publicize the case by publishing details, considering that "the report described constitutes an anti-social act" it is a journalistic duty to inform the public. The complainant did not ask the editors for a right of reply, but used the social network "Facebook", where he indicated that he had crossed channels for the distribution of narcotic substances in the prison and for that he had become a "victim of a slanderous war". In order to achieve maximum objectivity when covering the case, the company also published what was written by the complainant on social networks. They point out that the sole purpose of the published information is journalistic, and the applicant, in his capacity as a civil servant, is in the position of a subject that has a direct bearing on the public debate on intolerance to anti-social acts. It is stated that essential for journalistic activity is the collection, analysis, interpretation and dissemination through mass media of current and socially significant information, and it is indicated that every journalistic activity is a manifestation of freedom of speech in the rule of law. They believe that the balance between basic human rights, public interest and private life has been observed in the publication. The complaint under review fully complies with the requirements for regularity, according to Art. 28, para. 1 of the Regulations for the activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA), namely: there are data on the complainant, the nature of the request, date and signature. The norm of Art. 38, para. 1 of the LLDP provides for a deadline for referral to the Commission - within one year of learning of the violation, but no later than five years from its commission. The provisions provided for in Art. 38, para. 1 of the Labor Code, the terms have been met, given the provision of par. 44, para. 2 of the Transitional and Final Provisions to the Law on Amendments to the LLDP. In Art. 27, para. 2 of the APC, the legislator binds the assessment of the admissibility of the request to the presence of the requirements specified in the text. The competence of the Commission when considering complaints is related to the protection of natural persons in connection with the processing of their personal data by persons having the status of "administrators of personal data" within the meaning of Art. 4, item 7 of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR). In view of the above and in view of the absence of prerequisites from the category of negative under Art. 27, para. 2 of the APC, the complaint was declared admissible and as parties to the administrative proceedings were constituted, V.N. and respondent "M. Ltd., in the capacity of administrator of personal data. An open hearing has been scheduled for consideration of the merits of the appeal on 15.07.2020, of which the parties have been regularly notified and they have been instructed on the distribution of the burden of proof in the trial. Due to the fact that additional evidence relevant to the decision of the appeal has arrived, namely Decision

No. ***** of the Supreme Administrative Court (SAC), Fifth Department, under Adm. case No. *****, the appeal is scheduled for a new hearing on 14.10.2020, of which the parties are regularly notified. The complainant submitted a statement with Reg. No. PPN-01-1800#14(19)/07/06/2020, with which he informed the CPLD that he would not attend the meeting scheduled for 07/15/2020, but essentially expressed his opinion , that he does not share the statements of "M. " Ltd. in connection with the publications, adds that by Decision No. ***** of the Administrative Court of B., XXIII Chamber, Order No. ЧР-03-98 of 27.09.2029, issued by the Minister of Justice, with which imposed a disciplinary penalty of "reprimand" was declared null and void, and the decision was not final. Requests CPLD to rule on the complaint and to impose the sanctions provided for the violations. According to Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "f" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Personal Data Protection Commission examines complaints against acts and actions of personal data controllers that violate the rights of natural persons under the GDPR, as well as complaints of third parties in connection with their rights under this law. According to the legal definition given in Art. 4, par. 1, item 1 of the Regulation "personal data" means any information related to an identified natural person or an identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as a name, an identification number, location data, an online identifier or by one or more characteristics specific to the physical, the physiological, genetic, psychic, mental, economic, cultural or social identity of that natural person. The data published in the article, namely two names, position held, place of work and photo of Mr. VN, undoubtedly constitute personal data within the meaning of the cited provision. Recital 4 of Regulation (EU) 2016/679 states that 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, according to the principle of proportionality. The Regulation complies with all fundamental rights and respects and respects the freedoms and principles recognized by the Charter of Fundamental Rights of the European Union, and in particular respect for freedom of thought, freedom of expression and freedom of information. With Art. 85 of Regulation 2016/679, Member States are given the opportunity to reconcile the right to the protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes, through their domestic legislation. Art. 25 h of the Labor Code represents a legislative settlement of this issue. In para. 1 indicates the basis for processing personal data - processing for journalistic purposes is lawful when it is carried out for the realization of freedom of expression and the right to information. In para. 3 of the same article stipulates that when

processing personal data for these purposes, some of the provisions of Regulation 2016/679 do not apply, including the conditions for the admissibility of processing under Art. 6 of Regulation 2016/679. Given the above, the processing of personal data is lawful in the presence of journalistic purposes, such as are undoubtedly present with the publication of the article, but in which consent under Art. 6, paragraph 1, letter "a" of Regulation 2016/679 or another ground under Art. 6 is not necessary. According to Art. 25 h, para. 1, however, processing for this purpose should be carried out with respect for privacy. When processing personal data for journalistic purposes, the principles of processing personal data under Art. 5 of Regulation 2016/679. A decision of 14 February 2019 in case C□345/17 of the Court of Justice of the European Union stated that in order to find the balance between the right to respect for private life and the right to freedom of speech, the European Court of Human Rights is developed a series of relevant criteria to be taken into account, in particular the contribution to a public interest debate, the prominence of the person concerned, the subject of the report, the previous conduct of the person concerned, the content, form and consequences of the publication, the manner and circumstances, where the information was obtained, as well as its reliability. Consideration should also be given to the possibility of the data controller to adopt measures to reduce the scope of the interference with the right to private life. The concept of "journalistic purposes" is not defined by the legislator, but it is interpreted in judicial practice. What is essential for journalistic activity is the collection, analysis, interpretation and distribution through the mass media of current and socially significant information. Every journalistic activity is a manifestation of freedom of speech in the rule of law. Limiting the freedom of expression and information is permissible only within the framework of what is necessary in a democratic society according to Art. 10, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. By its very nature, journalistic activity requires the dissemination of information on matters of public interest. The publication of information on the website of the media constitutes its public disclosure. The public dissemination of information for these purposes is a journalistic activity, since the very fact of dissemination is an expression of an opinion, an opinion, a view, an assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalistic activity, the information must concern matters of value which, in view of the relations concerned, are of genuine public importance. Recital 153 of the Regulation provides that the law of the Member States should harmonize the provisions governing freedom of expression and freedom of information, including for journalistic, academic, artistic and literary purposes, with those for the protection of personal data. It should be pointed out that the freedom of the press and other means of mass information are constitutionally guaranteed by

the ban on 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. Society has delegated its right to information, to free expression, in a professional commitment to journalists, who, in the name of the public good, deal with the collection, arrangement and distribution of information. The duty of journalists to provide information and ideas concerning matters of public interest derives from the public's right to receive it. In this sense, the freedom of speech, the freedom to disseminate information without censorship is justified to the extent that it guarantees the democracy of public processes and the opportunity for citizens to form an opinion and position on issues of public interest. In addition, consideration should also be given to Recital 75 of the Regulation, which states that the personal data used cannot be used to harm the individual's reputation. In this case, Order No. CR-03-98 of 27.09.2019, issued by the Minister of Justice, by which Mr. V.N. disciplinary penalty "reprimand" was imposed and was declared null and void by Decision No. ***** under Adm. case No. ******* of the Administrative Court (AS) – B. The Minister of Justice asked the Supreme Administrative Court to cancel the effective Decision of the AC- B. With Decision No. ***** under adm. case ***** of the Supreme Court, the court rejected the request to cancel a decision that has entered into force, which in turn leads to the use of the applicant's data precisely to damage the reputation of the person, given the lack of grounds for their use. From the evidence provided in the administrative file, it was established that the published articles contained two names of the applicant, a photo, position held and place of work. Given this, in the specific case it is indisputable that the applicant's personal data were processed, in the hypothesis of use and distribution, for journalistic purposes. In this regard, however, when processing the applicant's personal data for the purposes of the article, a reasonable balance was not found between the right to privacy of the affected person, the right to freedom of the press and the right of the public to be informed, i.e. the balance between the public interest and the private life of the person who referred the Commission was not found. Persons who are not part of the public space generally enjoy a higher degree of protection of their right to private life. However, their actions may also be of public interest, so there is no absolute prohibition for journalists to publish information related to them. Information about individuals may be published if there is a greater public interest, i.e. if the disclosure of information is justified by public interest and concern, which is considered to take precedence over considerations of privacy. Journalists should pay particular attention to the wider consequences of publishing personal information about an individual. The key point in weighing up freedom of speech and information on the one hand, and the protection of personal data and privacy on the other, is the public interest. The specific case should be considered through the

prism of the above. That is why, although the personal data were lawfully collected for journalistic purposes within the meaning of Art. 25 h, para. 1 of the Labor Code, by publishing them to an unlimited number of persons, they are processed inaccurately, which leads to damage to the reputation of the person in the sense of consideration 75 of the Regulation - due to the cancellation of the order and due to the lack of evidence of what was done by the perpetrator himself, which represents violation of the principle specified in art. 5, par. 1, "b" Regulation (EU) 679/2016, according to which personal data should be collected for specific, explicitly specified and legitimate purposes and not further processed in a manner incompatible with these purposes. In connection with the above, a distinction should be made between public interest and public interest. Any information can be of public interest, but it is not of public interest. When processing personal data for journalistic purposes, the requirements for satisfying the public interest should be observed. Undoubtedly, for the specific case, an order was issued by the Minister of Justice No. ЧР-03-98/27.09.2019 to impose a disciplinary penalty of "reprimand". The order was also appealed with Decision No. ***** under adm. case No. ******* of the Administrative Court – B. was declared null and void. The decision of the AC – B. was confirmed by Decision No. ***** under adm. case***** of YOU. Given the fact that the order was declared null and void, the claims of the electronic media that it processes the personal data of Mr. V.N. for journalistic purposes in the public interest cannot be proven. The activity of journalists requires the observance of certain ethics, in which they should take into account the basic rights of citizens and not enter their personal sphere without reason. It follows from the foregoing that the administrator has violated the rights of the complainant in connection with the published article, in which the information is in violation of the principle of Art. 5, par. 1, b. "b" of Regulation (EU) 679/2016 and recital 75 of the Regulation, since there is no information that the actions alleged in the article published on the website of "www.******" took place, given the fact that Order No. CR-03-98 of 27.09.2029, issued by the Minister of Justice, by which Mr. V.N. the disciplinary penalty "reprimand" was imposed, it was declared null and void. For this reason, for the administrator "M. EOOD, there is no legal basis for the published data to remain in the public space and the same should be removed. That is why the complaint is well-founded. Professor Tselkov, a member of the CPLD, is of a different opinion, considers the complaint unfounded, given the fact that Order No. ЧР-03-98 of 27.09.2019, issued by the Minister of Justice for the imposition of disciplinary punishment on Mr. V.N . has been canceled as issued by an illegitimate authority. The Commission has operational independence, assessing which of its corrective powers under Art. 58, paragraph. 2 of Regulation 2016/679 to implement. The assessment is based on the considerations of purposefulness, expediency and effectiveness of the decision, and an act should be enacted

that protects the interest of society and the data subject to the fullest extent. The powers under Art. 58, par. 2, without the letter "i", have the character of coercive administrative measures, the purpose of which is to prevent the commission of a violation or, if the commission has begun, to stop it, thereby objectifying the behavior required by law. The administrative penalty "fine" or "property penalty" under Art. 58 pairs. 2, letter "i" has a punitive nature. Regarding the application of the appropriate corrective measure under Article 58, par. 2 of the Regulation should take into account the nature, gravity and consequences of the violation, assessing all the facts of the case. The assessment of what measures are effective, proportionate and dissuasive in each case will need to reflect the objective pursued by the corrective measure chosen, i.e. restoring compliance with the rules, sanctioning misconduct or both (which possibility is provided for in Article 58, par. 2, letter "i"). Given the above and taking into account the fact that the violation of the rules for processing personal data began on 14.11.2019 and continued until 08.07.2020 (as can be seen from screen prints objectified in protocol No. ППН-01-1800#15(19)/08.07.2020), the Commission considers that a coercive administrative measure should be imposed as a sanction against the administrator. The Commission also notes that "M" Ltd. was issued an official warning with decision No. PPN-01-441/2019 issued on 04.10.2020 on the basis of Art. 58, par. 2, b. "b" of Regulation 2016/679, as no appeal was filed against the decision and it entered into force.Given the above, on the basis of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "f" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled as follows

ANSWER:

1. Announces a complaint with reg. No. PPN-01-1800/27.11.2019 filed by V.N. against M. Ltd. for a well-founded.

2. In relation to item 1, on the basis of Art. 58, § 2, b. "d", in connection with Art. 85 § 2 of Regulation (EU) 2016/679, for violation of Art. 5, § 1, b. "b", issues an order to the administrator "M" Ltd. EIK *****, with its registered office at the address of the management in the city of B. *****, to remove the publications within 14 days of the entry into force of the decision, after which will notify the commission of the implementation by presenting the relevant evidence.

The decision is subject to appeal within 14 days of its delivery, through the Commission for the Protection of Personal Data before the Administrative Court - Sofia - city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

O.M. Veselin Tselkov /p/

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