

Decision on appeal with registration № NDMSPO-17-203 / 26.03.2019 DECISION» NDMSPO-17-203 / 2019 Sofia, 03.09.2019

The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 24.07.2019, pursuant to Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) of 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 (Regulation), considered on the merits complaint NDMSPO-17-203 / 26.03.2019, filed by AT 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 A.T. against a private bailiff (PEA). The complainant informed that in his capacity as a party to the enforcement case № *** he requested access to the covers of the case, which is located in the office of the PEA at the address ****. He added that he had been informed by PEA employees that audio and video surveillance by security cameras was carried out in the office and in this connection, with a deliberate written request, he requested from the personal data controller - PEA access to the collected personal data on video surveillance. during his stay in the office on March 25, 2019, to which he claims that he has not received an official motivated answer. No evidence was attached to the complaint. In addition, by letter NDMSPO-17-203 # 1 / 01.04.2019, Mr. AT indicates that he exercised his right of access with an application with ent. № *** according to the inventory of the PEA. He claims that such access was denied orally and without reason and asks the Commission to oblige the PEA to provide him with access to the video from the security cameras for the specific date containing his personal data given his presence in the office on 25.03.2019 from 08:30 to 12: 00 hours. Attaches an application addressed to the PEA regarding the exercise of data subject's rights and a printout by e-mail and a response to an electronic message by the personal data controller. 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 PEA requested a written opinion and relevant evidence. In response, an opinion was expressed that the complaint was unfounded. The PEA informs that an enforcement case has been instituted in his office № *** with a creditor financial institution (FI) and debtor AT He added that on March 25, 2019, the debtor appeared in the office with a request to issue a copy of the enforcement case, which was left without respect. He claims that Mr. A.T. he was acquainted with the case and his right to defense is not restricted, despite the aggressive, brazen and unforgiving behavior he has demonstrated. The PEA claims that

a sign "The site is under constant video surveillance and sound recording" is pasted on the front door of the office, in view of which it considers that the complainant has been duly notified and warned about the video and sound recording. He added that the request of Mr. AT to obtain a recording from the cameras in the office could not be satisfied, due to the fact that they are stored 24 hours. 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 (PDKZLDNA), 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. 44, § 2 of the Additional Provisions of LPPD by a natural person with legal interest against a competent party - natural person - personal data controller within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679 and the Private Enforcement Agents Act. The subject of the complaint is failure to rule on an application for access to personal data. The complaint was referred to a competent body - the CPDP, which according to its powers under Art. 10, para. 1 of LPPD in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of data subjects related to the processing of personal data, as there are no the 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 12.06.2019 the complaint was accepted as admissible and as parties in the proceedings were constituted: complainant - AT and respondent - PEA with registration № ***, with area of action District Court - B. An open hearing was scheduled to consider the complaint on the merits, of which the parties were regularly notified and instructed to distribute the burden of proof in the process. In order to clarify the case on the legal and factual side, the defendant requested a certified copy of the application submitted by the applicant with ent. № **** on the list of PEAs and the answer to the same, together with evidence of its receipt by the complainant, as well as internal rules, instructions, policies or other document which

regulates the term for keeping records of records located in the office of PEA cameras. In response, the PEA provided a certified copy of the procedural application and issued by the same Order № 1 / 01.03.2017, specifying that the term for storage of data collected from video surveillance and audio recording from cameras located in the office is 24 hours. Informs that the submission of Mr. AT an application was disregarded "with a resolution" placed on it, and no reply was sent to the applicant, "as nowhere in the law does the PEA impose an obligation to notify the parties to the case of a resolution". He added that Mr. A.T. he has repeatedly made inquiries on the enforcement case, he is acquainted with the materials on it, including the resolution placed on the application. In the course of the proceedings, the applicant disputed as untrue the allegations concerning the period of storage of the records from the cameras located in the defendant's office, claiming that the PEA "had an interest in concealing the requested recordings, , on the one hand.... ", " by concealing the requested records, the bailiff aims to avoid engaging his tortious, disciplinary and criminal liability ". In support of his allegations, he encloses an application with ent. № **** according to the list of the District Court - R. At a hearing held on 24.07.2019 the appeal was considered on the merits. The parties - regularly notified, do not appear, do not represent themselves. 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 APC, requiring the existence of established factual facts, given the evidence gathered and the allegations, the Commission considers that considered on the merits of the complaint № NDMSPO-17-203 / 26.03.2019 is justified. The subject of the same is a violation related to the right of access to personal data committed under EU Regulation 2016/679 and its corresponding obligation on the part of the personal data controller to which it is addressed. From the evidence gathered in the file it was established, and between the parties it is not disputed the existence of an enforcement case initiated in the office of the PEA with № *** with creditor financial institution and debtor AT It is also undisputed that the office was visited by Mr. AT on March 25, 2019 from 08:30 to 12:00. It is also indisputable that in the office video surveillance is carried out by PEA - administrator of personal data within the meaning of Art. 4, para. 7 of EU Regulation 2016/679, given the fact that he is a natural person who only determines the purposes and means of processing personal data through video surveillance. In this regard, it should be noted that video surveillance is an act of processing personal data when performed by recording technical means of video surveillance, which is stored, as in the present case. The information about the natural person - image contained in the videos from surveillance means falls within the scope of the concept of personal data, as the person can be physically identified in an indisputable way. The collection and storage of personal data is a form of

their processing within the meaning of Art. 4, § 1, item 2 of Regulation (EU) 2016/679 and as such should be carried out in compliance with the provisions of the LPPD and the Regulation by the personal data controller, including those related to the exercise of rights of data subjects and the resulting obligations for data controllers. In the specific case it is indisputable that on February 26, 2019 at 11:15 the applicant submitted to the PEA an application requesting to be provided with a recording of the video surveillance carried out in the PEA office between 08:30 and 12:00. hours on 25.03.2019, the same received by the administrator with ent. № ****. There is no answer to the application, it is limited to the resolution "No respect!" Placed on the application dated March 26, 2019, a circumstance that confirms the PEA in a written statement filed in the fileIt is evident from the content of the application, as well as its name, that it is an application for access to personal data under Art. 15 of LPPD, the same meets the requirements of Art. 37 b and 37 c of LPPD, namely it is a written application addressed to an obligated person - personal data controller, submitted electronically and signed with an electronic signature. The application contains data individualizing the sender, a description of the request, a preferred form for obtaining information. The application is regular and its receipt gives rise to obligations for the controller to whom it is addressed and from whom it is received, namely "provides the data subject with information on the actions taken in connection with the request without undue delay" (Art. 12, para. 3 of the Regulation), respectively "if the controller does not take action on the request of the data subject, the controller shall notify the data subject without delay and no later than within one month of receiving the request for reasons not to take appropriate action" (Art. 12, para 4 of the Regulation).

In the specific case and despite proper referral with an application for access to personal data, the PEA has not fulfilled its obligation under Art. 12, para. 4 of the Regulation, in the conditions of refusal to provide personal data - video surveillance recording, to notify the sender of the reasons for refusal within the statutory month, lacking evidence and a statement about the need to extend it. The resolution "Disrespect!" Placed on the application testifies to the administrator's refusal to take the actions requested by the subject, but not to his obligation to motivate him, an obligation he has under the Regulation, the non-fulfillment of which has led to a violation of human rights referred to the CPDP.

In view of the nature and type of the established violation and the circumstance that it has been completed, the Commission considers it appropriate, proportionate and deterrent to impose a corrective measure under Art. 58, § 2, letter "i" of the Regulation, namely imposing a fine on the administrator - PEA for violation of Art. 12, para. 4 of the Regulation, considering that the other corrective measures are inapplicable in this case on the grounds that the violation was completed by the act of

its commission and is irremovable, and providing the required videos as of the Commission's date is objectively impossible given the evidence involved in the case. for their storage only within 24 hours. He believes that the chosen corrective measure will have a warning and deterrent effect and will contribute to compliance by the controller of the established legal order introduced by the Regulation and LPPD, regulations under which the PEA is obliged, in view of its capacity as controller of personal data. As a purely sanctioning measure, a reaction of the state to the violation of the normatively established rules, the fine also has a disciplinary effect. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided for in the LPPD and the Regulation and arising from his subject of activity, human and economic resources.

In determining the amount of the fine and in accordance with the conditions under Art. 83, para. 2 of the Regulation, the Commission took into account that the violation was first for the administrator and concerned a violation of the rights of one person, and the administrator assisted in detecting the violation. As an aggravating circumstance it was considered that the violation was completed by the act of its commission and is irreparable, as long as there is no enforcement within the statutory period, and thereafter, it is effective and has deprived the complainant of the opportunity to exercise other rights granted his of the Regulation. With regard to guilt, he finds that the actions of the administrator and his vision of the obligations in the exercise of the right of access, objectified in written statements expressed in the file, testify to a violation committed through negligence. The circumstances under Art. 83, para. 2, letter "i" of the Regulation are irrelevant insofar as at the time of the violation the approved codes of conduct, respectively approved certification mechanisms have not been introduced.

Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection, HAS DECIDED AS FOLLOWS:

1. Declares the complaint № NDMSPO-17-203 / 26.03.2019 as well-founded.
2. On the grounds of art. 58, § 2, letter "i" in connection with Art. 83, § 5, letter "b" of EU Regulation 2016/6779 and for violation of Art. 12, para. 4 of Regulation EU 2016/679 imposes on the PEA, with registration № *** from the register of the Chamber of Private Bailiffs, a fine in the amount of BGN 3,500 (three thousand and five hundred levs).

The 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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