

Home »Practice» Decisions of the CPDP for 2019 »Decision on appeals with reg. № PPN-01-30 / 10.01.2019 and № PPN-01-43 / 15.01.2019, Decision on appeals with reg. № PPN-01-30 / 10.01.2019 and № PPN-01-43 / 15.01.2019, DECISION № PPN-01-30 / 2019 Sofia, 03.09.2019 Commission for Personal Data Protection (CPDP) composed of: Ventsislav Karadzhov and members: Tsanko Tsolov and Tsvetelin Sofroniev at a meeting held on 03.07.2019, 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, examined on the merits the complaint Reg. № PPN-01-30 / 10.01.2019 and the complaint Reg. № PPN-01-43 / 15.01.2019 filed by A.P. 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 PPN-01-30 / 10.01.2019, filed by A.P. with allegations of illegal publication of his personal data - photo, three names and a unique civil number on the site ***** in an article from 08.01.2019 entitled "*****". In support of his allegations and by letter PPN-01-30 # 2 / 15.01.2019 Mr. AP attach a printout of the process publication. The complaint was submitted electronically by email ***** and is not electronically signed. In the course of the proceedings and by letter PPN-01-30 # 3 / 07.03.2019 the complaint was confirmed. In the case of Mr. A.P. has filed a complaint with the Commission PPN-01-43 / 15.01.2019 against a non-profit legal entity (non-profit legal entity) alleging that the document published on the site containing his personal data was provided to the news agency by a non-profit legal entity purpose. He considers that the rights granted to him by the LPPD have been violated and asks the Commission to investigate the case. A copy of the article is attached to the complaint. In the conditions of the official beginning of 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, by BTO, owner and administrator of the site *****, and legal entity non-profit written statements and relevant evidence were required. In response and with a letter PPN-01-30 # 5 / 20.03.2019 from B.T.O. express an opinion that the complaint is unfounded, arguing that the publication mentions only the names of Mr. AP, without disclosing any other personal data. They inform that on 14 January 2019 the complainant contacted the company with a request to remove the trial material from the media's website. They claim that on January 16, 2019, the material was downloaded from the page of *****, and 48 hours later the cached version was deleted. They present a screen printout of the communication between the company and Mr. A.P. On behalf of the non-profit legal entity, an opinion was expressed PPN-01-43 # 2 / 18.03.2019 on the unfoundedness of the complaint filed against the association PPN-01-43 / 15.01.2019. . allegations of providing the published document to a news agency. They claim that the published letter is not identical to the letter with registration number № ***** of

*** military district kept in their office. Relevant evidence is attached to the opinion. 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 appeals shall contain the obligatorily required 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 they are regular. The appeals are procedurally admissible, filed within the term under § 44, para. 2 of the Transitional and Final Provisions of the LPPD by a natural person with a legal interest against competent parties - administrators of personal data within the meaning of Art. 4, para. 7 of EU Regulation 2016/679. The complaints concern illegal processing of personal data - three names, unique civil number and a photo of the complainant by providing them with non-profit legal entities to an information agency and publishing them on the website ***** to an article dated 08.01.2019 entitled " ***** ". Complaints are referred to a competent body to rule - 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 08.05.2019, the complaints were accepted as admissible and given the prerequisites of Art. 32 of the APC are united for consideration in one administrative proceeding with the appellant parties - A.P. and respondent parties - B.T.O., owner and administrator of the site *****, and non-profit legal entities. The parties were regularly notified of the open hearing scheduled for 03.07.2019 for consideration of the complaint on the merits and were instructed to distribute the burden of proof in the process. In order to clarify the case on the legal and factual side of B.T.O. a certified copy of the process article published on the site ***** and a clarification of the date of publication and the source is required, but not presented. At a meeting of the CPDP held on July 3, 2019, the complaints were considered on the merits. The applicant - regularly informed, did not appear, did not

represent himself. The respondent - B.T.O. - regularly notified, not represented. The respondent party - a non-profit legal entity - regularly notified, is represented by lawyer G., who disputes the complaint filed against the non-profit legal entity. It asks the Commission to disregard it as unfounded and unproven, in the light of the considerations set out in the written observations submitted in the proceedings. 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 made by the parties, the Commission considers that considered on the merits complaint № PPN-01-30 / 10.01.2019 is well-founded and complaint PPN-01-43 / 15.01.2019 - unfounded, as unproven. The complaints have as their subject of illegal processing of the personal data of the complainant - three names and a unique civil number, contained in a letter reg. № **** and ent. № ***** from *** military district to the President of the non-profit legal entity, in the case of their provision by the non-profit legal entity to an information agency and the publication of these data together with a photo of the complainant on the site ***** to an article from 08.01.2019 with the title "*****". It should be noted that from the materials collected in the file and in particular the date of the litigation letter, it concerns the processing of personal data carried out after 25.05.2018, in view of which the provisions of EU Regulation 2016/679 are applicable. It is indisputable that the provision and use of personal data is an action for 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 LPPD and the Regulation. In Art. 6, §. 1 of the Regulation, the conditions are set out, in the presence of which the processing of personal data of the natural persons subject to the data is admissible. The legislator has adopted that the processing of personal data of individuals should be carried out in the presence of at least one of these conditions, which is a prerequisite for the legality of processing, in compliance with the principles set out in Art. 5 of the Regulation. From the evidence gathered in the course of the administrative proceedings, the existence of a document was indisputably established - a letter from the Chief of *** military district to the Chairman of the non-profit legal entity, with registration № ****, the same with ent. № *** according to the inventory of the Central Council of the non-profit legal entity. It contains three names and a single civil number of the complainant, information which undoubtedly has the character of personal data within the meaning of Art. 4, § 1 of the Regulation in view of the fact that through it the person can be indisputably individualized. Marking of the letter testifies that it has been prepared in two copies - one for the addressee - *** military district and the addressee - the Chairman of the non-profit legal entity. It is undisputed that the same letter was

published on the website of ***** to an article dated 08.01.2019 with the title "*****", together with a photo of the complainant attached to the article. . It is also undisputed that on 16.01.2019, after referral to the Commission and a specific request made by the complainant to the administrator on 14.01.2019, the article was downloaded from the page of *****, and according to B. TO, the same undisputed by Mr. AP, 48 hours later the cached version was deleted. The allegations of the complainant that the published letter was provided to the news agency by a non-profit legal entity are not supported by the evidence gathered in the file. There is no direct evidence in the file - a letter, protocol or other, to provide the letter to a person other than the addressee, in particular to the news agency *****, and it should be noted that the non-profit legal entity categorically disputes the allegations of Mr. n A.P. in the opposite direction, namely for providing the document from the non-profit legal entity to the news agency. As can be seen from a non-profit copy of the letter and the content of the process publication and the attached letter, the two documents have identical content but formally differ. the procedural letter, kept in the office of the non-profit legal entity, in the upper left corner there is a resolution and signature, which are missing from the published document, which contains, in the upper left corner, a numerical mark, which is missing on the original letter stored in the legal entity Non-profit. Apart from that, it should be noted that the non-profit legal entity administrator has drafted Internal Rules for Personal Data Protection, adopted by Minutes № 10 / 30.08.2018 at a meeting of the Non-Profit Legal Entities Central Committee, which are detailed as to introduced technically and regarding the introduced organizational measures for protection of the processed personal data, the same in fulfillment of his obligation under Art. Articles 24, 25 and 32 of the Regulation to introduce such in order to prevent accidental or unlawful destruction, accidental loss or unauthorized access, alteration or distribution, as well as other illegal forms of processing. There is no evidence in the file to indicate non-compliance with these rules, namely illegal access and / or dissemination of personal data in the present case, in view of which the complainant's allegations should be disregarded as unfounded and unproven.

However, the claims of the complainant regarding the publication of his personal data on the website ***** to the article of 08.01.2019 with the title "*****", together with attached to the photo article - an image of the complainant and a copy of the procedural letter, without deleting the personal data contained therein - three names and a unique civil number. It is not disputed that the publication was freely available on the site from 08.01.2019 to 16.01.2019, and the publication of this information is an operation by which the data became available, in this case to an unlimited number of visitors to the site. It should be noted that the site where the article was published, given the nature and frequency of publications in it, and given

the unrestricted access to published information, has the nature of electronic media, and the information published in it is used for journalistic purposes. In this regard, it is not disputed that through the procedural publication the personal data of the natural person who approached the CPDP have been processed within the meaning of Art. 4, § 2 of the Regulation, in the case of distribution to an unlimited number of persons who visited the site.

The processing was carried out in the period from 08.01. - 16.01.2019, ie before the entry into force of the provision of Art. 25 of the LPPD, but in the conditions of art. 4, para. 2 of LPPD (not revoked as of the date of publication), which are essentially identical provisions regarding the specific conditions for processing personal data for journalistic purposes, with the specification that the provision of Art. Article 25 of the LPPD is detailed and introduces criteria that support the assessment in each case whether there is a balance between the right to information and the right to protection of personal data. The wording of Art. 25h of the law corresponds to the current norm of art. 4, para. 2 of the LPPD, according to which the processing of personal data for journalistic purposes, literary or artistic expression is lawful, insofar as this right does not violate the right to privacy of the person to whom the data relates. The criteria that are introduced support the assessment of the existence of this balance and provide clarity, transparency, predictability and legal certainty. It should be noted that these criteria are not applied in all processing operations, but only in public disclosure and dissemination of personal data, ie. Journalists have full freedom to collect any information relating to a particular individual - the object of journalistic interest, but before disclosing it in the form of investigative journalism, article, commentary, analysis, etc. the balance between the two rights should be assessed.

In the present case, three personal names, an image of the complainant and his unique civil number were published, the latter being considered excessive by the Commission in accordance with the purpose and content of the publication, circumstances in which the data became available to the media and the applicant.

Indeed, the right to the protection of personal data is not an absolute right and must be seen in relation to its function in society and be balanced against other fundamental rights in accordance with the principle of proportionality, and in particular respect for both personal data protection and freedom of expression and freedom of information.

As far as the public interest underlying the processing for journalistic purposes is concerned, journalists may process such data if their disclosure is related to the subject of the specific journalistic activity and the specific publication. In case of the nature of the published data, the publication of the document without deleting the unique civil number of the complainant is in violation of the principle of minimizing the data - Art. 5, § 1, letter "c" of the Regulation and is in violation of the rights of the

complainant, given the fact that through the publication the unique civil number of the person is distributed to an unlimited number of people visiting the site. This conclusion is irrelevant to the other published data, such as three names and an image of the complainant, which are specifically related to the journalistic investigation and publication.

Disclosure of the unique civil number creates preconditions for negative interference and access to the complainant's personal data and their subsequent use, and the publication and disclosure of the complainant's PIN is not justified as the disclosure of this information does not concern important public interest or clarify a matter of public importance. Moreover, the single civil number was published without the consent of the person who is not a public figure, respectively a person holding a position under Art. 6 of the Anti-Corruption and Confiscation of Illegally Acquired Property Act, or is a person who, due to the nature of his activity or his role in public life, has less protection of his personal privacy, or whose actions have an impact on society.

In view of the above, the Commission considers that the processing - the publication of the complainant's unique civil number on electronic media pages - is inadmissible in so far as it violates the data subject's right to privacy, a right which takes precedence over the right to public information. The latter would not have been restricted or impaired if the information on the applicant's PIN had been missing from the publication. By publishing this information as well, the administrator has violated the balance between the two rights and has violated the rights of the person referring to the CPDP, by not restricting and complying with the processing of personal data collected in his journalistic investigation. published.

Given that the breach is first and foremost for the data controller and that he or she is helping to clarify the case, and that he or she has taken timely action to put an end to the breach of a person's rights, the Commission considers it appropriate to impose corrective action. Art. 58, § 2, letter "d" of the Regulation, insofar as the operation of personal data processing - publication of the applicant's PIN in the procedural article is in violation of the principle set out in Art. 5, § 1, letter "c" of the Regulation on "data minimization".

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. On the grounds of art. 32 of the APC to unite for consideration in one administrative proceeding a complaint reg. № PPN-01-30 / 10.01.2019 and a complaint reg. № PPN-01-43 / 15.01.2019, filed by A.P.
2. Dismisses the complaint PPN-01-43 / 15.01.2019 filed against a non-profit legal entity as unfounded and unproven.

3. Declares a well-founded complaint PPN-01-30 / 10.01.2019 filed against -BTO, owner and administrator of the site *****.

4. On the grounds of art. 58, § 2, letter “d” of EU Regulation 2016/6779 and for violation of Art. 5, § 1, letter “c” of the Regulation orders B.T.O. with UIC ***, with registered office and address of management *****, owner and administrator of the site *****, to comply with the operations for processing personal data with the provisions of the Regulation and the principles set out in Art. 5 of it, as in processing - publishing personal data for journalistic purposes assesses, for each specific case, the balance between the right to information and the right to protection of personal data according to the criteria specified in Art. 25 of the LPPD.

5. Indicates to the company that it must comply with the order within 14 days of the entry into force of the decision, which it shall notify to the Commission, providing the relevant evidence of compliance.

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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Downloads

Decision on appeals with reg. № PPN-01-30 / 10.01.2019 and № PPN-01-43 / 15.01.2019,

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