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» Decision on appeal with reg. No. PPN-01-641/15.07.2019 Decision on appeal with reg. No. PPN-01-641/15.07.2019

ANSWER

No. PPN-01-641/2019

Sofia, 25/01/2021

The Commission for the Protection of Personal Data (CPDP) in composition: Chairman: Ventsislav Karadjov and members: Maria Mateva and Tsanko Tsolov at a meeting held on 02.12.2020, on the basis of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, letter "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 ), submitted for consideration a complaint reg. No. PPN-01-641/15.07.2019 filed by M.K. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA).

The Commission for the Protection of Personal Data was referred to a complaint filed by M.K. with allegations of unlawful processing of her personal data by M.B., in the hypothesis of video surveillance being carried out in a residential building in condominium mode with the address \*\*\*\*\*. The complainant claims that the camera was installed on 06/09/2019, without the consent of the residents of the building, and that it covers common parts of the condominium, including the elevator. Requests an investigation into the case, dismantling of the camera and deletion of the available recordings from the video surveillance. No evidence was attached to the complaint.

According to the principles of equality of the parties in the proceedings and truthfulness, M.B. was notified of the filed complaint, and was given the opportunity to submit a written statement and relevant evidence.

In response, Mrs. M.B. disputes the complaint. She claims that after several theft attempts in the residential complex and for the purpose of prevention, she installed a dummy camera next to the front door of her apartment with the address \*\*\*\*\*. He claims the process camera is not connected to a recording device, does not perform real-time video surveillance or video recording, and lacks a functioning video surveillance system.

In view of the conflicting statements of the parties and in view of the official beginning, an inspection was carried out on the subject of the complaint, the results of which were objectified in a finding report PPN-02-609/19.11.2019, with a finding

protocol dated 14.11.2019 attached to it. and graphical representations of the camera location.

The inspection was opened on 14.11.2020 at the address: \*\*\*\*\* with the delivery of the inspection order to M.B., which facilitates the possibility of access and collection of evidence by the CPLD inspection team.

From the performed inspection, the following was established:

The address is a gated complex consisting of seven blocks, with the complainant's apartment on the fourth floor of block six, which is five floors with one entrance. There are three more apartments on the fourth floor in question, one of which is owned by M.B\*\*\*\*\* Above the front door of the apartment of Mrs. M.B. a dummy camera was installed, the same one placed with a preventive security purpose. The camera is not connected to the mains, but is powered by batteries. The camera is equipped with a red LED that simulates video surveillance and video recording. The presence of posted information signs/stickers warning of video surveillance has not been established.

A copy of the statement of findings and the statement made by Mrs. M.B. opinion on the complaint were provided to the complainant for perusal, with instructions, within 7 days of receiving the documents, to express a written opinion on them and to engage evidence in support of the statements presented in the complaint, given the allocation of the burden of proof in the process. In the specified period, and up to now, they have not been engaged. The facts established by the inspection of the CPLD are not disputed, the statements of Mrs. MB are also not disputed, there is no evidence from the complainant in the opposite direction.

The Commission for the Protection of Personal Data is an independent state body that protects individuals in the processing of their personal data and access to such data, as well as control of compliance with the GDPR and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data.

In order to exercise its powers, the commission must be validly referred.

The complaint contains mandatory required details - data about the complainant, the nature of the request, date and signature, the person against whom the complaint was filed is indicated, so that it is regular. The subject of the complaint are allegations of illegal processing of personal data by M.B., in the hypothesis of video surveillance of a residential building in condominium mode with the address \*\*\*\*\* , by means of a camera installed above the front door of the residence of Mrs. M.B.

The complaint was submitted within the period under Art. 38 of the Labor Code by a natural person with a legal interest against

a natural person who is claimed to be a personal data controller within the meaning of Art. 4, para. 7 Regulation EU 2016/679, given the claims that the latter only defines the purposes and means of processing personal data through video surveillance. Referred body competent to make a decision - CPLD, which according to its powers under Art. 10, para. 1 of the Labor Code in connection with Art. 57, § 1, letter "f" of Regulation (EU) 2016/679, considers complaints against acts and actions of the controllers of personal data, which violate the rights of data subjects related to the processing of personal data, being not available the exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of the Regulation given the fact that the case does not concern processing activities carried out by an individual in the course of purely personal or domestic activities and/or activities carried out by the courts in the performance of their judicial functions.

For the above reasons and given the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, a conclusion on the admissibility of the appeal is required.

The Commission considers that the prerequisites under Art. 38, para. 4 of the Labor Code for leaving the complaint without consideration, as obviously unfounded.

According to Art. 10, para. 1 of the Labor Code in connection with Art. 57, § 1, letter "f" of Regulation 2016/679, each supervisory authority, in this case CPDP, should consider complaints submitted by data subjects and investigate the subject of the complaint, as far as this is appropriate. The expediency in considering the appeals and the development of the proceedings is procedurally further developed in the internal legislation - in Art. 38, para. 4 ЗЗЛД. The cited provision allows, when the complaint is clearly unfounded or excessive, with a decision of the Commission to leave the complaint without consideration. The judgment "whether to leave an obviously unfounded complaint without examination or to consider it on its merits and reject it" is within the operational autonomy of the CPLD, an opinion that is also shared in judicial practice and in particular Decision No. 5687/29.07.2020. by adm. case 3713/2020 of the ASSG.

In the specific case, illegal video surveillance carried out by M.B. by means of a camera installed next to the front door of an independent property owned by her, app. \*\*, in a condominium building with address \*\*\*\*\*. However, it is undisputedly established in this case that there is no built-in video surveillance system. It concerns a camera that is a dummy and is objectively impossible to process personal data. For these reasons, the complaint should be left without consideration, as obviously unfounded, insofar as video surveillance as a set of actions - recording and storing by automatic means - video surveillance system, which falls under the concept of "processing" of personal data, is not carried out. The above conclusion

would not change if the appeal was scheduled for substantive consideration in an open meeting of the CPLD. The latter would only unjustifiably delay the development of the proceedings and would be contrary to the principle of speed and economy in administrative proceedings, insofar as the factual situation has been established beyond doubt and has not been disputed by the applicant.

Based on the above and based on Art. 38, para. 4 of the Personal Data Protection Act, the Personal Data Protection Commission,

RESOLVE:

Leave appeal PPN-01-641/15.07.2020 without consideration, as obviously unfounded.

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

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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