

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-51 / 09.02.2017 Decision on appeal with registration № Ж-51 / 09.02.2017 DECISION № Ж-51 / 2017 Sofia, February 23, 2018 The Commission for Personal Data Protection (CPDP) composed of Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on January 17, 2018. , objectified in protocol № 4/2018, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered on the merits a complaint Reg. № G-51 / 09.02.2017, filed by V.A.V. (applicant) against IPSMPOB OM - Dr. B. Ltd. for violating the Personal Data Protection Act. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). V.A.V. has lodged a complaint with the Commission for Personal Data Protection, containing allegations of illegal installation of CCTV cameras. In the complaint he claims that "IPSMPOB OM - Dr. B." EOOD, with manager HB, uses the video surveillance he has installed to compromise and manipulate his neighbors. The applicant was based on the provision of Art. 32 of the Constitution of the Republic of Bulgaria, which provides for privacy, as per the provision of Art. 32, para. 2 "no one may be monitored, photographed, filmed, recorded or subjected to other similar acts without his knowledge or despite his express consent, except in cases provided by law." The applicant alleged that "IPSMPOB OM - Dr. B." Ltd. did not ask the consent of the residents for the installation of the video surveillance cameras in question and the fact that they are aimed at the entrances of nearby homes. He also referred to Art. 11 of the Private Security Activity Act (PPAA), stating that "IPSMPOB OM - Dr. B." EOOD has not concluded a contract with a company performing security activities. He claims that the latter is not registered as a controller of personal data, under the LPPD, which does not give him the opportunity to distribute the records, thereby harming his neighbors. The applicant requested assistance and an opinion. With a letter ex. № P-13032 / 03.05.2017 of the Chairman of the CPDP, "IPSMPOB OM - Dr. B." EOOD was notified on the grounds of Art. 26 of the APC for the initiated administrative proceedings. Pursuant to Art. 36 of the APC provided a deadline for opinion and presentation of relevant evidence. 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 APC, the Commission has ruled on the admissibility of the complaint № G-51 / 09.02.2017, given the considerations of jurisdiction of the parties, competence of the CPDP, the existence of a legal interest of the complainants, compliance with Art. 38, para. 1 of LPPD term. The complaint with registration number G-51 / 09.02.2017 was filed by V.A.V. against the individual H.B. In connection with the official beginning and the evidence gathered in the administrative proceedings, the opinion expressed by Dr. H.B. and the findings, objectified in the statement of findings

PPN-02-670 / 13.12.2017, at a regular meeting of the Commission, objectified in the minutes № 68 / 20.12.2017 was constituted as a respondent in the proceedings the legal entity "IPSMPOB OM - Dr. B. " EOOD (IPSMPOB OM - Dr. B. EOOD), with manager H.Y.B. 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. The applicant, V.A.V., did not appear, did not represent himself. The respondent appears in person. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, objectified in Protocol № 63 / 15.11.2017, an Order № RD-14-341 / 01.12.2017 was issued by the Chairman of the CPDP to conduct an inspection in connection with clarifying the facts and circumstances on the complaint, objectified in the Statement of Findings № PPN-02-670 / 13.12.2017. As a result of the inspection it was established that at the address indicated in the complaint there is a 4 (four) storey residential building with 2 (two) entrances and adjacent to her yard, inhabited by the defendant H.B. and his family. The ground floor of the real estate functions as a specialized medical institution: "IPSMPOB OM - Dr. B." EOOD (IPSMPOB OM - Dr. B. EOOD), UIC: *****, with registered office and address of management: *****. "IPSMPOB OM - Dr. B." EOOD, UIC: ***** has the main subject of activity - services for individual practice for specialized outpatient medical care; diagnosis, treatment and rehabilitation of patients; monitoring of chronically ill and endangered persons, disease prevention and early detection of diseases; measures to strengthen and protect health; consultations; prescribing laboratory and other types of tests; prescribing medicines, bandages and medical supplies; performing health promotion and prevention activities, including preventive examinations and immunizations; issuing documents related to these activities; referral of patients for counseling and hospital care, hourly monitoring; purchase of goods and consumables for the needs of medical activities and outpatient eye surgeries. The company is an administrator of personal data within the meaning of Art. 3 of the LPPD. On 15.01.2010 he submitted an application for entry in the register under Art. 10, para. 1, item 2 of the LPPD, as at the time of the inspection two registers have been declared: "Patient List" and "Video Surveillance", in which processing of personal data of individuals has been declared, incl. and through a built-in video surveillance system for the purposes of private security activities. It was established that for the purposes of security activities, "IPSMPOB OM - Dr. B." EOOD has concluded a Contract for protection of property with electronic security systems and mobile patrols № ***** on 31.10.2016 with "V.S." EOOD, UIC: *****, as the site has a video surveillance system brand "DAHUA", which consists of 5 (five) video cameras, recording device (NVR-video recorder) and monitor, which monitors the output image and video recordings. It was found that the VCR and the monitor were stored in

an isolated room with controlled access in a medical institution, to which only H.B. and his wife. At the time of the inspection, there is no remote access to the system and video recordings. The video surveillance system was purchased and installed on the site by VS EOOD, according to a document provided by B. (Certificate for installation of a video surveillance system) from 07.01.2016. which are automatically deleted in the order of their receipt. It was found that at the time of the inspection the video cameras were located on the facade of the building, as 3 (three) of them filmed different areas in the courtyard of the property, and the other 2 (two) filmed the sidewalks and street adjacent to the property. the façade of the residential building located on the opposite side of the street, inhabited by the applicant V.A.V. The camcorders have a high resolution, allow identification of persons and have infrared lights that allow night surveillance. Information boards warning about video surveillance are placed in places visible to all residents and visitors of the property. 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. In this sense, the initiation of administrative proceedings before the CPDP is related to the presence of a person who processes personal data in his capacity as a controller of personal data. 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. From an official reference made in the Electronic Register of personal data controllers and the registers kept by them, it was established that the company has fulfilled its obligation under Art. 17, para. 1 of the LPPD, has submitted an application for registration and is registered as a controller of personal data and two registers have been requested. An opinion was submitted to the Commission for Personal Data Protection by Dr. H.Y.B., filed with Reg. № C-286 / 11.05.2017, alleging that his doctor's office is equipped with expensive and modern equipment. It is stated that in the last two years there have been three robberies of sites located in the immediate vicinity of the above-mentioned cabinet. For each of them, he was asked by the investigative bodies of RUP-Petrich to take recordings from the cameras. It is alleged that he has 5 cameras, two of which are aimed at the two entrances to the apartment and his office, and the other three to the

garden around the house. It is pointed out that on 30 August 2016 the applicant, Mr. V.A.V. with a metal pipe he broke two of the cameras aimed at the entrances of Mr. B.'s house, and a complaint was filed with the Petrich Regional Police Department, and Mr. V.A.V. detained for twenty-four hours. The investigation into the case has not been completed. It is stated that Mr. V.A.V. for his part, for many years he owned two video surveillance cameras, which he removed after the specific situation. The respondent party points out that on 06.02.2017 in a state of intoxication the complainant Mr. V.A.V. and his friends staged a threat from Mr B., which led to the arrival of Mol officers. After checking the video footage, he found that no such attack had taken place. Mr. B. claims that he has a contract with V.S. Ltd. on a site with address ***** and a sign is placed in a prominent place, which indicates that the site is under video surveillance.

As a result of the evidence gathered in the administrative proceedings and after analyzing the relevant legal provisions, the Commission ruled on the merits of the complaint, taking into account the reasons set out below.

Pursuant to Art. 1, para. 1 and para. 2 of the LPPD, this law regulates the protection of the rights of individuals in the processing of their personal data. The purpose of the law is to guarantee the inviolability of the person and private life by ensuring the protection of individuals in the event of improper processing of related personal data in the process of free movement of data.

In connection with the evidence gathered and the established factual situation, the relevant legal provisions regarding the legality of the video surveillance are considered.

According to Art. 4, para. 1 of the LPPD, the processing of personal data is admissible only in the cases when there is at least one of the conditions listed in item 1 - item 7 of the same norm.

According to 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.

The above is part of the constitutionally guaranteed rights and freedoms of the citizen of the Republic of Bulgaria such as the right to life, personal liberty and inviolability on the grounds of Art. 28, Art. 30, para. 1 of the Constitution of the Republic of

Bulgaria.

Given the dynamic development of technological and social relations in general, and the growing relevance of issues related to peace, health and life of the individual in modern reality, there is an increasingly urgent trend to consider the rights and interests of citizens namely from the point of view of their equality, as well as the application of the meaning of the spirit of the law and its conformity with reality.

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 conclusion of the above and in accordance with the application of Art. 4, para. 1, item 7 of the LPPD as a ground for admissibility of the processing, no preconditions are established for accepting the conclusion that the interests of the complainant have priority over the interests of the respondent party.

In connection with the above and on the grounds of Art. 38, para. 2 of the Personal Data Protection Act, the Personal Data Protection Commission ruled as follows

ANSWER:

1. Dismisses as unfounded the complaint with reg. № Ж-51 / 09.02.2017, filed by V.A.B. against IPSMPOB OM - Dr. B. EOOD - in view of the established on the grounds of art. 4, para. 1, item 7 of the LPPD admissibility of the processing of personal data of the complainant, through video surveillance performed by the respondent in a way that does not establish an advantage of the interests of the complainant over those of the personal data controller, in compliance with the principles Art. 28 and Art. 30, para. 1 of the Constitution of the Republic of Bulgaria for the right to life, personal liberty and inviolability of every Bulgarian citizen, due to which there is no violation of the rights of the complainant in accordance with the provisions of the LPPD;

The decision of the Commission for Personal Data Protection may be appealed to the Administrative Court of Sofia - city within 14 days of receipt.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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