

Decision on appeal with registration № PPN-01-783 / 21.09.2018 DECISION» PPN-01-783 / 2018 Sofia, 25.02.3019

Commission for Personal Data Protection (Commission / CPDP) composed of: members - Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at an open meeting held on January 16, 2019, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA) considered on the merits a complaint reg. № PPN-01-783 / 21.09.2018, filed by P.I.

The administrative proceedings are by the order of art. 38, para. 1 of the Personal Data Protection Act. P.I. has appealed to the Commission for Personal Data Protection with a complaint that at address *****, his neighbor K.Zh. has installed cameras with which he illegally monitors his property. He considers that his rights under the LPPD are being violated, and states that he has not given his consent to be observed or filmed. He asks the CPDP to order the case. A certified copy of the complaint was sent to the defendant with instructions to provide a written opinion within 7 days, as well as relevant evidence in the case. In response, Mr. K.J. expresses an opinion reg. № PPN-01-783 # 2 / 01.11.2018 for unfoundedness of the complaint, insofar as the cameras did not cover and did not record the property of his neighbor. He admits that he has installed a video surveillance system consisting of 12 units. cameras with VCR. All of them were located entirely in his property (house with a yard) and looked inside the property, as well as the facade of the property from the street. He points out that he has the right to take measures to protect his property through video surveillance and filming. The applicant would not have been photographed unless he entered his yard, but admitted that he might also be caught on camera by street cameras. He finds that if a person does not want to be photographed, he should not move around H. at all, including not entering banks and government offices. Filed a cross-appeal with Reg. № 911 / 01.11.2018, which the Commission declared inadmissible in a closed meeting held on 21.11.2018, objectified in Minutes № 43. At the same meeting, an appeal Reg. № PPN-01- 783 / 21.09.2018 has been accepted as regular and procedurally admissible: it contains the obligatory requisites, specified in the provision of art. 29, para. 2 of the APC, supra art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (the Rules) - the full name of the person and his address, the nature of the request, date and signature, in view of which it is regular. The appeal is also procedurally admissible: there is no entered into force administrative act with the same subject and parties; there is no pending proceedings before the Commission on the same subject matter and with the participation of the same party; The CPDP is competent to rule on the case; the parties are competent - the applicant is a natural person and his legal interest is determined by Art. 32, para. 2 of the Constitution of the Republic of Bulgaria, top of the

LPPD; the term under Art. 38, para. 1 of the LPPD. and as parties in the proceedings are constituted: the applicant - P.I., and the respondent party - K.Zh. in his capacity as controller of personal data. The parties were regularly informed about the meeting scheduled for 19.12.2018 to consider the complaint on the merits, and they were told that an inspection had been appointed regarding the video surveillance. They were told that they could present additional evidence in support of their allegations, as well as request the collection of other relevant ones. On the basis of Order № RD-14-326 / 28.11.2018 of the Chairman of the Commission for Personal Data Protection, on 04.12.2018 at the address indicated in the complaint an inspection was carried out, objectified in a statement of findings reg. № PPN- 02-850 / 07.12.2018. The inspection team has established that a video surveillance system has been built at the address H. **** - a two-storey house with an adjoining yard. The property of the defendant and the applicant are adjacent. Access to the inspectors was provided by the son of Mr. K.Zh. - NA, according to him, the construction of a video surveillance system began in January 2017, initially it consisted of a smaller number of cameras connected to a recorder and TV, and later added new cameras. At the time of the inspection, there were sixteen of them, 4 of which were added after sending a written statement to the Commission, in which 12 were indicated. cameras. The inspection team found that the recorder and the monitor were stored in an isolated room, according to N.A. only he has access to the recordings and the output image in real time. There is also the possibility of remote access to the system, which is carried out through an application installed on a mobile phone of N.A. The retention period for video recordings is about 14 days, after which they are automatically deleted in the order of their receipt. Regarding the location of the cameras, the team found the following: four video cameras were installed in different places inside the property, capturing only areas of the yard adjacent to the house; a camera is mounted on the fence above the front door and captures the entrance to the entrance, as well as parts of the street in front of the property and adjacent sidewalks, parts of an apartment building and a grocery store across the street; another camera is mounted above the front door of NA's garage, and the scope of the video recording includes the access to the garage, parts of the street in front of the property with the sidewalks, as well as parts of other houses located on the opposite side; eight cameras are mounted on the facades of the house, directly under the roof, capturing parts of the yard, as well as part of the street in front of the property and adjacent sidewalks, part of the street next to the property leading to the parking lot, neighboring residential building, part of neighboring residential buildings, garages, parts of neighboring houses and their yards, a grocery store, a substation and the municipal area behind the NA property; one of these eight cameras, located on the façade of the house, filmed part of the applicant PI's house, including two of the windows,

as well as parts of the yard of the property inhabited by him. Of the eleven cameras capturing areas outside the NA property, eight have a range of up to 20 meters and are equipped with infrared night video recording, and the remaining four have a range of up to ten meters and only daytime video recording. It was established that the system allows video recording and identification of an unlimited number of individuals passing freely in public areas falling within the scope of the cameras. An information board warning about the video surveillance is placed in a prominent place on the front door. Based on the results of the inspection, with a decision of the Commission, objectified in Protocol № 48 / 19.12.2018, as a respondent party was constituted and N.A. in his capacity as controller of personal data. The examination of the complaint on the merits has been postponed to an open meeting scheduled for January 16, 2019, of which the parties have been regularly notified. At the open meeting on January 16, 2019, the parties did not appear, did not send a representative. ON. sends a written statement reg. № PPN-01-783 # 14 (18) /14.01.2019 for unfoundedness of the complaint. Examined in substance the complaint is well founded. The purpose of Regulation (EU) 2016/679 (Regulation) and LPPD is to ensure the privacy of individuals and privacy 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 Art. 2, §1 of the Regulation, respectively Art. 1, para. 3, item 1 of the LPPD, it is explicitly stated that they are applied to the processing of personal data in whole or in part by automatic means. Video recording is undoubtedly the processing of personal data by automatic means. "Recording" is indicated as one of the activities for processing personal data according to Art. 4, § 2 of the Regulation, and personal data, according to § 1 of the same article, is any information relating to a natural person who is identified or can be identified directly or indirectly by one or more specific features. From the evidence gathered in the case, it was established, and N.A. does not deny that eleven of the cameras included in the video surveillance system capture public spaces: sidewalks, parts of the street, parking, grocery store, garage cells, etc. One of the cameras on the façade captures part of the applicant's house P.I. , including its windows, as well as parts of its yard. With regard to the passively legitimized party - K.Zh., the complaint is unfounded, as far as the inspection establishes that he does not have the capacity of controller of personal data. Such a quality in this case has his son NA, who built the video surveillance system and has exclusive access to images and recordings from cameras. At the same time, by filming public spaces, N.A. exercises an activity for which there are no grounds for admissibility within the meaning of Art. 6 of the Regulation or Art. 4 ZZLD. It cannot be considered that the observation of the street, parts of the sidewalk and the window of the neighboring house falls into the category of "purely personal or domestic activities", excluded from the material scope of the Regulation. The same contradicts

the principles related to the processing of personal data, in particular they are not minimized in relation to the purposes for which they are processed (Art. 5, § 1, letter "c" of the Regulation, respectively Art. 2, para 2, item 3 of the LPPD). With regard to the other five cameras, which capture only the yard and parts of the defendant's property, the processing of personal data is lawful insofar as this is related to his legitimate interest in protecting his property - Art. 6, § 1, b. "E" from ORZD. However, if they were directed in such a way that parts of the applicant's property or public areas fell within their scope of the survey, Mr. N.A. will carry out activities in violation of the Regulation and the LPPD. Disagreeing with the decision of the Commission, Mr. Veselin Tselkov - member of the CPDP - voted against. Guided by the above, based on Art. 57, § 1, b. "E" of the Regulation, respectively Art. 10, para. 1, item 7, in connection with Art. 38, para. 2 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Declares as well-founded a complaint Reg. № PPN-01-783 / 21.09.2018, filed by PI, for violation of Art. 5, § 1, b. "C" of the Regulation;
2. On the grounds of art. 58, § 2, b. "D" of the Regulation issues an order to N.A. to suspend the filming of Mr. PI's property, as well as in public spaces, by providing evidence that he had complied with the order.

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

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

O.M. Veselin Tselkov

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