Home »Practice» Decisions of the CPDP for 2019 »Decision on appeal with registration № PPN-01-61 / 13.09.2017 Decision on appeal with registration № PPN-01-61 / 13.09.2017 DECISION» PPN-01-61 / 17, Sofia, October 8, 2019. The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at an open meeting held on June 12, 2019. ., given the provision of § 44, para. 1 of the Transitional and Final Provisions of the Law for amendment and supplement of the Law for protection of the personal data, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act (revoked), considered a complaint with registration № PPN-01-61 / 13.09.2017, filed by A.K. against the Ministry of the Interior (MoI). Mr. A.K. declares that he is a citizen of Finland and resides in Finland. The complainant informed that he had arrived in Bulgaria on 30 June 2017 with his family on a flight from Helsinki to Varna Airport for a planned summer holiday. Before the return flight home - on 07.07.2017, at Varna Airport, Mr. AK was detained by the border police and not allowed to return to Finland, and was subsequently brought before the Varna District Court, which ordered his detention for 40 days. The applicant understands that his detention is the result of a request submitted by the Togolese authorities, announced through the Interpol system, for a search for the purpose of prosecuting a person whose details - two names and country of origin - coincide with his. Although the Togolese authorities did not provide photographs, fingerprints or other (passport) data of the wanted person, the Bulgarian authorities detained Mr AK. At the same time, the Bulgarian authorities informed the Togolese and Finnish authorities of the applicant's detention. . The Finnish authorities confirm that he is a citizen of their country, that he owns the passport and ID card of a Finnish citizen presented by him, and that on 12 June 2016 they sent a request to the Togolese authorities to provide them with information about the alleged committed crimes, as well as more data allowing to establish the identity of the wanted person, as A.K. has the same details - such as name, date and country of origin, but so far - no information has been received from the Togolese authorities. In this situation, on 07.07.2017, the authorities in Bulgaria took the identity documents of AK, took pictures of him, took his full fingerprints and without any reason, send all his personal data to the authorities in Togo. The applicant alleged that without the requesting State providing identification data in respect of the wanted person, Bulgaria had unjustifiably sent all his personal data to a third country, Togo. Even AK's own country did not do such a thing, although it had the same obligations at the request of Togo. Subsequently, the Sofia City Court considered the request of the Togolese authorities for extradition and ruled, refusing A.K. to be extradited at the request of Togo. The complainant considers that the provision of his personal data by the Ministry of the Interior to the authorities of a third country, Togo, constitutes a violation of the rights granted to him by

the LPPD and EU law. A.K. points out that it is not the person wanted by Togo, but the authorities in Bulgaria - instead of requesting information from the requesting state, they have illegally and unjustifiably provided all his personal data by sending it to Togo. The Ministry of Interior requested and filed a written statement on the complaint by which Mr. A.K. refer to the CPDP. In the statement reg. № PPN-01-61 # 6 / 11.12.2017 the Ministry of Interior engages arguments for unfoundedness of the filed complaint. It is pointed out that according to Art. 43a, para. 3 of the Law on the Ministry of Interior, the Directorate for International Operational Cooperation (DMOS) is a structure of the Ministry of Interior for organizing and coordinating the international exchange of operational information, for coordinating and methodological support of international operational cooperation and for extradition, transfer and transfer of persons . As the national contact point for Interpol, the DMOS should exchange all available information on wanted and detained persons with the relevant requesting Member State of Interpol that has entered the international search warrant. It is pointed out that in the case under consideration, the Ministry of the Interior processed the data of Mr. A.K. fully lawfully, exercising its authority to carry out operational and investigative activities, according to Art. 8 et seq. Of the LMI. According to Art. 9, para. 2, item 2 of the LMI, grounds for carrying out operative-search activity may also be requests made by another state or organization by virtue of international agreements to which the Republic of Bulgaria is a party. The specific case concerns a request for the detention and extradition of AK addressed to Bulgaria by the Togolese Republic under the legal framework of the International Criminal Police Organization "Interpol", of which both countries are members. It is emphasized that the grounds for detention of A.K. and the subsequent exchange of personal data between the Bulgarian authorities and the Togolese authorities fall within the scope of Art. 9, para. 2, item 2 of the LMI and Art. 4, para. 1, item 6 of LPPD. According to the Ministry of Interior, the DMOS has performed actions under Art. 36a, para. 7, item 4 of the LPPD, which refers to the provision of personal data in a third country if "the provision is necessary or required by law due to significant public interest or for the establishment, exercise or protection of rights in court." At its regular meeting, held on 24.01.2018, the CPDP accepted the complaint reg. № PPN-01-61 / 13.09.2017 as admissible and determined it for consideration in an open meeting of the commission, scheduled for 14.02.2018. In the opinion reg. has been established, as well as from the country in which the person is established, to the country that is looking for the person. In view of the described practice, the identity of the persons is confirmed in two ways, namely: confirmation in the country where the person was identified after comparing the dactyloscopic data received from the requesting country with the dactyloscopic data taken by the person during his detention or sending the dactyloscopic data. , taken during the detention of the person, for

comparison with the requesting state, which undertakes to perform the necessary fingerprinting and confirm his identity, the Ministry of Interior requested information about the legal framework on which this practice is based. In opinion reg. № PPN-01-61 # 12 (17) /13.02.2017, the Ministry of Interior does not provide the requested information, but only reinterprets the arguments involved in the previous opinion on the case, previously filed with the CPDP. In Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA) defines the details that must contain the complaint with which individuals refer to the Commission for violation of their rights under LPPD. The complaint filed by Mr. A.K. against the Ministry of Interior meets the statutory requirements, which is why it is regular. The complaint was filed by a natural person, in the presence of a legal interest and within the term under Art. 38, para. 1 of LPPD, which is why it is admissible. The complaint is directed against the Ministry of Interior, which is a controller of personal data within the meaning of Art. 3, para. 1 of the LPPD. At its regular meeting, held on 24.01.2018, the CPDP accepted a complaint reg. № PPN-01-61 / 13.09.2017, filed by A.K. against the Ministry of Interior as admissible. Pursuant to Art. 38, para. 3 of the PDKZLDNA the commission constitutes the complainant and the Ministry of Interior - as a respondent respondent in the proceedings. Complaint Reg. B.K. - procedural representative of Mr. A.K. and Chief Legal Adviser V.T. - procedural representative of the Ministry of Interior. In the course of the examination of the merits of the complaint Reg. from Finland and respectively - reciprocally, from the Bulgarian side. The Commission requests the Ministry of Interior to provide the signal from Interpol, together with the accompanying notes, as well as information on the subsequent actions taken by the Ministry, after establishing that A.K. is not wanted - through Interpol, a person. In view of the above, the CPDP postpones the consideration of the complaint Reg. № PPN-01-61 / 13.09.2017 for 07.03.2017, of which the parties were notified at the meeting. Subsequently, with a decision of the CPDP dated 28.02.2018, the examination of the merits of the complaint Reg. № PPN-01-61 / 13.09.2017, was postponed from 07.03.2018 to 21.03.2018. , for which the parties are regularly notified under the APC. In the open meeting of the CPDP, held on March 21, 2018, B.K. - procedural representative of Mr. A.K. and Chief Legal Adviser V.T. - procedural representative of the Ministry of Interior. Regarding the information requested in the previous session, the Ministry of Interior, through its procedural representative, declared a refusal to provide it, stating that it maintained its initial opinion on the case. The Personal Data Protection Act does not differentiate between persons on the basis of their nationality or legal status. All natural persons whose data are processed by an administrator falling under the jurisdiction of the Bulgarian legislation enjoy the right to protection of their personal data (Article 1, paragraph 4 of the LPPD). The assessment

of the legality of the personal data of Mr. A.K. - in the form of their transfer to a third country, Togo, should also comply with the special extradition law and the European Arrest Warrant (EAEA). In Art. 4, para. 1 of the EAEA is indicated that it is applied in the presence of an international agreement to which the Republic of Bulgaria is a party, supplementing it with regard to unresolved issues. The provision of Art. 4, para. 3 of the EAEA explicitly states that the scope of the law also covers cases of obtaining an International Criminal Investigation Bulletin of the International Criminal Police Organization ("Interpol") or receiving a signal through the Schengen Information System for detention and extradition. According to the administrative file, it is not disputed that this is a request for search and detention - for the purpose of extradition of AK, sent to Bulgaria by the Togolese Republic, through the International Criminal Police Organization "Interpol". There is a case where an EU Member State, through Interpol, has been requested by a third country - to search for and detain - for the purpose of extradition, to a person who is a citizen of another EU Member State. At the same time, the request for extradition seeks a citizen of Côte d'Ivoire, although the Togolese authorities have been informed that a Finnish citizen has been detained and that, apart from two names, does not match the data of A.K. on the file materials, the request for search and detention - for the purpose of extradition, does not contain the requisites under Art. 9, para. 3, item 3 of the EAEA, namely data on the requested person, accompanied by other information allowing the establishment of his identity and citizenship in an indisputable manner. In this case, there is a coincidence of identity, not established in any other way than by the two names available in the Interpol bulletin, year of birth and country in which the person was born. Notwithstanding the reference, by the Ministry of Interior, to Art. 9, para. 2, item 2 of the LMI and of Art. 4, para. 1, item 6, in connection with Art. 36a, para. 7, item 4 of the LPPD - as grounds for processing the personal data of the complainant, it can be concluded that without the requesting State Togo has provided identification data in respect of the wanted person, Bulgaria, without having established in an indisputable manner the identity of that person sent all of AK's personal data, including photographs, complete fingerprints and photographs, to a third country, Togo. In view of the above, it is necessary to conclude that the Ministry of Interior has processed - by providing them to Togo, the personal data of Mr. AK, contrary to the provisions of Art. 23, para. 1 of LPPD, failing to take the necessary technical and organizational measures to protect data from accidental or illegal destruction or accidental loss, from unauthorized access, alteration or dissemination, as well as from other illegal forms of processing. In view of the above, the Commission accepts the complaint Reg. № PPN-01-61 / 13.09.2017 as justified and imposes on the Ministry of Interior a property sanction in the amount of BGN 1,000 (thousand) for personal data controller has processed the personal data of Mr.

AK, in violation of Art. 23, para. 1 of the LPPD. The dispute was ruled Decision PPN-01-61 / 17 of 26.04.2018 of the CPDP, which was challenged by a complaint from the Ministry of Interior and the Minister of Interior, filed with the Administrative Court Sofia - city. The court ruled with Decision № 579 / 30.01.2019, which found that in the case there was a discrepancy between the described factual situation of the administrative violation - illegal provision of personal data, without grounds for the meaning of the complaint of Mr. AK, on the basis of which the administrative proceedings were instituted, ie the existence of a violation under Art. 2, para. 2 of LPPD, which is given a legal qualification under Art. 23, para. 1 of the LPPD. The ACCG considers that this discrepancy deprives the court of the opportunity to assess whether the administrative body has correctly applied the relevant sanction norm and does not allow to assess whether the CPDP has ruled on the alleged violation - illegal processing of personal data. According to the court of first instance, having qualified the violation under Art. 23, para. 1 of the LPPD, whose subject is a controller of personal data, the CPDP has not presented data on the quality of the Ministry of Interior as such, and in this case, according to Art. 29, para. 1 of the Ministry of Interior, the administrator of personal data is the Minister of Interior, not the Ministry of Interior. Thus motivated and on the grounds of Art. 172, para. 2 in conjunction with Art. 173, para. 2 of the APC, the court annulled Decision № PPN-01-61 / 17 of 26.04.2018 and returned the file to the CPDP for a new ruling on the appeal of AK, in compliance with the mandatory instructions given in the reasons of the court answer. In view of the above, in view of the entry into force of Decision № 579 / 30.01.2019 of the ACCG, at its regular meeting held on 10.04.2019, the CPDP considers admissible the complaint filed by Mr. A.K. and constituted it as an applicant party in the administrative proceedings. In accordance with the provision of Art. 29, para. 1 of the LMI, the commission constitutes the Minister of Interior as a respondent in the proceedings, requires him to provide a written opinion, together with the relevant evidence and determines a complaint reg. № PPN-01-61 / 13.09.2017 for consideration in open meeting, scheduled for June 12, 2019. By letter reg. № PPN-01-61 # 36 (17) /15.05.2019, the Minister of Interior, through his procedural representative - Ch. yurk. VT, expresses an opinion declaring that he maintains a full opinion reg. № 812100-24708 / 06.12.2017 on the list of the Ministry of Interior on the complaint of Mr. AK, as well as set out in a letter entitled information ”with registration number 812100-2747 / 13.02.2018 according to the inventory of the Ministry of Interior. The statement states that the Ministry of the Interior processed the personal data of Mr. A.K. completely lawfully, as they have exercised their authority to carry out operational search activities, according to Art. 8 et seq. Of the LMI. It is emphasized that the grounds for the performed processing are also provided in Art. 6, § 1, b. "C" and b. "E" of the ORZD, and the detention of Mr. A.K. and the subsequent

exchange of personal data between the Bulgarian authorities and the Togolese authorities fall within the scope of Art. 9, para. 2, item 2 of the LMI and Art. 4, para. 1, item 6 of LPPD (revoked). According to the Minister of Interior, this case does not concern a violation of the rights of the detainee, granted to him by the LPPD, because the DMOS has committed actions under Art. 36a, para. 7, item 4 of LPPD (repealed), allowing the provision of personal data in a third country, if it is necessary or required by law due to significant public interest or for the establishment, exercise or protection of rights in court. Given the described factual situation, the materials involved in the file and in accordance with the mandatory instructions given in the reasons for the effective decision № 579 / 30.01.2019 of the ACCG, it is necessary to conclude that the personal data controller, determined according to Art. 29, para. 1 of the LMI in the person of the Minister of Interior, has committed an administrative violation, representing illegal processing of personal data of Mr. AK, consisting in their illegal provision to a third country - without any of the conditions for admissibility of data processing regulated in Art. 4, para. 1, items 1-7 of LPPD (repealed), in contradiction with the principles laid down in Art. 2, para. 2 of LPPD (revoked). In ruling on the appeal of Mr. A.K. the change in the legal framework in the field of personal data protection in the period from the processing of personal data to the moment of ruling on the merits of the request addressed to the administrative body should be taken into account. It is necessary to take into account that from 25.05.2018 the General Regulation on data protection applies, which has direct effect, and according to the provision of Art. 142 of the APC, the compliance of the administrative act with the substantive law is assessed at the time of its issuance. The General Data Protection Regulation and the Personal Data Protection Act regulate the protection of the rights of individuals in the processing of personal data in order to ensure the privacy of individuals and privacy by providing protection against improper processing of personal data relating to them. the process of free movement of data. In the course of the administrative proceedings on the complaint Reg. № PPN-01-61 / 13.09.2017, none of the hypotheses for admissibility of the processing of personal data, specified in Art. 4, para. 1, item 1 to item 7 of LPPD (repealed), respectively on the identical grounds for admissibility of the processing, provided in Art. 6, § 1 of the ORZD., Which is a violation of the rights of the complainant, guaranteed to him by the current legislation. Disseminating the personal data of Mr. AK, the Ministry of Interior has processed them illegally, without guaranteeing their security, contrary to the principles related to data processing, enshrined in Art. 2, para. 2 of LPPD (revoked) and Art. 5, § 1 of the ORD. The violation found in the dissemination of AK's personal data by providing them to the Togolese State - without legal basis - has been completed and its gravity should be assessed in the light of the damage suffered by the applicant in connection with his detention. border police,

with the ruling - by the Varna District Court of his detention for up to 40 days and with his involvement in the subsequent court proceedings against him. Given the above, the imposition - in respect of the controller of personal data, determined in accordance with Art. 29, para. 1 of the LMI in the person of the Minister of Interior, of a corrective measure, different from the one indicated in art. 58, § 2, b. "And" of the ORD - "fine" is inapplicable and inappropriate. The corrective measures provided for in Art. 58, § 2, b. "A", "b", "c", "d", "e", "e", "g", "h" and "y". The corrective measure provided for in Art. 58, § 2, b. "And" of the ORD, would be proportionate and in view of the protection of the public interest, with disciplinary action for failure to commit the same violation in the future, consistent with the purpose of punishment and the need for it to deter and warn, not create economic difficulties for the administrator In view of the principle of proportionality between the gravity of the violation and the amount of the penalty, the commission considers that the fine imposed on the Minister of Interior should amount to BGN 10,000 - a minimum compared to the average minimum provided in the ORD for violation of Art. 6, § 1 of the ORD and within the limits provided for in Art. 42, para. 1 of LPPD (revoked) for violation of Art. 4, para. 1 of LPPD (revoked)In accordance with Art. 83, § 2 of the ORD, in determining the amount of the sanction, the commission has in mind the adverse consequences for the individual, who is detained for a long period of time and being involved in legal proceedings against him, is prevented from returning to his homeland Finland, to practice his profession and to contact his family.

During the same period, the dissemination of his personal data without legal grounds characterized him in a negative context, linking him to a person other than him who was criminally exposed and wanted by Interpol.

The categories of personal data processed in respect of Mr. AK, contained in his identity documents, photographs taken and his complete fingerprints taken, are in a volume that individualizes him in an indisputable way.

In determining the amount of the sanction, the duration of the violation and the passive behavior of the Ministry of Interior were taken into account, as well as that the violation was completed and no action was taken to prevent or eliminate it. The high public danger of the committed violation was also taken into account in view of the lack of an established criterion or normative base on the basis of which the method for confirming the identity of the complainant A.K. - by sending the dactyloscopic data taken during his detention for comparison to the requesting State.

The dissemination of personal data is the processing of personal data according to the legal definition given in § 1 of the RD of the LPPD (repealed) and in this case, in respect of the complainant, was carried out without the conditions for admissibility of data processing regulated in Art. 4, para. 1, items 1-7 of LPPD (repealed) and in contradiction with the principles laid down in

Art. 2, para. 2 of LPPD (repealed), according to which it should be lawful, conscientious, for specific, well-defined purposes and legitimate purposes.

The established specific violation has been completed with the act of its commission and in this sense it is irremovable, due to which giving a term for its elimination is pointless.

Given the importance of public relations regulated by the ORD and LPPD, violations of their provisions should be classified as those of high public danger, and the Commission for Personal Data Protection has an obligation - as a control body, to monitor the implementation of lawful processing of personal data of individuals.

The Commission for Personal Data Protection, taking into account the facts and circumstances presented in the present administrative proceedings and on the grounds of Art. 38, para. 3 of the LPPD,

HAS DECIDED AS FOLLOWS:

1. Announces a complaint reg. № PPN-01-61 / 13.09.2017, filed by A.K. against the Ministry of Interior, as well-founded in respect of the Minister of Interior - personal data controller, according to Art. 29, para. 1 of the Law on the Ministry of Interior, through their distribution, without the presence of the provided conditions for admissibility of the processing, enshrined in Art. 4, para. 1, item 1 - item 7 of LPPD (revoked), resp. in Art. 6 § 1 of the General Regulation on Data Protection and in contradiction with the principles set out in Art. 2, para. 2 of LPPD (revoked), resp. in Art. 5, § 1 of the Regulation.

2. On the grounds of art. 58, § 2, b. "And", in connection with Art. 83, § 5, b. "A" of the General Regulation on Data Protection, given the established processing of personal data, the Commission for Personal Data Protection imposes on the Minister of Interior, address: Sofia, 1000, Sredets district, 29 Shesti Septemvri Str., Managing the Ministry of Interior with BULSTAT 000695235, administrative penalty - fine, in the amount of BGN 10,000 (ten thousand), for being an administrator of personal data has processed the personal data of Mr. AK, in violation of Art. 4, para. 1, items 1-7 of LPPD (revoked), resp. of Art. 6 § 1 of the ORD and in contradiction with the principles laid down in Art. 2, para. 2 of LPPD (revoked), resp. in Art. 5, § 1 of the ORD.

After the entry into force of this decision, the amount of the imposed penalty to be paid in cash at the box office of the Commission for Personal Data Protection, Sofia, 1592, Blvd. "Prof. Tsvetan Lazarov ”-№ 2 or transferred by bank transfer: BNB Bank - Central Office IBAN: BG18BNBG96613000158601 BIC BNBGBGSD - Commission for Personal Data Protection, Bulstat 130961721.

The decision to be communicated to the interested persons by the order of the APC.

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

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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