

Home »Practice» Decisions of the CPDP for 2020 »Decision on appeals with registration №PPN-01-29 / 15.01.2020 and №PPN-01-423 / 17.06.2020. Decision on appeals with registration №ППН-01-29 / 15.01.2020r. and №PPN-01-423 / 17.06.2020. DECISION № PPN-01-29 / 2020 Sofia, 19.11.2020 Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 23.09.2020, on the grounds of 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 № PPN-01-29 / 15.01.2020 and complaint PPN-01-423 / 17.06.2020, filed respectively by Z.M. and R.K. 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-01-29 / 15.01.2020, filed by Z.M. with allegations of illegal processing of his personal data by KK, Chairman of the Management Board of condominiums (EU), through their dissemination through placed on an information board at the entrance to the EU apartment block № ***, located in Sofia, *****, a copy of the last page of a court decision of the Sofia District Court, which contains his three names, address and unique civil number. He asserted that his personal data had been disseminated without his knowledge and consent, and that the lack of action taken by Mr K.K. necessary technical and organizational protection measures has created the preconditions for this and has led to their illegal distribution to an unlimited number of people living and visiting the EU. He claims that the document was placed "around the middle of November 2019" and was available until December 18, 2019, when it was removed from the board and replaced by another document - a protocol from December 18, 2019. It is clear that it concerns the deliberate actions of the President of the EU Governing Council, which he describes as a "recurrent illegal practice" against him, insofar as the case is not isolated. The Commission for Personal Data Protection was also seised with a complaint PPN-01-423 / 17.06.2020, filed by R.K. with allegations of illegal processing of his personal data by KK, Chairman of the Management Board of the condominium, through their dissemination through placed on an information board at the entrance to the EU apartment block № ***, located in Sofia, *****, a copy of the last page of a court decision of the Sofia District Court, which contains his three names, address and a single civil number. An identical factual situation is set out with that on the complaint PPN-01-29 / 2020, namely that his personal data were disseminated without his knowledge and consent, and the lack of actions taken by Mr. K.K. Necessary technical and organizational protection measures have led to their illegal distribution to an unlimited number of people living

and visiting the EU in the period "around mid-November 2019" until 18.12.2019. Relevant evidence is attached to the complaints. In view of the principles of the official principle, truthfulness and equality of the parties in the proceedings, represented in the administrative process, K.K. was informed of the complaints lodged and the opportunity to comment on the allegations set out in the same allegations, as well as the need to provide relevant evidence. In response and with letters PPN-01-29 # 6 / 06.07.2020 and PPN-01-423 # 3 / 10.07.2020 Mr. K.K. does not dispute the factual situation set out in the appeals. It states that it placed the documents cited in the complaints, the last page of RCC decisions, on the EU's information board in order to inform condominium occupants of the legal costs paid by the EU in connection with the civil proceedings against it. n Z.M. and Mr. RK, which are a total of 16. At a meeting of the CPDP held on 15.07.2020, the complaints were accepted as regular and admissible - they contain mandatory details, submitted within the period under Art. 38, para. 1 of LPPD, by natural persons with legal interest, against a competent party controller of personal data within the meaning of Art. 4, para. 7 of the Regulation. It is 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, considers complaints against acts and actions that violate the rights of data subjects related to the processing of personal data, as there are no exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of the Regulation in view of 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 the courts in the performance of their judicial functions. The negative prerequisites specified in Art. 27, para. 2 of the APC. Given the prerequisites of Art. 32 of the APC, the appeals were united for consideration in one general administrative proceeding with parties: complainants Z.M. and R.K. and respondent - KK, in his capacity of Chairman of the Management Board of condominiums located at Sofia, *****. An open meeting has been scheduled to consider the complaints on the merits on September 23, 2020, of which the parties have been regularly notified. The applicants were presented with a certified copy of the statements of the respondent party with an indicated legal opportunity to comment on the statements made by Mr. K.K. statements. In response, Mr. Z.M. and Mr. R.K. inform that they support the filed complaints, and find the reasons given by the respondent for placing the documents without deleted personal data unfounded and irrelevant to the specific factual situation, as long as the specific decisions do not concern court costs incurred by the EU. At a meeting of the commission held on 23.09.2020, the complaints were considered on the merits. The applicant, Z.M. - regularly notified, appears in person and with a lawyer. S. with a power of attorney presented at the meeting. The applicant R.K. - regularly notified, does not appear, is

represented by a lawyer. S. with a power of attorney presented at the meeting. Respondent - regularly notified, does not appear, does not represent. The applicant, Mr Z.M. and adv. S. declare that they are acquainted with the evidence gathered in the file and will not point to new evidence, they have no requests for evidence. They support the complaints and ask the commission to sanction the illegal behavior of the personal data controller, which they claim is biased and repeated. It is alleged that talks were held with the defendant on the matter referred to the Commission, including Mr K.K. was informed of the applicants' intention to refer the matter to the CPDP if it did not put an end to the violation. They added that the written correspondence with the defendant was impossible, as he did not receive the letters addressed to him, and the conversations with him were fruitless. They claim costs for procedural representation in the administrative proceedings, namely for paid attorney's fees in the amount of BGN 700 by each of the applicants, according to the contracts for legal protection and assistance presented at the hearing. 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 and given the evidence gathered and the allegations, the commission accepts that considered on the merits of complaints № PPN-01-29 / 15.01.2020 and PPN-01-423 / 17.06.2020. are justified. From the evidence gathered in the proceedings it was established, and it is not disputed between the parties, that the respondent K.K. is Chairman of the Management Board of a condominium located at Sofia, *****, and the applicants Z.M. and R.K. are owners of real estate in the condominium. The existence of a court dispute between the parties under the jurisdiction of the Sofia District Court, initiated by the applicants against the condominium on the grounds of Art. 40, para. 1 of the LSMA for annulment of an EU decision from a meeting of the General Assembly held on 20.11.2017. and R.K. claims against the EU and ordered each of the plaintiffs to pay to the EU, represented by President K.K., the sum of BGN 750, representing costs in the case for paid attorney's fees. It is not disputed that the President of the EU has placed on an information board at the entrance to the EU apartment building № ***, located in Sofia, *****, a copy of the last pages of the two court decisions of the Sofia District Court, containing the operative part of the decisions, in which the three names and the unique civil number of the plaintiffs Z.M. and R.K., the same applicants in the present proceedings. It is also undisputed that the documents were placed on the information board "around mid-November 2019" and downloaded on 18.12.2019. sufficient for their indisputable individualization, given that they have the nature of personal data of individuals. For the sake of completeness, it should be noted that the applicants' allegations that the documents provided and their addresses are unfounded and do not correspond to the evidence gathered in the file. Placing

the last pages of court decisions on the information board at the entrance to the EU in view of the unrestricted access to the same should be qualified as access and dissemination of personal data contained in the documents and as such should be carried out in the presence of any of the conditions processing and in compliance with the principles set out in the Regulation, in particular the principles of legality, good faith and transparency and the principles of integrity and confidentiality. security of personal data, including protection against unauthorized or illegal processing, applying appropriate technical and organizational measures by the controller within the meaning of Art. 32, § 1 and 2 of the ORD. The applicants' allegations that the last page of the two court decisions of the Sofia District Court, which contained their personal data - names and PINs, violated their rights under the LPPD and the PDPA were well-founded.

Given the fact that the personal data of the complainants were not deleted or anonymized in the procedural documents placed on the board, it must be concluded that they were disseminated and available to an unlimited number of persons living and / or visitors in the building in the period from "around mid-month November 2019 "until 18.12.2019

The regulation imposes an obligation on the controller of personal data, in this case

Mr. K.K. - Chairman of the Management Board of a condominium building, an obligation to take appropriate technical and organizational measures to protect the personal data processed by him from unauthorized access and / or dissemination, as well as from other illegal forms of processing. By placing the procedural documents on the notice board at the entrance to the condominium, the personal data controller created preconditions for the dissemination and access of the applicants' personal data contained in the same personal data to an unlimited number of persons, without this data being able to enjoy protection. under the LPPD. To the extent that such unlawful processing took place, it is clear that the data controller did not take appropriate technical and organizational measures to protect the applicants' data from unauthorized access and dissemination, and therefore failed to fulfill his obligation under Art. 32, § 1 of the CPDP and the rights of the natural persons who have approached the CPDP have been violated. For the sake of completeness, it should be noted that measures in fulfillment of this obligation have not been taken at all, there is no deletion, anonymization or other action or experience in the direction of protection of the personal data contained in the submitted documents. The respondent does not claim and does not commit written internal rules and / or procedure for processing personal data in such cases, as the opinion of Mr. K.K. the conviction of the same is evident that his actions are lawful and in order to inform the EU members about the acts. This view is incorrect in terms of the way in which the acts are communicated to other EU members, insofar as they are placed in a place with

unrestricted access, which is accessible not only to beneficiaries but also to third parties outside the EU, such as visitors. EU. Informing the EU members about the issued acts does not require placing the court decisions in a public place in the condominium building without deleting the personal data contained in them, moreover, that the result would be achieved in another lawful manner.

Given the nature of the violation and the fact that it is the first for the personal data controller and the same was terminated before referring to the CPDP, namely on 18.12.2019, the Commission considers it appropriate, given the prevention of the same violation in the future to issue of the personal data controller order under Art. 58, § 2, letter “d” of the ORZD, finding that the imposition of a fine for the established violation would be excessive and in violation of the principle of proportionality under Art. 6 of the APC, according to which "when the administrative act affects the rights or creates obligations for citizens, apply those measures that are more favorable to them, if in this way the goal of the law is achieved."

Taking into account the purpose of the penalty, which should have a deterrent and warning function, the nature and severity of the violation, public relations, the categories of personal data affected, the Commission considers that the corrective power exercised unquestionably meets the effectiveness of deterrent effect, while not violating the principle of proportionality and the requirement of proportionality.

Despite the outcome of the dispute, the CPDP finds the request for awarding costs for procedural representation of the applicants by a lawyer inadmissible and disregards it, on the grounds that no costs are due in the proceedings before the CPDP, according to Art. 12, para. 3 of the APC, insofar as this is not provided for in the special law of the LPPD.

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. Announces a complaint № PPN-01-29 / 15.01.2020, filed by Z.M. and complaint PPN-01-423 / 17.06.2020, filed by RK, as well-founded.
2. On the grounds of art. 58, § 2, letter “d” of EU Regulation 2016/679 and for violation of Art. 32, § 1 and 2 of the Regulation orders the personal data controller - KK, in his capacity as Chairman of the Management Board of condominiums located at Sofia, *****, to take and sign appropriate technical and organizational measures for protection of personal data of individuals from unauthorized access and distribution, taking into account the content of the acts placed on the information board of the condominium with the provisions of LPPD and ORZD, deleting or anonymizing personal data contained in the board acts.

3. Dismisses the application for costs and expenses of the applicants?

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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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Decision on appeals with reg. № PPN-01-29 / 15.01.2020 and № PPN-01-423 / 17.06.2020

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