

Decision on appeal with registration № PPN-01-108 / 20.02.2018 DECISION» PPN-01-108 / 2018 Sofia, 24.07.2019 Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev and Veselin Tselkov at a meeting held on 27.03.2019 , pursuant to Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, considered on the merits a complaint reg. № PPN-01-108 / 20.02.2018, filed by G.G. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint filed by G.G. with allegations of illegal processing of his personal data - unified civil number and those concerning his health, by the Municipal Council - V. The complainant informed that from 02.11.2015 he was elected mayor of V. and added, that according to the Law on Local Self-Government and Local Administration, when used, in this capacity, on leave due to temporary incapacity for work, the issued sick list is submitted to the municipal administration. He claims that from an inspection carried out by representatives of the Labor Inspectorate on leave due to temporary incapacity for work, he found that the Chairman of the Municipal Council V. requested from the TA of NSSI - R. information about his health, and in the submitted request his civil number. Mr. G.G. considers that the Municipal Council V. does not have the competence to store and process his personal data - a single civil number, much less to request and receive information about his health. He added that he had not given his consent for the receipt and use of his personal data by the Municipal Council (MC) V. and its Chairman. Asks the Commission to investigate the case and rule on the allegations of violation of the LPPD. 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, the Municipal Council - V. requested a written opinion and relevant evidence. In response, the Chairman of the Municipal Council, V., disputed the complaint and argued that there had been no dissemination or misuse of the applicant's personal data. He points out that according to the Rules for organizing the activities of the Municipal Council - V. "the mayor of the municipality notifies in writing the municipal council of the time of leave or absence for other reasons, as well as the person who will replace him during his absence." He added that in this regard and on the occasion provided by the Deputy Mayor of the Municipality of V. to the General Assembly. notification dated 18.01.2018 for the absence of Mr. G.G. - Mayor of the municipality due to temporary incapacity for work and replacement order, without a sick leave, had to request information from RHI and TA of NSSI - R. information issued to Mr. G.G. sick leave. As a reason for the latter points out the

fact that during the leave Mr. G.G. has resided at his place of work and has participated in the meetings of the Municipal Council held during this period. Mr. M. does not dispute the fact that he requested this information from an administrative body - personal data controller within the meaning of the law, which is competent to decide whether or not to provide the requested information, assessing whether it is personal data. He added that the Municipal Council does not store and process data within the meaning of the LPPD and does not keep registers, pointing out that "this activity is entrusted to the municipal administration, which is directly subordinated to the mayor - Mr. G.G. ". Considers that the submitted signal is intended to discredit the General Assembly - B. A certified copy of relevant evidence in the case is attached to the opinion, including a certified copy of a medical certificate № \*\*\*\*. 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 monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and 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. In order to exercise its powers, the Commission must be properly seised. The appeal shall contain the obligatory 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, namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest against a competent party - controller of personal data, which the capacity of Municipal Council V. undoubtedly possesses by argument of 4, para. 7 of the General Regulation EU 2016/679 and Art. 3, para. 1 of LPPD, given its quality as a body of local self-government within the meaning of Art. Art. 18 of the LGMSA. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD / respectively Art. 55, § 1 of Regulation (EU) 2016/679, considers complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data, as there are no exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by courts in the performance of their judicial functions. For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, at a meeting of the Commission held on 06.02.2019 the complaint was accepted as procedurally admissible and as parties in the proceedings were constituted: complainant - G.G. and respondent - Municipal Council - V., represented by the Chairman of the

General Assembly. The complaint is scheduled for consideration on the merits for March 27, 2019, of which the parties have been regularly notified. In order to clarify the case, the respondent requested legal and factual information and evidence about the source from which the medical certificate presented in the file was received, the same one with the certification "True to the original" issued by the Municipal Council - V. In response and by letter PPN-01-108 # 7 / 25.02.2019, the respondent informed that a copy of the medical record presented in the file, together with a replacement order, was provided by Deputy. the mayor of the municipality V., I.S. during a meeting of the General Assembly held on 07.11.2017. In addition, he states that they have 3 uncertified copies of the applicant's sick leaves, the same provided at a meeting of the General Assembly by the Deputy Deputy. the mayor according to a replacement order, the first of which was provided on January 29, 2016. In support of the allegations, certified copies of the Extract from Protocols № 6 / 29.01.2019 and № 40 / 07.11.2017 and an uncertified copy of the hospital list issued on 17.01.2016. At a meeting of the CPDP held on 27.03.2019, the complaint was considered on the merits. The complainant - regularly notified, did not appear, was represented by lawyer MM, with a power of attorney presented at the hearing, which supports the complaint and asks the Commission to accept it as well-founded. He claims costs in the amount of BGN 300. The respondent - regularly notified, is represented by lawyer GZ, who maintains an opinion that the complaint is unfounded. Reaffirms that this is a practice based on the Rules of Procedure of the General Assembly, adding that the case is specific given the fact that it concerns a person acting as a state body, which should be subject to a higher degree of criticism and transparency. with regard to the processing of his personal data. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the Code of Administrative Procedure, requiring the existence of established facts, given the written evidence gathered and the allegations of the parties, the Commission considers that considered on the merits of the complaint № PPN-01-108 / 20.02.2018 is justified. The decision took into account the change in the legal framework in the field of personal data protection and the fact that from 25.05.2018 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 the fact that from 02.03.2019 the Law on amendment of the Personal Data Protection Act. Account is also taken of the fact that Regulation (EU) 2016/679 has direct effect, and legal facts and the consequences arising from them before the application of the Regulation should be assessed according to the substantive law in force at the time of their occurrence. In the specific case such are the material provisions written in the LPPD in the wording before 02.03.2019, in view of the fact that

the legal facts and legal consequences related to the processing - data collection concern the period before application of the Regulation, but also to the date of pronouncement. The provisions of the Regulation are also relevant to the Commission, and it should be noted that the provision of Art. 5 of LPPD corresponds to the provision of art. 9 of the Regulation and does not contradict it - they concern the processing of special categories of personal data, including those related to health. holding this position to this day. By order № 515 / 03.10.2017 of the mayor of the municipality of V. was authorized deputy. the mayor of the municipality V., I.S. to perform in full the functions of the mayor of the municipality of V. under Art. 44 of LLSGA, in the cases of used by the mayor on statutory leave, sick leave and business trips.

From the evidence gathered in the file it was established that on the occasion of leave used by the complainant due to temporary incapacity for work and received on 18.01.2018 in the General Assembly - V. notification in this regard, the Chairman of the General Assembly - V. sent a letter to RHI-R. , with a copy to the TD of the National Social Security Institute R., with which he requested information issued to the mayor of the municipality V. - Mr. G.G. sick leave, its duration and treatment regimen, as well as whether the latter has been complied with. The letter mentions both the three names of Mr GG and his unique civil number. In response - letter № 534 / 20.02.2018 from RHI - R. refused to provide the required information on the grounds that the hypotheses of Art. 28, para. 1 of the Health Act, regarding the possibility for the requested information - health in the sense of the law, to be provided to a third party. The refusal is lawful, and the processing - the provision and use of personal data - names and PINs of Mr. G.G. to obtain such information should be considered admissible and lawful in the case of exercising official powers granted to the administrator within the meaning of LLSGA, namely control over the activities of the mayor, especially since the data is provided to a state body - RHI, which has them, in the discretion of which is to provide or not the required information.

However, a violation of the Administrative Procedure Code was established in the administrative proceedings. related to the collection and storage of sensitive personal data - a special category of data, namely those related to the health of the complainant. Contrary to the allegations of the respondent, the evidence gathered in the file established that the General Assembly kept a copy of three sick leaves issued to the applicant, two of which were presented in the present proceedings, namely sick leave № \*\*\*\*, issued on 31.10. 2017 from OMC "St. N. Chudotvoretz "EOOD and a hospital certificate issued on 17.01.2016 by MHAT“ Dr. Teodosii Vitanov "EOOD.

It is indisputable that the information contained in the documents is personal data from the category of sensitive / special within

the meaning of Art. 5, para. 1, item 3 of LPPD (repealed) and Art. 9, § 1 of the Regulation, given the fact that in the sick leaves, in addition to information about the three names, address, unique civil number and position held by Mr. G.G. there is also information about his health condition within the meaning of Art. 4, § 15 of the Regulation, namely one related to his physical health - diagnosis. Given the lack of explicit consent of the individual to process data related to his health by the OS-B. and the absence of any of the others referred to in Art. 5, para. 2 of LPPD (repealed) regarding the data collection and Art. 9, § 2 of Regulation 2016/679 on their storage conditions for admissibility of processing, it is necessary to conclude that the collection and storage of such information, in particular a copy of sick leaves in which it is reflected, is illegal and in violation of Art. 5, para. 1 of LPPD (repealed), respectively Art. 9, § 1 of the Regulation and the ban imposed on them for processing personal data related to the health condition of the data subject. In this regard, the prevailing in the OS-B. According to the Chairman of the General Assembly, for presenting to the General Assembly a sick note issued to the mayor together with an order for his replacement during the mayor's leave due to temporary incapacity for work, is vicious and illegal and should be terminated as contradictory according to the provisions. of LPPD and the Regulation. The actions of the General Assembly on the collection and storage of personal data related to the health condition of the complainant are in violation of the privacy of the person, which undoubtedly even public figures have.

For the sake of completeness, it should be noted that the Commission is of the opinion that the role of a person in public life justifies the public's priority interest in having access to information concerning him or her, and that persons acting as public authorities should be degree of transparency and criticism. In this direction is the practice of the Constitutional Court of the Republic of Bulgaria, according to which the protection of personal data of persons holding public office, including the mayor, is much lower than the protection of other citizens. The processing of his personal data, individualizing him as a body of power, is necessary to build an opinion among citizens about the activities of legal entities. However, the latter is irrelevant to the data related to the person's health - diagnoses, sensitive data that are under special protection and are not and / or should not be in the public interest, as long as there is no reprehensible behavior, but rather the exercise of rights , which does not interfere with the operation of the OS.

Given the nature and type of the established violation, the Commission considers that in the specific case the corrective measures under Art. 58, § 2, letters "a", "c", "e", "e", "g", "h" and "j" of the Regulation. In view of the fact that the violation is the first for the personal data controller and the fact that no evidence for its termination is involved and the same continues, he

considers it appropriate, proportionate and effective to impose a corrective measure under Art. 58, § 2, letter “d” of the Regulation, namely order of the personal data controller - Municipal Council - V. to comply with the operations for processing special personal data with the provisions of Art. 9 of the Regulation, by suspending the collection of a copy of sick leaves issued to the mayor of the municipality of V. in connection with the leave used by him due to temporary incapacity for work and destroying the collected ones so far. It finds that it will have a warning and deterrent effect and will contribute to the observance of the established legal order and termination of the violation.

The Commission acknowledges the costs incurred by the applicant for legal representation in the amount of BGN 300, given the outcome of the dispute, the timely request for costs and the personal appearance of the applicant's legal representative, and it should be noted that the defendant's representative did not object the request.

Guided by the above and on the grounds of Art. 38, para. 3 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Announces a complaint PPN-01-108 / 20.02.2018 filed by G.G. for justified.
2. On the grounds of art. 58, § 2, letter “d” of EU Regulation 679/2016 and for violation of Art. 5, para. 1 of LPPD (repealed), respectively Art. 9, § 1 of the Regulation shall issue to the controller of personal data Municipal Council - V. an order to comply with the operations for processing of special category of personal data with the provisions of art. 9 of the Regulation, by suspending the collection of a copy of sick leaves issued to the mayor of the municipality of V. and destroying those collected so far within 14 days of entry into force of the decision, to notify the Commission and provide evidence of its implementation .
3. On the grounds of art. 59, para. 2, item 6 of the APC, supra art. 78, para. 1 of the Civil Procedure Code, supra art. 8, para. 3 of the Ordinance on the minimum amounts of attorneys' fees, recognizes and respects the costs incurred by the applicant in the amount of BGN 300, which should be paid by the Municipal Council - V.

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court - R.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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