

DECISION № 7406 Sofia, 07.12.2018 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 24 Chamber, in a public hearing on 03.12.2018 in the following Chamber: JUDGE: Branimira Mitusheva with the participation of Secretary Gerga Martinova, considering case number 7668 on the inventory for 2018 reported by the judge, and to rule took into account the following: 8 The proceedings are under Art. 145 - 178 of the APC in connection with Art. 38, para. 6 of the Personal Data Protection Act / PDPA /. It was formed upon a complaint of M. Y. V. from [settlement] against Decision № PPN-01-63 / 2017 of 02.05.2018 of the Commission for Personal Data Protection / CPDP / in its part under item 2. The appeal contains arguments for illegality and incorrectness of the appealed administrative act, as ruled in case of violations of the administrative-procedural rules and in contradiction with the substantive legal norms. It is alleged that the CPDP incorrectly considered that the complaint referred to it referred only to the violation of MV's rights, after the complaint was also filed by her husband A.M. It is objected that the cameras were installed. so as to photograph common parts such as the corridor, the adjoining staircase, the courtyard and the whole building, as well as the terrace and part of the applicant's apartment, which is personal property. The applicant considered that the administrative body had wrongly accepted that the photos and videos had become available only to a certain group of "friends and relatives", as the social network F. was public and publicly available to all users of the social network. It is further argued that Directive 95/46, cited in the contested decision, concerns the right to the protection of personal property and not the common parts, and that the taking and uploading of photographs on social networks cannot be described as the preservation of personal property. . The complaint also states that the son and daughter of the S. family also have access to video surveillance through a special mobile application of I. 4200, as well as the fact that the photos and videos of the video surveillance were uploaded by the S. family on the social network only on itself is a violation of Art. 2, para. 2, item 1, item 2 and item 3 of LPPD. It is claimed by the court to issue a court decision, with which to annul the decision in its disputed part and to fully respect the appeal filed by MV. At a court hearing, through his legal representative, he also made a request for an award of costs incurred in the case. The defendant - the COMMISSION FOR PROTECTION OF PERSONAL DATA - regularly summoned, through his legal representative disputes the complaint and considers it unfounded. He claims to be awarded legal fees. The interested parties - G. K. S. and M. C. S., regularly summoned, did not appear in court, did not send a representative and did not express an opinion on the appeal. In the written notes attached to the case, they express an opinion that the complaint is unfounded. SOFIA CITY PROSECUTOR'S OFFICE, regularly notified, does not send a representative and does not express an opinion on the complaint. The court, after

discussing the arguments of the parties and assessing the written evidence collected and accepted in the case, finds the following factual situation established: The proceedings before the CPDP were instituted on appeal Reg. C. that, without her consent and that of her husband A.M. and video recording, for which no decision was taken by the general meeting of the condominium, as well as the applicant's repeated disagreement. The complaint also alleges that the applicant had learned from relatives and friends that video and video recordings had been shared by S. on the social network. Attached to the complaint are copies of photos taken from the social network and shared by G. and M. S. .. In connection with the complaint filed in this way by letter ex. № PPN-01-63 / 2017 # 1 / 02.11.2017, based on Art. 36 of the APC, M. and GS were given the opportunity to express a written opinion on the complaint, as well as to present evidence. Within the term determined by the administrative body with an opinion ent. № PPN-01-63 # 2 / 14.11.2017, S. have indicated that the video surveillance carried out by them is the result of daily mental and physical harassment by MV's husband for 10 years, as for placing the cameras received advice from the neighborhood inspector. Attached to the statement were taken recordings from the video surveillance system, which were shared by them on the social network - the group "No to vandalism and simplicity in K.". At its meeting held on January 17, 2018, the CPDP decided on the admissibility of the complaint filed by M.Y.V. and its consideration on the merits in open court / transcript-extract from the minutes № 4 /. With letters ex. № PPR-01-63 / 2017 # 5 / 22.01.2018 and ref. № PPN-01-63 / 2017 # 6 / 22.01.2018 G. and M. S. and M. V. were informed that the complaint will be considered on the merits at an open meeting of the CPDP on 14.02.2018 by 13.00, as well as that they have been constituted as parties in the administrative proceedings. In the course of the administrative proceedings by order № RD-14-27 / 02.02.2018 the Chairman of the CPDP has ordered a subsequent inspection of compliance with and application of the CPDP in condominiums at the address: [settlement], [street], with the task: to establish whether the provisions of the LPPD have been complied with when processing personal data of individuals through a video surveillance system at the specified address. For the performed inspection a handover protocol, a statement of findings from 07.02.2018 and a statement of findings № PPN-02-102 / 09.02.2018 have been drawn up. two entrances, in co-ownership, as the S. family owns an apartment on the second floor of the building on [street] proportional parts of the yard, and MV's apartment is located on the third floor. The act also states that according to the S. family, the latter have been subjected to systematic harassment for 15 years by V.'s husband, who constantly dumps garbage from the third floor on the awning on the second floor, throws pirates on the terraces, destroys flowers in the yard, etc., including inflicting bodily harm on Mr. S., as M.'s actions provoked the S. family to publish footage

from the camera on social networks. It was also established that the video surveillance system built at the address consists of four video cameras and one recording device - D. a video recorder connected to the home computer of the S. family and the mobile devices of Mrs. S., their daughter and their son. through the iVMS 4200 application, as: the first camera is installed above the garage door of the S. family and parts of the adjacent sidewalk and street, as well as part of the opposite sidewalk are within its scope of observation; the second camera is installed on the other inner side of the garage and captures parts of the yard and the entire residential building; the third camera was placed on the terrace of the S. family and parts of the yard and the garage of the S. family and part of the applicant's garage fell within its scope of observation; the fourth camera is installed on the front door of the S. family and captures the landing on the second floor and the adjacent staircase. According to the statement of findings, the video surveillance system allows monitoring of the output image of the cameras in real time and automatic recording of images when moving the object within range of the cameras, the recordings are stored for 7 days, then automatically deleted. camera and information boards are placed. As can be seen from the minutes № 8 / 14.02.2018 of a meeting of the CPDP, the consideration of the complaint of MV was postponed in connection with the collection of evidence regarding the regime of the residential building. With a letter ex. № PPN-01-63 / 2017 # 14 / 02.03.2018 MV was informed that the next meeting of the CPDP to consider her complaint will be held on 21.03.2018 at 13.00. With a letter ex. № PPN-01-63 / 2017 # 15 / 02.03.2018 G. and MS are informed that the CPDP will consider the complaint of MV on 21.03.2018 from 13.00, as to clarify the In the case of fact and law, the defendants should provide evidence of ownership of the property on [street], [settlement], as well as specify exactly what records they have shared and provide relevant evidence, screen prints, etc. The complaint is considered at the meeting of the CPDP held on 21.03.2018, at which a unanimous decision was taken to declare the complaint well-founded with regard to the camera, which captures public territories, and the rest of the same is declared unfounded. With decision № PPN-01-63 / 2017 / 02.05.2018 the CPDP has accepted as a well-founded complaint with registration № PPN-01-63 / 15.09.2017, filed by MV against G. and M. S., in the part related to the video surveillance performed by a camera installed above the garage door, due to violation of the principle regulated in Art. 2, para. 2, item 3 of the LPPD personal data to be relevant, related to and not exceeding the purposes for which they are processed, as well as left without respect as unfounded complaint reg. № PPN-01-63 / 15.09.2017 in view of the established on the grounds of Art. 4, para. 1, item 7 of the LPPD admissibility of the processing of the personal data of the complainant, through video surveillance carried out by the respondent parties in a way that does not establish an advantage of the interests of Mrs. V. over those of the

family S. in compliance with the principles regulated in Art. 28 and Art. 30, para. 1 of the Constitution of the Republic of B. for the right to life, personal liberty and inviolability of all Bulgarian citizens, due to which there is no violation of the rights of the complainant in accordance with the provisions of the LPPD. In its reasons, the CPDP has accepted that in the procedural case the processing of personal data is admissible on the grounds of Art. 4, para. 1, item 7 of the LPPD and no preconditions are established for accepting the conclusion that the interests of the complainant have priority over the interests of the respondent parties. The administrative body has also accepted that the photos and videos that are were shared, refer to a person other than the complainant, and that in the processing of personal data of a particular individual by publishing his photo, the personality and unequivocal recognition of a wide, unlimited number of persons is essential, and in the present case even with photos / recordings the faces remain unrecognizable to the public except for the closest circle of friends and relatives. In issuing its decision, the CPDP also referred to the decision of the Court of Justice of the European Union in case № C-212/2013, as well as accepted that the building located at [settlement], [street] is in condominium mode and there is no house manager. In the case was accepted as evidence and Decree of 17.07.2017 for refusal to initiate pre-trial proceedings under the case 1291/2017 of the District Prosecutor's Office - K .. Given the facts thus established, the court reached the following legal conclusions: The appeal is procedurally admissible - it has been filed by a competent party within the term under Art. 38, para. 6 of the LPPD. As can be seen from the return receipt attached to the case, the applicant was notified on 09.05.2018 of the disputed administrative act, and her appeal against the act, according to the official note attached to the case, ref. № 02-785 / 18.09.2018 of [company] and return receipt ID PS 2500 00NAZ3 N, was submitted to the court on 23.05.2018, ie within the statutory 14-day period. Considered on the merits, the appeal is unfounded for the following reasons: The contested decision in the present proceedings was issued by a competent administrative body - CPDP in accordance with the powers granted to it under Art. 38, para. 1 and para. 2 of LPPD in connection with Art. 10, para. 1, item 7 of the LPPD. Despite the fact that it is indisputably established in the case that GS and MS are not registered as controllers of personal data, insofar as a complaint has been filed against their processing of personal data, it has been properly considered by the CPDP and it has not gone beyond its powers. According to § 1, item 1 of the RD of LPPD "Personal data processing" is any action or set of actions that can be performed on personal data by automatic or other means, such as collection, recording, organization, storage, adapting or modifying, restoring, consulting, using, disclosing by transmitting, distributing, providing, updating or combining, blocking, deleting or destroying. In this case, the court finds that personal data is being processed -

recording by automatic means - video surveillance system. According to Art. 3, para. 1 of the LPPD, a personal data controller is a natural or legal person, as well as a body of state power or local self-government, which alone or jointly with another person determines the purposes and means for processing personal data. The same definition is given in Art. 2, p. "D" of Directive 95/46 / EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46 / EC). Therefore, it is sufficient to process personal data within the meaning of the law in order to turn a natural person, as in the present case, into a controller of personal data. Whether it is registered in the register under Art. 10, para. 1, item 2 of the LPPD is a separate issue, and in this regard it should be borne in mind that the CPDP should register controllers only when they maintain registers of personal data - an argument of § 3 of the TFP of the LPPD and Art. 10, para. 1, item 2 of the LPPD. Persons who do not keep registers, but process personal data within the meaning of the law, as in the case of video recording, also have the capacity of controller of personal data and the CPDP may consider complaints against them and accordingly establish or not violations of processing of this data. No violations of the administrative procedure rules were committed during the enactment of the administrative act. The decision was rendered after the parties were given the opportunity to express an opinion and present written evidence - Art. 36 of the APC, as well as after consideration of the appeal on the merits in an open court hearing according to Art. 9, para. 4 of LPPD and Art. 39, para. 1 of the Rules of Procedure of the CPDP and its administration and was adopted by the required majority / Art. 9, para. 3 of LPPD /. The administrative body has also correctly constituted the parties in the proceedings before it. The administrative act was issued in the form prescribed by law - a decision stating the reasons - factual and legal grounds, due to which the complaint of MV is partially respected and considered valid and not respected in the rest, as unfounded. The present court also finds that the procedural decision was rendered in accordance with substantive legal provisions and the arguments in this sense for illegality by the appellant appear to be unfounded. According to Art. 2, para. 1 of the LPPD personal data are any information relating to a natural person who is identified or can be identified directly or indirectly by identification number or by one or more specific features. The purpose of the LPPD is to guarantee the inviolability of the person and private life by protecting individuals from illegal processing of related personal data and regulating the right of access to collected and processed such data. The protection of personal data provided by law is not absolute and is subject to restriction in cases expressly provided by law. The provision of Art. 4, para. 1 of the LPPD regulates seven alternative hypotheses in which the processing of personal data is admissible. The processing of personal

data is permissible only in cases where at least one of the conditions exhaustively listed in the norm is present. The Personal Data Protection Act introduces the provisions of Directive 95/46 / EC / § 1a of the Additional Provisions of the LPPD /, as in Art. 7, p. "E" of the Directive stipulates that Member States provide that the processing of personal data may take place only if the processing is necessary for the legitimate interests pursued by the controller or by a third party or persons to whom the data are disclosed. , except for the cases when these interests are preceded by interests related to the fundamental rights and freedoms of the respective natural person, which require protection by virtue of Article 1, paragraph 1. In Art. 4, para. 1, item 7 of the LPPD stipulates that the processing is admissible when it is necessary for the realization of the legitimate interests of the personal data controller or a third party to whom the data are disclosed, except when the interests of the natural person take precedence over these interests. data subject. It is for the present case to determine whether that hypothesis existed. The interests of GS and MS / administrators of personal data /, related to the protection of their personal property, should take precedence over the interests of the complainant / individual whose data may have been captured /. In this regard, the Judgment of the Court of 11.12.2014 in case C - 212/13 on a reference for a preliminary ruling should also be taken into account, in the operative part of which it is stated that Art. Article 3 (2), second indent, of Directive 95/46 / EC must be interpreted as meaning that the use of a video surveillance system for video recording of persons stored on a long-term storage device, namely a hard disk, which is installed by a physical a person in his family house for the protection of the property, health and life of the owners of the house, as the system also covers public places, does not constitute processing of personal data when performing entirely personal or domestic activities within the meaning of this provision. As an example of activities that are purely personal or domestic, the Directive cites correspondence and the maintenance of address books. Indeed, in compliance with the Decision in case C - 212/13 in this case it cannot be assumed that the video recording was for entirely personal or domestic activities, but the CPDP has not established illegal processing of personal data. The Directive provides that Member States should protect the fundamental rights and freedoms of individuals, and in particular their right to privacy with regard to the processing of personal data. Therefore, both the rights and freedoms of data subjects and the rights and freedoms of data subjects should be taken into account. In the present case it is established that the S. family processed data of other natural persons - in the specific case of the applicant and her husband, by video recording only to protect their own property due to serious problems in their relations with the applicant and her husband. No unlawful processing of this data was found by the administrative body, and neither in the administrative proceedings nor in the court proceedings was it

established that the applicant's personal data were subject to filing, classification or other similar action by the interested parties. . Indeed, it is indisputably established in the case that some of the video recordings were shared by the interested parties on the social network - published on the Facebook page. In this regard, it should be borne in mind on the one hand that it is evident from the printouts from Facebook attached to the case that only one of the shared photos / from 01.10.2018 / has the figure of a woman in the back, which can be assumed to be the applicant. However, this photo, taking into account the nature of the photo shoot, as correctly indicated by the administrative body, lacks a clear and complete description of the features of the person, so that he can become recognizable to the public and unambiguously identified by publishing this photo. exception, of course, to the limited closest circle of friends and relatives. When processing personal data of a particular individual through the publication of his photo is essential on

the legality of the processing is the personality and the definite recognizability from a wide and unlimited circle of people. In the present case the court finds that s

it would be difficult for the applicant to post this photo on Facebook

could be identified by an unlimited number of persons. On the other hand in one of

part of the other photos shared on the social network, it is clear that

a male person other than the applicant was present. Even if it is accepted for

it is indisputable that this person is her husband - A. M., the latter is not a sender of

the appeal, nor is a party in the conducted administrative proceedings, as for

there was no obligation for the CPDP to establish violated rights. IN

this connection should be borne in mind that it is unjustified and

the applicant's objection that the CPDP had been seised and not

She also ruled that her husband's rights had been violated

the case appeal with ent. № PPN-01-63 / 15.09.2017 the same was submitted only in the name

of M.Y.V., as it is stated in it that the recordings from the video cameras and photos with

images of the applicant and her husband were shared on social media

networks. In accordance with Art. 36, para. 1 of the Rules of Procedure of the CPDP and

her administration's complaint is a request seeking protection for the violated

of the claimant under the LPPD. In the present case, the complaint was filed only by M.

V. and she seeks protection only for her violated rights, but not for the alleged ones

only in the appeal, but not filed or signed the same, husband of MV .. In the case

are also not engaged in any evidence that the interests of

the applicant MV had an advantage over the interests of G. and M. S ..

Therefore, which, as well as correctly adopted by the CPDP, in the present case is present

provided for in Art. 4, para. 1, item 7 of the LPPD hypothesis with respect to the disputed

item 2 of the procedural decision.

In view of the above, the present court finds that this is the case

the complaint lodged is unfounded and unproven and as such should be

rejected.

Given the outcome of the case and the request for the award of

legal fees from the defendant's legal representative,

as well as on the grounds of art. 143, para. 4 of the APC, the applicant should be

sentenced to pay the defendant the amount of BGN 100, representing

legal consulting remuneration, determined by the order of art. 37, para. 1 of the Act

for legal aid and Art. 24 of the Ordinance for payment of legal aid.

Led by the above and pursuant to Art. 172, para. 2 of the APC Administrative Court

- Sofia city, 24th panel

RESOLVED:

DISMISSES the appeal of M.J.V. from [settlement] against Decision [

PPN-01-63 / 2017 of 02.05.2018 of the Commission for Personal Data Protection

/ CPDP / in its part under item 2, as unfounded.

ORDERS M.J.V., with PIN [PIN], to pay the PROTECTION COMMISSION

OF PERSONAL DATA the amount of BGN 100 / hundred /, representing

legal fees.



The decision can be appealed with a cassation appeal before the SAC of the Republic of Bulgaria

14 days from the notification to the parties for its ruling.

JUDGE: