

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № G-167 / 30.03.2017 Decision on appeal with registration № G-167 / 30.03.2017 DECISION № G-167 / 2017 Sofia, 12.02.2018 The Commission for Personal Data Protection (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva at a meeting held on 20.12.2017, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act considered on the merits a complaint № Ж-167 / 30.03.2017, filed by P.G.M. 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 petition filed by P.G.M. complaint stating allegations of illegal processing of his personal data by the political party "Bulgaria without Censorship" and their use without his knowledge and consent to register as a member of the sectional election commission № 244606062 in the elections held on 26.03.2017. The complaint was filed on March 22, 2017 on the open telephone line at the Ministry of Interior and was filed with ent. № SC-T-8 / 22.03.2017, from where, after an inspection, it was forwarded for consideration to the Central Election Commission, and from there to the CPDP. The applicant informed that he had been notified by telephone by P.K. - Chairman of 62 PECs in Sofia, Poduyane municipality, that he is included in the list of observers of the party "Bulgaria without Censorship" in the said section. Mr. P.G.M. claims that he subsequently found that his personal data had been processed not for his inclusion as a party observer in the specific elections, but for his registration as a member of the sectional election commission. He is adamant that he did not consent to the processing of his personal data for this purpose and in connection with the specific elections. Relevant evidence was attached to the complaint, including written explanations from both the applicant and P.K. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case, an official reference was made on the website of the Central Election Commission and relevant decisions were published on the website № 4264- NA / 08.02.2016 of the CEC on the registration of the party "Bulgaria without Censorship" for participation in the elections for MPs on 26.03.2016, Decision № 4182-NS / 01.02.2017 of the CEC on the appointment of members of PEC for the elections for Members of Parliament scheduled for March 26, 2017. Official inquiries were made on the website of the Twenty-fourth constituency - Sofia, as well as printouts of relevant decisions published on the website, namely Decision № 60-NS Sofia 24 IR / 28.02.2017 for the appointment of sectional election commissions in the Poduyane region and approval of the list of reserve members, Decision № 111-NS, Sofia, 24 IR / 22.03.2017 on changes in the the positions of sectional election commissions in the Poduyane district. In view of the need to clarify the case from a legal and factual point of view, the Sofia District Governor

requested and presented relevant evidence in response, namely a letter to the mayor of Poduyane district appointing PEC members from the coalition quota from the parties "Bulgaria without Censorship", with an attached list of the coalition with the PEC in the Poduyane region for the elections for MPs for the National Assembly, scheduled for March 26, 2017; Decision № 111-HC / 22.03.2017 of 24 DEC's on changes in the composition of sectional election commissions in the Poduyane district; Canceled PEC list № 244606062; List of PECs № 244606062; Revoked certificate № 06-062-6 / 28.02.2017 for appointment of P.G.M. for a member of the PEC № 244606062; Letter with ent. № 207 / 22.03.2017 of the mayor of the Poduyane region with an attached list of changes in the composition of the PEC for the Poduyane region. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing these data, as well as control over compliance with the LPPD. In order to exercise its powers, the Commission must be properly seised. From the evidence gathered in the file it follows that the complaint is regular - there is information about the complainant, the nature of the request, date and signature. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest. The same is the subject of illegal processing of personal data - three names and a unique civil number of the complainant for his registration as a member of the sectional election commission № 244606062 in connection with the elections held on 26.03.2017. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of the LPPD considers complaints against acts and actions of the personal data controllers, which violate the rights of individuals under the LPPD. At a meeting of the Commission held on November 8, 2017, the complaint was accepted as admissible and as parties to the proceedings were constituted: complainant - P.G.M. censorship ", PP" Agricultural People's Union ", PP" Dvizhenie Gergyovden ", PP" Bulgarian Democratic Center ", legal successor of PP" Leader ", PP" Bulgarian Democratic Union "Radicals", "Union of Free Democrats" and PP "Party of Bulgarian women "the same coalition partners, as evidenced by the Decision to form a coalition" Bulgaria without Censorship "and an additional agreement to establish a coalition to participate in the elections on 05.10.2014. As an interested party in the proceedings permanent address \*\*\*\*\*, given the fact that it is authorized by the representatives of the coalition to represent the coalition during the consultations with the mayor of the municipality for the appointment of sectional election commissions during the of the elections for the National Assembly, scheduled for March 26, 2017 on the territory of Sofia Municipality, Poduyane district, for this purpose presenting a written proposal for the composition of the sectional election commissions, which contains the names of the proposed persons, single civil number, position in commission, education and

specialty. 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 response, the political party "Bulgarian Democratic Center" expressed a written opinion on the unfoundedness of the complaint against the party given the agreement signed between the coalition partners on the distribution of sectional election commissions in the Republic of Bulgaria in connection with the elections on March 26, 2017. ., a certified copy of which they present. The Agricultural People's Union political party, as well as the St. George's Day Movement political party, expressed views on the unfoundedness of the complaint against the parties with the same arguments stated by the Bulgarian Democratic Center, namely the agreement between the coalition parties. partners agreement. Political party "Movement reloads Bulgaria", PP "Bulgarian Democratic Union" Radicals ", " Union of Free Democrats ", PP" Party of Bulgarian Women "and P.I.P. do not commit opinions. At a meeting of the Commission held on 20.12.2017, the complaint 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 № G-167 / 30.03.2017 is justified. In the present case and evident from the evidence gathered, it was indisputably established that the applicant was included in the quota list of the Bulgaria Without Censorship coalition for appointment as a member of PEC № 62 in the Poduyane district for participation in the parliamentary elections. March 26, 2017. The list includes his three names, a single civil number and a contact phone number. The list was presented at the consultations with the mayor of the municipality by P.I.P., proxy of the representatives of KP "Bulgaria without Censorship", evident from the attached power of attorney. It is not disputable, but also evident from Decision № 60-HC / 28.02.2017 The complainant was appointed a member of the PEC № 244606062 and a certificate for this quality was issued. , Poduyane district, a proposal was submitted for a change in the composition of the appointed sectional election commissions, including in the composition of PEC 244606062. In response, evident from the content of Decision № 111-HC / 22.03.2017 of 24 DEC's and Annex The applicant was dismissed as a member of the sectional election commission, and the decision, together with the annex thereto, was published on the DEC 24 website and was freely available. It should be noted that on 22.03.2017 - the date on which the complainant contacted the Ministry of Interior for misuse of his personal data, the application was submitted by the representative of the eligible entity for a change in the composition of the PEC. The Electoral Code sets out the rules for appointing the composition of the PEC,

and Decision № 4182-NS Sofia, 01.02.2017 of the CEC already specifies the rules concerning the elections for Members of Parliament held on 26.03.2017, according to which the composition of PECs are appointed by the DEC, and the appointment is preceded by consultations with the mayor of the respective municipality for the formation of the PECs. For the specific elections in the consultations participate the parties and coalitions that participated in the elections for MPs on 05.10.2014 and had a parliamentary group in the National Assembly on 24.01.2017, which submit a written proposal for the composition of the PEC from the quota of the respective political entity, which contains: three names and PIN of the proposed persons, education and specialty, contact phone number of the person and the position in the commission for which he is proposed (item 8 of the CEC Decision). in the consultations for the formation of the PEC there is also a coalition "Bulgaria without Censorship", as according to item 13 of the Decision is entitled to 6, 17% participation in the PEC within the municipality. It is known that at the date of the consultations with the mayor of the municipality and the provision of the applicant's data, the coalition did not exist as a political entity. However, according to the Electoral Code, he has the right to have representatives in the sectional election commissions for the elections on March 26, 2017. In this regard, and given the fact that in the elections on March 26, 2017 the parties in the coalition In the form of 15.02.2017 between the coalition partners an Agreement for distribution of the sectional election commissions for exercising the rights arising under Art. 75, para. 2 of the IC. As can be seen from the content of the agreement, the political party "Bulgaria without Censorship" with the current name of the political party "Movement Recharge Bulgaria" has been designated as a proxy for the Poduyane region in 24 MIR.

In view of the evidence gathered in the file, undisputed by the parties to the proceedings, including undisputed by the Recharge Bulgaria Movement political party, it was established that the applicant's personal data were processed by the personal data controller of the Recharge Bulgaria Movement political party. the hypothesis of their inclusion in the list of persons for their appointment in sectional election commissions from the quota of the coalition "Bulgaria without Censorship" for participation in the elections on 26.03.2017 and providing these data to the mayor of Sofia Municipality, Poduyane region. No processing of the complainant's personal data was established by the other political parties constituted in the proceedings - PP "Agricultural People's Union", PP "Dvizhenie Gergyovden", PP "Bulgarian Democratic Center", successor of PP "Leader", PP "Bulgarian Democratic Union" Radicals ", " Union of Free Democrats "and" Bulgarian Women's Party ".

The applicant's allegations that his personal data - three names, a unique civil number - had been unlawfully processed by the Bulgaria Without Censorship political party, now called the Recharge Forward Movement, and without his knowledge and

consent were included in the list provided to the mayor of Sofia. municipality, Poduyane district, for his appointment as a member of the PEC in connection with the elections for MPs held on March 26, 2017 were not disputed by the respondent political party "Recharge Bulgaria Movement". Despite the legal opportunity provided and the instructions given regarding the distribution of the burden of proof in the process, the party did not engage evidence of specific and informed consent expressed by the complainant within the meaning of § 1, item 13 of the Additional Provisions of LPPD for processing his personal data. . In this connection, it must be concluded that the applicant's allegations that his personal data were processed illegally and without his consent by the political party for that purpose are well founded. This conclusion is also suggested by the actions taken subsequently by the political entity to delete him as a member of the PEC.

In view of the evidence gathered in the file, it must be concluded that the complainant's personal data were processed by the political party "Recharge Bulgaria Movement" for his registration as a member of the sectional election commission № 244606062 in the elections held on 26.03.2017 from the quota of the coalition "Bulgaria without censorship ", in violation of Art. 4, para. 1 of the LPPD, without the consent of the person and without any of the conditions for admissibility of the processing specified in the provision, as the rights of the person referring to the CPDP have been violated.

In view of the nature of the infringement found, the Commission considers that the imposition of coercive administrative measures (mandatory prescribing or setting a time limit for remedying the infringement) is inappropriate and inapplicable in this case, and therefore engages the controller of personal data. for processing the personal data of the complainant in violation of Art. 4, para. 1 of the LPPD, considering that the same will have an educational impact and will contribute to the observance by the political subject of the established legal order.

As the identified specific violation is completed by the act of its commission and is irremovable, due to the fact that the data are provided and processed for the purposes of registration, giving a deadline for elimination of the violation is irrelevant. It, as a coercive administrative measure, is applicable in a case in which the commission of the respective violation continues or the same is remediable. In the present case, however, this is impossible.

The CPDP has the power to give a mandatory prescription to the controller of personal data, but it concerns situations in which the controller has not fulfilled its obligation, which omission can be remedied by performing the missed actions and objectifying the required by law.

Only the property sanction, as a measure of administrative coercion, is the most appropriate and effective measure to protect

the legitimate public interest. It should be noted that in addition to a purely sanction measure, a reaction of the state to the violation of the statutory rules, the property sanction also has a disciplinary effect, in view of the non-commission of the same violation in the future. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided in the LPPD and arising from his subject of activity, human and economic resources. In determining the amount of the administrative penalty, the Commission has taken into account the purpose of the penalty, which should have a deterrent and warning function and not create economic difficulties for the person who committed the breach. provided for in the law for the respective violation.

Guided by the above and on the grounds of 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 the complaint № Ж-167 / 30.03.2017 to be well-founded.
2. On the grounds of art. 42, para. 1 of the LPPD imposes on the political party "Recharge Bulgaria Movement" with Bulstat 176666205, with address of management \*\*\*\*\*, represented by Nikolay Barekov, in its capacity of personal data administrator, an administrative penalty - property sanction in the amount of 10 000 BGN (ten thousand BGN) for violation of Art. 4, para. 1 of the LPPD.

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.

After the entry into force of the decision, the amount of the imposed penalty to be transferred by bank transfer:

Bank of the BNB - Central Office

IBAN: BG18BNBG96613000158601

BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Downloads

Decision on the appeal with registration № Ж-167 / 30.03.2017

print