

DEFINITION

№ 13

Sofia, January 2, 2019

ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 48 panel,

in closed session on 02.01.2019 in the following composition:

JUDGE: Kalina Petsova

considering case number 12683 on the inventory for 2018 reported by

the judge, and in order to rule took into account the following:

The proceedings are by the order of art. 197 et seq. Of the APC, under Arg. of Art. 56, para. 4 of

APK.

The case was instituted on appeal by TR from [settlement] against Decision №

PPN-01-259 dated November 9, 2018. of the Commission for Personal Data Protection, bringing the complaint

the person was left without consideration and the initiated proceedings were terminated.

The appeal seeks the annulment of the contested decision on the following grounds:

that the CPDP has requested verification of the IP address from which it was published and on

her husband photo on the Internet, stating that the anonymity of the administrator of

the site makes it impossible to submit a request for deletion of personal data from

the face. An explicit request was made to the CPDP to request assistance from DG BOP for

identify the owner of the specified site and engage his responsibility.

The grounds of the decision stated that, in connection with the identification of the person

against which the complaint was filed, DG BOP requested assistance in establishing

of the site administrator.

DG BOP pointed out that the process IP address is part of the address space of

U., M. V., as extended information can be obtained only in the order of

forensic order. Indicates that in order to be able to refer the case to the court and be formed

case it is necessary to specify the party, which is impossible as a result

the decision of the CPDP.

The case was referred to the Prosecutor's Office, where they ruled that it was private criminal proceedings. To file a lawsuit, it should be explicitly stated defendant country. In view of the above, the bad faith actions of a third party remain unpunished.

In order to issue the act, the CPDP refers to Art. 34, para 3 of the APC, according to which the body should provide an opportunity for the parties to express their views on the complaint and the file beyond which the supervisory authority may exercise its powers only against a specific person who is not individualized in this case.

Requests the annulment of the decision and the return of the file to the competent authority pronounce on the merits.

The Decision of the CPDP was adopted and challenged in the present proceedings the following: The applicant found that a photograph with her face and that of her husband, exact address and names. He wants the CPDP to carry out check the IP address from which the photo was published on the Internet, where they are improperly processed her personal data.

Assistance was requested from DG BOP for individualization of the person - administrator on the site where the photo was published. In response, DG BOP stated that the process site is associated with the address space of U., M. V. as extended information can only be obtained through a forensic order.

It is accepted that the complaint was filed on April 23, 2018, but the considered processing of personal data is ongoing and at the time of enactment of the decision is an action in view of which it falls under the application of the EU Regulation 2016/679.

It is stated that according to Art. 10, para 1, item 7 of LPPD CPDP considers appeals against acts and actions of personal data controllers. According to Art. 57, para. 1, item "is" from

The Regulation, in conjunction with the clarification made in recital 122 to the referring to it, the CPDP considers complaints filed by data subjects against controller or processor, public authority or private body, acting in the public interest.

It is accepted that according to Art. 26, para 1 of the APC, the body should notify the parties of initiating administrative proceedings, and according to Art. 34, para 3 of the APC, of the same the opportunity to express an opinion should be provided. Beyond that, the body he could exercise powers only against a specific person.

It is concluded that the presence of a specific controller of personal data such as respondent in the proceedings is an absolute procedural prerequisite for admissibility of the appeal and development of the proceedings.

In this case, the respondent is not specified, and the requested assistance from DG BOP is not led to the final result, as the CPDP does not have the power to assign forensic order.

Due to the above and the lack of an individualized respondent, the proceedings are declared inadmissible and was terminated, and the appeal was left without consideration.

The court finds that the act was issued by a competent authority after its referral under Art. 38 of LPPD, is issued in the respective form, in compliance with administrative procedure rules and is in accordance with the law.

The thesis set out in the Decision of the CPDP is shared that in the absence of a defendant who be individualized in the course of the proceedings, the appeal is inadmissible, due to lack of abstract exercise of the powers of the body - without identification of a specific person. It is established that the Authority has taken measures to identification of the person, administrator of the site on which the photo was uploaded, which undoubtedly constitutes unlawful processing of personal data. From the answer to However, DG BOP finds that a person cannot be individualized without

preparation of a forensic order. It is not within the powers of the CPDP

possibility of awarding such, therefore it follows that outside the powers of

the state body is to identify the defendant in the case.

It is established from the data in the case that the person has taken measures to form

criminal proceedings by referral to the Prosecutor's Office of the Republic of Bulgaria, which has been terminated

due to the private nature of the allegation.

In view of this, the court finds that the person has the opportunity to exercise his right to

a lawsuit before the criminal court, to be seised and with a request for preparation of

forensic order to identify the defendant.

Only after the above, the CPDP will be able to exercise its powers, and in

individualized defendant, to carry out an inspection, to consider the proceedings under

substance, and possibly impose administrative sanctions when establishing

the prerequisites for this.

In view of the above, the court finds the appeal unfounded and as such should

left her without respect.

Guided by the above and on the grounds of Art. 200 of the APC, the court

DETERMINED:

DISREGARDS the appeal of TR from [settlement] against Decision [

PPN-01-259 dated November 9, 2018. of the Commission for Personal Data Protection.

The ruling is subject to challenge before the SAC within seven days of notification

his sides.

Copies of the order to be sent to the parties.

JUDGE: