

Decision on appeal with registration № PPN-01-952 / 23.11.2018 DECISION» PPN-01-952 / 2018 Sofia, 02.05.2019 Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 20.02. 2019, based on Art. 10, para. 1, item 7 of the Personal Data Protection Act in connection with Art. 57, § 1, letter “e” of Regulation (EU) 2016/679, considered on the merits a complaint Reg. № PPN-01-952 / 23.11.2018, filed by K.T. 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 filed by K.T. with stated allegations of violation of the rights granted to him by the LPPD through video surveillance carried out at his workplace. The applicant informed that he had been blackmailed and threatened by his former employer P.K. - Manager of "M. EOOD, P. He claims that video surveillance cameras have been installed at his workplace without his knowledge and consent, and his employer has access to the footage, threatening and blackmailing him after the termination of the employment contract concluded between them, in order to financial benefit. No evidence was attached to the complaint. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case, from “M. “EOOD is a required written statement and relevant evidence in the case. In response, the company informed that the reason for the video surveillance carried out in the company's establishment located in **** were abuses and thefts by the complainant K.T. and his colleague Sh., the same employees in the restaurant. They add that proceedings have been instituted in the case at the District Prosecutor's Office - P., and recordings from cameras have been provided to the investigators as evidence of abuse by Mr. K.T. and Mrs. Sh. on a particularly large scale. Present an order № 24 / 01.08.2018 on the inventory of the company regarding the video surveillance. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and 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. In order to exercise its powers, the Commission must be properly seised. The appeal shall contain the obligatory requisites, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, in view of which it is regular. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest against a competent

party - "M. "EOOD - legal entity personal data controllers within the meaning of Art. 4, para. 7 of EU Regulation 2016/679, given the fact that the latter only determines the purposes and means of personal data processing by video surveillance. The subject of the complaint is illegal processing of the personal data of the complainant by "M. "EOOD through video surveillance carried out at address **** in a fast food restaurant, the same workplace of the complainant. The complaint was referred to a competent body - the CPDP, which in accordance with its powers to consider complaints against acts and actions of data controllers, which violate the rights of individuals related to the processing of personal data, and there are no exceptions to Art. 2, § 2, letter "c" and Art. 55, § 3 of Regulation (EU) 2016/679 given 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 courts in the performance of their judicial functions. For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, on 16.01.2019 the appeal was accepted as procedurally admissible and as parties in the proceedings were constituted: complainant - K.T. and respondent - "M. "Ltd. The complaint is scheduled for consideration on the merits in open court on 20.02.2019, of which the parties have been regularly notified. In order to clarify the case from a legal and factual point of view, an inspection was carried out on the subject of the complaint, objectified in a statement of findings № PPN-02-15 / 11.01.2019. The inspection team of the commission found that a video surveillance camera installed which does not record video footage. According to the manager representing the company, Ms. K., the camera was placed in the restaurant on September 15, 2018, in order to monitor the staff. The camera is Foscam, model FI8918W. IP camera, 640 x 480 (VGA) resolution with 15 fps, MJPEG compression, 1/4 "CMOS sensor. 0.5 Lux, infrared lighting up to 8 m, 3mm lens, built-in microphone, audio output, user access detection The manager Ms. K. and the salon manager Mr. P. have access to the video footage from the camera in real time. The inspection team found that PK downloaded the mobile application Record it, through which she made videos from the camera on 15.09 .2018, 16.09.2018 and 22.09.2018 on his mobile phone. time of work in the inspected site on 15.09.2018, on 16.09.2018 and on 22.09.2018, as the three records are stored in the mobile device of the manager of the company for an indefinite period of time. KT, can be physically identified. The inspection team found that there was no written vote for video surveillance by K.T. The inspection team found from the displayed mobile device - phone of the manager, through which real-time monitoring is performed, that the perimeter of video recording from the installed camera is only inside the restaurant, not covering external public places - adjacent street and sidewalk. During the inspection of the fast food restaurant it was found that in prominent places there are a total of 5 (five)

information stickers that warn of video surveillance. At a meeting of the CPDP held on February 20, 2019, 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 Code of Administrative Procedure, requiring the existence of established facts, given the written evidence gathered and the allegations made by the parties, the Commission considers that considered on the merits complaint № PPN-01-952 / 23.11.2018 is unfounded. The parties do not dispute, and it is evident from the evidence gathered and in particular the employment contract № 43 / 16.05.2018, according to the inventory of "M. EOOD is that the applicant was in an employment relationship with the company, the same terminated on 12.10.2018. It is undisputed that the position of "cook fast food restaurant" the applicant held in a catering establishment owned by M. "EOOD, located in *****. It is indisputably established that video surveillance has been carried out in the establishment by means of a camera, through which real-time surveillance is carried out only inside the establishment, as the perimeter of video surveillance does not cover external public places - adjacent street and sidewalk. The manager of the company - Mrs. K. and the salon manager Mr. P. have access to the video footage from the camera in real time. There is no data, and there are no allegations or evidence that third parties have access to the footage. It is indisputably established that as of January 11, 2019, three records from September 15, 2018, September 16, 2018 and September 22, 2018 from the video surveillance camera were stored in the mobile device of the manager of the company, containing an image of the complainant of his workplace. According to the legal definition given in 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 an identification number or by one or more specific features. The concept is further developed in Art. 4, § 1 of Regulation (EU) 2016/679, according to which the provision "personal data" means any information relating to an identified natural person or an identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more features specific to the natural, the physiological, genetic, mental, intellectual, economic, cultural or social identity of that individual. The information contained in the surveillance videos of the natural person, in this case an image, falls within the scope of the concept of personal data, as the person can be physically identified in an indisputable way. In the sense of §1, item 1 of the Additional Provisions of the LPPD, video surveillance is an action for processing personal data when it is performed by recording technical means for video surveillance, which is stored. The

collection and storage of personal data is a form of their processing within the meaning of § 1, item 1 of the Additional Provisions of the LPPD, respectively Art. 4, § 1, item 2 of Regulation (EU) 2016/679 and as such should be carried out in compliance with the provisions of LPPD and the Regulation. In Art. 4, para. 1 of the LPPD outlines the conditions under which the processing of personal data of individuals is permissible. The legislator has adopted that the processing of personal data of individuals should be carried out in the presence of at least one of these conditions, which is prerequisite for legality of the processing, as the provision of art. 6 (1) of the Regulation. In view of the evidence gathered in the case, the Commission considers that the video surveillance carried out is lawful on the grounds of Art. 6, § 1, letter "e" of the Regulation, respectively Art. 4, para. 1, item 7 of LPPD - necessary for the purposes of the legitimate interests of the controller of personal data, namely protection of his property and protection of the rights of the controller and proof of his claim before the judicial authorities. An interest which takes precedence over that of the individual who referred the matter to the Commission, all the more so as the applicant was informed of the video surveillance carried out.

The scope of the video surveillance led to the conclusion that the inviolability of the applicant's identity had not been violated, given that it did not cover the toilets and rest rooms, but the interior of the applicant's place of work, the company's property and the place where they were served. customers of the restaurant.

In view of the scope of video surveillance, it can also be assumed that it is carried out in the hypothesis of Art. 6, § 1, letter "d" of the Regulation, respectively Art. 4, para. 1, item 4 of the LPPD - for protection of the health and life of both the employees of the company and the clients of the establishment.

The principle of transparency in data processing is observed, namely the individual is informed about the video surveillance. In this regard, it should be noted that the inspection team found stickers for video surveillance, which warn about the ongoing video surveillance. The applicant did not adduce evidence to the contrary, although he claimed that there were no information boards on video surveillance and that he was not aware of its implementation.

Undoubtedly, there is no evidence of written consent expressed by the complainant for the video surveillance, but given the fact that the conditions specified in Art. 6, § 1 of the Regulation, respectively Art. 4, para. 1 of LPPD are alternatively listed and the legality of processing requires the presence of at least one of these conditions, it must be concluded that although there is no explicit written consent of the complainant to process his personal data in connection with video surveillance, the same is lawful given the existence of other of the conditions for admissibility and legality of processing specified in the regulations,

namely the existence of a legitimate interest of the administrator and protection of health and life of employees of the company and customers of the institution.

It has not been established from the evidence gathered in the file that the personal data of the complainant were processed for purposes other than those for which they were collected. The allegations of Mr. K.T. in the opposite direction, namely for unscrupulous and illegal use of his personal data collected through video surveillance, for threats and extortion against him, are unproven.

Guided by the above and on the grounds of Art. 38, para. 2 of the Personal Data Protection Act, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

Dismisses as unfounded the complaint reg. № PPN-01-952 / 23.11.2018 filed by K.T. against M. EOOD.

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court - P.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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