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»Practice» Decisions of the CPDP for 2019

»Decision on the appeal with registration № Ж-279 / 22.06.2018 Decision on the appeal with registration № Ж-279 /

22.06.2018

ANSWER

№ Ж-279 # 37/2018

Sofia, January 9, 2019

Commission for Personal Data Protection (CPDP, Commission) composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a regular meeting held on 28.11.2018 and objectified in the minutes № 44 / 28.11.2018, based on Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered in closed session a request with registration № Ж-279 # 37 (17) /03.09.2018, for resumption of appeal proceedings with registration № G-279 / 22.06.2018, filed by G.C. and N.L.

The Commission for Personal Data Protection received a request by e-mail from Ms. G.C. and Ms NL, filed with Reg. № G-279 # 37 (17) /03.09.2018, for resumption of appeal proceedings with Reg. № G-279 / 02.06.2017 in connection with with new facts and circumstances.

The request states that with item 1 of decision № G-279/2017, the Commission rejects as unfounded the complaint with reg. № G-279 / 22.06.2017 against the established video surveillance system, as no advantage has been established the interests of the applicants over those of the defendants. They point out that the Commission has not taken into account the comments commenting on the possibility of manipulating the range of the cameras. It is also stated that with item 2 of the same decision a complaint with reg. "Vasil Levski" and sidewalk, according to the established factual situation. A mandatory prescription has been issued to take action to move the cameras in a way that does not allow the filming of public areas, and a deadline has been set for implementation.

The applicants described further in the request for reopening under Art. 99, item 2 of the APC, that in July this year they were summoned by the district police inspector in connection with a complaint filed in the 8th police station with registration number ****, filed by CZ, which is was supported by photographic footage from CCTV footage.

They claim that the scope of the filming has nothing to do with the one established during the Commission's inspection, but is currently radically different and covers the applicants' property within the scope of the video camera footage.

With a letter ex. № PPN-01-279 (17) # 38 / 20.11.2018 the complainants were given instructions for eliminating irregularities in the complaint. Irregularities were eliminated in time.

According to the provision of art. 99 item 2 of the APC, in order to request resumption of the proceedings, there must be an individual administrative act that has entered into force and has not been challenged before the court.

The proceedings under Art. 99 et seq. Of the APC is an extraordinary control method for revocation of an entered into force administrative act, which has not been appealed in court and only in the presence of any of the grounds under Art. 99, item 1 - item 7 of the APC. The preconditions for resumption of the procedure for issuing the administrative acts presuppose bringing the acts in compliance with the actual factual and legal situation, existing at the moment of their enactment. The revocation under Art. 99 of the APC is an additional legal means to ensure the application of the principles of truthfulness and legality of acts issued by administrative bodies. This procedure affects the stability of the administrative act, therefore the grounds for resumption are exhaustive and cannot be interpreted broadly.

In this case there is no ground under Art. 99, item 2 of the APC for resumption of proceedings. This ground provides for the discovery of new circumstances or new written evidence essential for the issuance of the act, which in resolving the issue by the administrative body could not be known to the party as newly discovered are those evidences of legally relevant facts, which could not be included in the evidence in the administrative proceedings until the moment of its completion in the due diligence of the party that had the obligation to prove them, ie. that there are no "new" within the meaning of Art. 99, item 2 of evidence, as they did not exist before the issuance of the entered into force administrative act, the procedure for the issuance of which is requested.

From the allegations of the complainants for video recordings provided by a file in the 8th Regional Police Department by the defendants in the complaint with Reg. circumstances, as with Decision № Ж-279/2017 of 30.11.2017, appeal with reg. № Ж-279 / 22.06.2017, filed by NL and G.C. against E.Z., A.Z. and C.Z. was respected in its part related to the two cameras, the scope of which includes parts of the street and sidewalk adjacent to the property, and the defendants were issued mandatory prescribed to take action to move the cameras in a way that does not allow the capture of public areas.

"New circumstances" should be understood as such facts of reality that have in relation to the disputed legal relationship the significance of legal or evidentiary facts that are new - ie. have not been included in the factual material of the administrative proceedings, but they must not be newly created, ie. to have arisen after the issuance of the act. New written evidence can be

- newly discovered or newly created, but should relate to facts that existed before the issuance of the administrative act. An essential condition for the application of the provision is that these new circumstances or new written evidence could not have been known to the party until the issuance of the act. Ignorance should be the result of an objective impossibility for these newly discovered circumstances or new evidence to be known to the administrative authority and not due to non-compliance with the obligation to collect evidence ex officio. These new circumstances or written evidence should be relevant as of issuance of the act, for revocation or amendment of which it is claimed that there are grounds for resumption under Art. 99 et seq. Of the APC.

In this sense, the provisions of Art. 99, item 2 of the APC grounds concern incompleteness of the factual and evidentiary material, which is revealed only after the entry into force of the administrative act and is not due to negligence of the party. I.e. these are facts and circumstances that existed at the time of the administrative act, but the party did not know about them or, if it knew, for objective reasons was not able to obtain evidence of their establishment.

In view of the above, it follows that there are no new facts and circumstances that were not known at the time of issuing the individual administrative act of the Commission.

In view of the above and on the grounds of Art. 97, para. 1 of the APC, the Commission for Personal Data Protection ruled as follows

ANSWER:

Disregards as unfounded the request for resumption of the administrative proceedings on the appeal with reg. № Ж-279 # 37 (17) /03.09.2018, as the grounds under Art. 99, item 2 of the APC for resumption of administrative proceedings.

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.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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