

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-92 / 22.02.2017 Decision on appeal with registration № Ж-92 / 22.02.2017 DECISION № Ж-92 / 2017 Sofia, January 9, 2018 Personal Data Protection Commission (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on November 8, 2017 and presented in the minutes № 62/2017, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered a complaint with registration № G-92 / 22.02.2017, filed by SD, IK, GS, I .S., M.Z. (the applicants) v. A.S. for violating the Personal Data Protection Act. The complainants have lodged a complaint with the Commission for Personal Data Protection (CPDP, the Commission) containing allegations of illegal installation of video surveillance cameras. The complaint alleges that neighbor A.S. has installed video surveillance cameras in the common parts of the building without the consent of the residents of the building and without a decision of the general meeting of the condominium. It is alleged that one of the cameras was mounted on the neck of Mr. A.S. (from the outside) "and observes the whole corridor, and the other on the outside of the wall of the building and covers part of the yard and the main entrance of the building. The applicants alleged that Mr A.S. he takes pictures of them constantly, prints the pictures from the cameras and pastes them at the entrance. S.D., I.K., G.S., I.S., M.Z. make allegations of installed video surveillance, for which there is consent from all residents of the cooperative, such as Mr. A.S. has installed additional cameras without the consent of neighbors. The applicants consider that their rights under the LPPD have been violated, as well as that their personal space has been violated, in view of which they have requested a request to exercise the legal powers of the CPDP. 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 with letters ref. №№ P-1638 / 14.03.2017, P-4951 / 07.07.2017 of the CPDP, to Mr. A.S. a deadline was given for expressing a written opinion and presenting relevant evidence. The letters were not received, they were returned to the Commission marked "unsolicited". In order to exercise its powers, the Commission must be properly seised. Complaint reg. № Ж-92 / 22.02.2017 contains the obligatory 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 (PDKZLDNA), namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The complaint filed by S.D., I.K., G.S., I.S., M.Z. is fully compliant with the requirements of the CPDP, according to PDKZLDNA and contains the necessary regulations for regularity. According to Art. 38, para. 1 of the LPPD in case of violation of his rights under the LPPD, each individual has the right to refer to the Commission for Personal

Data Protection within one year of learning of the violation, but not later than five years from its commission. The complaint was filed within the term of art. 38, para. 1 of LPPD and is admissible. In Art. 27, para. 2 of the Administrative Procedure Code (APC) the legislator links the assessment of the admissibility of the request with the presence of the requirements specified in the text. The applicability of the Personal Data Protection Act is related to the protection of individuals in connection with the processing of their personal data by persons having the capacity of administrators of personal data within the meaning of the legal definition of Art. 3 of the Act. 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. 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, on 07.09.2017 the Commission has ruled on the admissibility of the complaint № G-92 / 22.02.2017, given the considerations of jurisdiction of the parties, competence of the CPDP, the existence of a legal interest of the complainants, compliance of the provisions of Art. 38, para. 1 of LPPD term. In view of the said ruling, the appeal was declared admissible and the parties in the administrative proceedings were constituted: complainants - SD, IK, GS, IS, MZ; respondent - A.S. and a date has been set for consideration of the complaint on the merits - 11.10.2017 at 13.00. At a regular meeting held on 11.10.2017, objected in Minutes 57/2017, the complaint was postponed for consideration on the merits for 18.11.2017 at 13.00, as "V.S. "EOOD has been constituted as a respondent. The parties are regularly notified. The applicants S.D. and M.Z. appear in person. The applicants I.K., G.S. - regularly notified, do not appear and do not represent themselves. The respondent - A.S. appears in person and is represented by a lawyer. K.K. „V.S. EOOD is represented by NK with a power of attorney presented at the meeting. Pursuant to Art. 36, para. 1 of the APC and a decision of the CPDP, reflected in Protocol № 52 / 07.09.2017, an Order № RD-14-276 / 18.09.2017 was issued by the Chairman of the CPDP to conduct an inspection in connection with clarifying the facts and circumstances on the complaint, objected in the Statement of Findings № PPN-02-378 / 05.10.2017. 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 consisting of one entrance. For the purposes of security activities and after encroachments on Mr. A.S. and his property, in ap. 20 a video surveillance system was built by Kamsek OOD, which maintains the system. The video surveillance system consists of 3 (three) video cameras and a recording device (DVR-video recorder), stored in the apartment of A.S. The inspection team was explained that the housing cooperative has a video surveillance system, after a decision of the general meeting of residents, but at the time of the inspection, according to AS, this system does not work. The described

cameras installed by A.S. are not part of the others installed with the consent of all residents of the address. The first camera is located on the wall next to the front door and covers the space under the front door frame of the app. 20 and is protected by a grille. The second camera is installed inside the apartment and captures the corridor. The third camera is installed under the window sill of the app. 20 and is also protected by a metal safety grille. It covers the entrance of the residential building, part of a road leading to underground garages, part of the property fence and parts of a neighboring property. The first camera records when motion is recorded, and the third constantly. Using a DVR-video recorder, the video surveillance system allows video recording for a period of about 4-5 days. After filling the memory (1 terabyte) of the DVR, the old recordings are automatically deleted in the order in which they were received. Through installed software on the personal laptop of A.S. the input video image and video recordings are displayed. Only A.S. has access to the video surveillance system and the recordings made. by entering a username and password in the software used. Video frames and recordings are not remotely accessed. The video surveillance system allows identification of individuals. At the moment of the inspection there are no information boards warning about the video surveillance. To document the results of the inspection and in the presence of A.S. 4 (four) graphic images were taken from the video surveillance system, described in the statement of findings and attached to this statement of findings. A.S. provides the inspection team with a Warranty Card № **** for the video surveillance system, which describes the technical characteristics of the devices. The inspection team found the existence of a functioning video surveillance system at the address indicated in the complaint. After getting acquainted with the administrative file by Mr. AS, objectified in the minutes of 19.09.2017, evidence was submitted to the Commission - two complaints filed with the District Court - Sofia. Three Decrees of the District Prosecutor's Office - Sofia of 25.06.2015, 30.03.2016 and 27.04.2017 for refusing to initiate criminal proceedings for crimes of a general nature were provided. The content of the documents shows that the signals are due to deteriorating neighborly relations. Forensic certificates for bodily injuries were provided, as well as photographic material. In connection with the analysis of the evidence gathered in the proceedings, a contract for protection of property with electronic security systems and mobile patrols is considered № ***** / 29.09.2017 and an annex to the contract concluded between A.S. and "V.S. EOOD, deposited in the Commission by the respondent - A.S. on 29.09.2017 and on 06.10.2017. After concluding the provided contract between A.S. and "V.S. "EOOD in a prominent place, at the entrance and inside the residential building there are information boards warning about the video surveillance. With a letter ex. № PPN-01 / Ж-92/2017 # 22 / 06.10.2017 of the Commission of "V.S. "EOOD was granted a three-day period for expressing a written

opinion and presenting relevant evidence. „V.S. “EOD have engaged a statement in which they inform that between the company and A.S. A contract for protection of property has been concluded № *****, as of September 29, 2017. Verification of the site has been agreed as an additional service. It is explained that "verification is a service in which" only when an alarm signal is registered from the site in the monitoring center on duty, they verify the information received from the connected cameras in real time. " The components required to perform the service are not installed and are not maintained by "V.S. "Ltd. The video surveillance system is the property of the respondent. The technical team of the company has made an adjustment for centralization of the signals to the monitoring center of "V.S. "Ltd. In addition to the opinion filed with Reg. performs visual verification of the authenticity of the alarm operation, by means of video - activation of the camera, without making recordings. The company informs that "it does not perform and has not performed any video collection or processing of personal data of residents of the building." for video surveillance, installed on the site of Mr. A.S.

The Commission found that VS EOD did not have access to the records. The company has installed alarm and security equipment in case there is an alarm signal to perform video verification, for which purpose the cameras of Mr. A.S. The service does not include recording.

Mrs. S.D. has filed evidence containing complaints to the head of the 06-Regional Police Department, Sofia, forensic certificates, photographs, the content of the documents shows that the signals are due to deteriorating neighborly relations.

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 control over compliance with the Personal Data Protection Act. 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.

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.

Given the established factual situation, there is video surveillance, on the one hand, inside the residential building, according to the description of the installed cameras in the statement of findings № PPN-02-378 / 05.10.2017, namely: the first camera is located on the wall next to the entrance door and covers the space under the front door frame of the app. 20 and is protected by a grille. The third camera is installed under the window sill of the app. 20 and is also protected by a metal safety grille. It

covers the entrance of the residential building, part of a road leading to underground garages, part of the property fence and parts of a neighboring property.

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 specified in item 1 - item 7 of the LPPD.

In the specific case, given the established regime of condominium ownership in the residential building, regulated by the provisions of the Condominium Management Act (ZUES), the legal basis of Art. 4, para. 1, item 1 of the LPPD - the processing is in fulfillment of a normative obligation of the personal data controller.

In case of video surveillance inside the residential building and considering the regime of condominium ownership in the cooperative, the provisions of Art. 11, para. 1, vol. 10, p. a / and art. 17, para. 3 of ZUES, which regulate the powers of the general meeting as a body of condominium management.

According to Art. 11, para. 1, vol. 10, p. a / from ZUES the general meeting adopts decisions for making expenses, which are necessary for the maintenance of the common parts.

Pursuant to Art. 17, para. 3 of the LSMA, the legality of the cited power is guaranteed by providing a majority of more than 50 percent of the presented ideal parts of the common parts of the condominium.

In connection with the establishment of compliance with the said legal requirement, as one of the grounds for admissibility of the processing of personal data, the conclusion is drawn that there is a lack of legality of the video surveillance.

The reasons for the above concern the lack of any evidence from which to establish at the time of installation of video cameras that a general meeting was held in order to make a decision by residents to conduct video surveillance by process cameras.

In view of the installation of the video camera inside the apartment by AS, as a natural person, the content of the provision of Art. 1, para. 9 of the LPPD.

According to Art. 1, para. 9 of the LPPD, this law does not apply to the processing of personal data carried out by individuals for their personal or domestic activities.

With regard to video surveillance with the scope of filming in public places, such as the space in front of the entrance of the building, including sidewalks and streets around it, should consider the application of the principles of personal data processing specified in the norm of Art. 2, para. 2, item 1, item 2, item 3 of LPPD, namely: personal data to be processed lawfully and conscientiously, for precisely defined and legal purposes, to be relevant, related to and not exceeding the purposes for which

they are processed.

Given the need to find a balance between the interests of the controller of personal data and those of the complainants in compliance with the principle regulated in Art. 30, para. 1 of the Constitution of the Republic of Bulgaria for personal freedom and inviolability of every Bulgarian citizen, the assessment of the validity of complaint № Ж-92 / 22.02.2017 is substantiated in the part in which the video surveillance in public places is proved.

The established filming of public areas goes beyond the purposes for which the video surveillance was installed, namely: the protection of the property integrity of the respondent.

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-92 / 22.02.2017, filed by SD, IK, GS, IS, M.Z. against A.S. in terms of the camera that is positioned inside the app. 20 on the grounds of the provision of art. 1, para. 9 of the LPPD.
2. Respects as a well-founded complaint with registration № Ж-92 / 22.02.2017, filed by S.D., I.K., G.S., I.S., M.Z. against A.S. in its part related to the video surveillance performed by the two cameras, respectively located on the wall next to the front door and covers the space under the frame of the front door of the app. 20 and under the window sill of the app. 20, in the scope of which public places fall, according to the established factual situation, due to violation of the principle regulated in Art. 2, para. 2, item 3 of the LPPD, the personal data to be relevant, related to and not exceeding the purposes for which they are processed;
3. In connection with item 2 issues a mandatory prescription to A.S. within 10 (ten) days from the entry into force of the decision to dismantle the two cameras, the scope of which includes the common parts of the building and public areas outside it, the implementation of which to notify the commission by presenting relevant evidence.

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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