

Decision on appeal with registration № PPN-01-544 / 06.07.2018 DECISION» PPN-01-544 / 2018 Sofia, 09.01.2019 Personal Data Protection Commission (CPDP) composed of: Chairman Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a regular meeting held on 13.12 .2018, objectified in Protocol № 47/2018, on the grounds of Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA) and 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 and on repeal of Directive 95/46 / EC (ORD), considering the merits of the complaint Reg. № PPN-01-544 of 06.07.2018, in order to rule took into account the following: 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint with registration № PPN-01-544 dated 06.07.2018 filed by AA In the complaint, A.A. points out that on 03.07.2018 she was visited by a reporter and cameraman of N.T. at her workplace - in the office of a health institution (ZZ). They asked her questions and photographed her without her consent. She stated that the questions were related to her health condition and her treatment. Despite her explicit refusal to be photographed and to answer their questions concerning personal sensitive data, the reporter and cameraman of N.T. they did not cease their actions against her person. In connection with the above, she sent a notification letter to NT, stating that she wanted the footage with her to be deleted and not to broadcast a report in which they would be included. After the expiration of the statutory period, she did not receive any feedback from N.T. on the manner of processing her personal data - collected by the reporter and the television operator, nor confirmation of the deletion of sensitive data relating to her identity. According to AA, the actions for collection and processing of her personal data were committed in violation of the basic principles of the ORD and in this regard she asks the CPDP to take the necessary actions within its competence. The complaint was filed by fax and post, without the appendices described therein. In the conditions of the official beginning of the administrative process and the obligation of the administrative body to collect evidence ex officio and to clarify the actual facts relevant to the case with letters with reg. №: PPN-01-544 # 2 and № PPN-01-544 # 3 both from 08.08.2018 A.A. and "N.B.G." AD are regularly notified of the commenced proceedings, as of A.A. is instructed to present the letters described in the complaint, together with evidence of the order and manner of their submission to the addressee. With a letter with registration № PPN-01-544 # 5 dated 29.08.2018 from "N.B.G." AD, through legal adviser T.G. an opinion was expressed on the complaint. "N.B.G." AD informs the CPDP that on 03.07.2018 they received an e-mail from AA containing a

request that the recorded footage with her participation be deleted and that a report with her participation not be broadcast.

The e-mail was sent from an e-mail address through which the data subject could not be unambiguously identified. On July 5, 2018, they received a second letter from AA, with which the latter requested information on whether her request of July 3, 2018 for deletion of staff was granted. That e-mail was also sent from an e-mail address through which the data subject could not be unambiguously identified. On July 6, 2018, a response was sent by the Personal Data Protection Officer to N.B.G. AD to the e-mail address of AA. In this reply, information was provided to A.A. regarding the order and manner in which the respective rights of the data subject may be exercised, namely - through a deliberately submitted application, together with a sample attached to it, and subsequent identification of the data subject by "N.B.G. " AD in its capacity of administrator of personal data, and in connection with the response sent on 06.07.2018 no further action was taken by AA. Out of the above, "N.B.G." AD asks the CPDP to take into account that from the recording of the only broadcast report on ZZ attached to the opinion it was evident that no personal data relating to AA were broadcast or published under any any form- ****. As relevant to the subject of the dispute, it is stated that on 03.07.2018 in the office of "N.B.G." AD a letter was received with ref. № 323 dated 03.07.2018 by K.V. - procurator of ZZ, with which K.V. expressed his disagreement with the actions of persons posing as journalists of N.T. on 03.07.2018 in the building of Z.Z. K.V. also requested the deletion of all his personal data, as well as those of the employees of the medical institution he represents, collected by journalists of N.T. With a letter of ref. № 817 dated 13.07.2018, a reply was sent regarding the request of KV, in which it was clarified that "N.B.G." AD, as a responsible provider of media services, strictly observes the provisions of the Bulgarian legislation, as well as the ethical norms in the field of media activity. The letter also reflected the relevant legal derogation concerning the processing of personal data in journalistic investigations. In conclusion in connection with the request of K.V. for deletion of his personal data, as well as of employees of the medical institution represented by him, it was clarified the fact that the right of access began. 26 of the LPPD is exercised personally by the natural person, through an application to the respective controller of personal data and refers to data concerning only the specific natural person. Informs the CPDP that in addition to the attached article and report, the company has an opinion of RHIF - P., according to which the costs incurred in the relevant clinical path for all patients with hospital stay in Z.Z. will not be respected. In this sense, they believe that the journalistic material is on a topic of serious public importance, namely the spending of health care funds. For these reasons, it is argued that the complaint is unfounded and on this basis the CPDP is asked to rule with a decision to disregard it. Attached to the complaint are: emails from A.A. dated 03 and

05.07-2018, e-mail to AA from 06.07.2018, DVD containing a recording of a report from 10.07.2018, letter with ref. № 323 dated 03.07.2018, letter with ref. 817 of 13.07.2018. Additionally with a letter reg. № PPN-01-907 # 8 dated 12.09.2018 by "N.B.G." AD, through legal adviser T.G. points out that on 03.07.2018 around 12:00, the news team of "N.B.G." AD (NBG) was in the building of ZZ, investigating the misuse of health care funds - a topic of strong public interest. Fulfilling their official duties to reveal the full truth about the case in question, the team of N.B.G. has also interviewed A.A. after her consent to comment on the case. As far as reporters remembered, probably A.A. questions were asked, including about her health, as this information was relevant to the report. All sensitive data, insofar as such were actually provided, were provided personally by A.A. during the interview. It is noted that no personal data relating to AA was broadcast or published by N.B.G. in any form. According to the applicable policies and rules of the company, all data relating to A.A. are deleted automatically 3 days after the recording of the interview. Informs the CPDP that the applied relevant technical measures for storage of video files containing personal data of data subjects are as follows: server storage of these files on the company's own server and under its physical and network control and deletion of personal data through p. the so-called data erasure script, which is an automated process for cleaning files every 3 days. In connection with the introduced organizational measures for personal data protection, it is stated that each employee of the company in its daily activities to perform their official duties is guided by the "Internal Policy for Personal Data Protection" in force from 10.05.2018. this policy has a special Annex 1, which provided specific guidelines for the conduct of journalists. It was evident from item 5 of the latter that information on a person's health is collected only if the collection in question is relevant and in the public interest, as was undoubtedly the case with the suspicious spending of funds on a clinical path in ZZ. The concept of the concept of "public interest" was further developed in item 7 of Annex 1 to the "Internal Policy for Personal Data Protection" of 10.05.2018, as one of these options was "protecting society from the danger of being seriously misled ". In this sense, the company believes that at any time the team of N.B.G. was guided by the above guidelines in search of the whole truth about spending money on health care, which was confirmed by the opinion received and broadcast in the above report of RHIF - P. .3. Ltd. will not be respected. He also refers to item 5.3, proposal one of the Code of Ethics of the Bulgarian media, according to which point "a publication is in the public interest only when it is in defense of health, safety and security", which showed the role of each media as a corrective to the activities performed in the public interest and the possible abuses accompanying these activities - as is the case with the report of a team of N.B.G. on the expenditure of funds for health care in the Health Insurance Fund. amendment and supplement to the

Personal Data Protection Act and in particular with Art. 25e of it, which testifies to the full commitment of N.B.G. in its capacity of controller of personal data and provider of media services for lawful storage and processing of personal data in accordance with regulatory requirements in this area. Attached to the letter are: a script image and Annex № 1 to the "Internal Privacy Policy". On November 2, 2018 and December 7, 2018, telephone conversations were held with A.A. - the complainant, in the course of which she was informed that at present she has not provided and presented the required information and evidence from the CPDP. An official check was made at the address: ***** regarding the published materials and broadcast reports on the topic. With a Decision of the CPDP from a meeting held on November 7, 2018, objectified in Minutes № 42, submitted by A.A. complaint with registration № PPN-01-544 of 06.07.2018 has been declared regular and admissible, as: its content is in compliance with the requirements of Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA), respectively Art. 29, para. 2 of the Administrative Procedure Code (APC), the same is filed by a natural person and is aimed at a person who has the capacity of controller of personal data - "N.B.G." AD; it contains allegations of illegal processing of personal data - collection of personal data, incl. such constituting special categories of data - for her health condition by asking questions about her stay in a hospital and her treatment and filming her on 03.07.2018 by the news team of "N.B.G." AD, as well as their subsequent processing and failure to pronounce in time the administrator on a request submitted by her under Art. 17 of the ORD; the complaint has been submitted to a competent body and within the normatively established term, by a person with legal interest, the negative prerequisites specified in Art. 27, para. 2 of the Administrative Procedure Code. With the mentioned decision the following have been constituted as parties: applicant - A.A. and respondent - "N.B.G." AD and a date has been set for consideration of the complaint on the merits. With a letter with registration № PPN-01-544 # 7 dated 21.11.20108 "N.B.G." AD, through legal adviser T.G. applies as relevant to the organizational measures for personal data protection: order of 21.05.2018 - 2 pcs., sample - privacy statement of 10.05.2018 - 2 pcs. An open meeting was held on 13.12.2018, in accordance with the provisions of Art. 39, para. 1 of the PDKZLDNA, of which the parties have been regularly notified. The applicant did not appear and did not send a representative, the respondent was represented by a lawyer. *** with a power of attorney for the file. The latter stated that there were no requests for the collection of other evidence, maintained the opinion expressed and asked the CPDP to disregard the complaint. The Commission for Personal Data Protection, after considering the views of the parties in the context of the evidence gathered in the file, finds that the complaint is unfounded and as such should be dismissed for the following reasons: The parties do not

dispute the fact that the company processed personal data of the complainant, by filming her by the cameraman from the news team of "N.B.G." AD on 03.07.2018 at her workplace in Z.Z. and that on the spot the reporter asked questions related to her health condition - stay in a hospital and treatment provided by her. No evidence was presented regarding the above facts: according to the respondent, the data on the complainant were automatically deleted 3 days after the recording of the interview. From the evidence gathered in the course of the proceedings it is established that the processing (collection) of personal data about the complainant, by taking pictures of her by the operator and asking questions about her health and subsequent processing of this material (storage, deletion) by the administrator the context of the activity carried out by him - provider of media services (§ 1, item 19 of the Additional Provisions of the IC) within the meaning of Art. 4 of the Radio and Television Act in connection with an investigation into the existence of misuse of health care funds by Z.Z. According to the applicant, despite her disapproval of being photographed and answering questions from the NBG team, the action was not stopped. Conversely, from NBG AD argue that the case was commented on by the complainant after her consent, that the data were provided by her personally during the interview and that they were relevant to the report. In addition to the presence of her consent "NBG" AD also point to the existence of another condition for the admissibility of the processing, namely the existence of a strong public interest on the topic of misuse of health care funds by the Health Insurance Fund, in connection with which a journalistic investigation was conducted. As can be seen from the presented DVD, containing a recording of a report from 10.07.2018 and a link to it, as well as from the official inspection of the published materials and broadcast reports on "Suspicious of draining the NHIF from a hospital in *****" is that on July 10, 2018 an article was published and a report was broadcast on this topic, according to which four employees of the hospital administration and their relatives were admitted with the same diagnosis and at the same time in the medical institution. From the above-mentioned materials it is established that the personal data of the complainant were not used, disseminated, respectively publicly disclosed on the mentioned topic. Given the above, it should be assumed that the actions to collect information on "Suspicious of draining the NHIF from a hospital in *****" - the subject of a journalistic investigation by Nova, incl. such containing personal data about the complainant were made admissible, in the presence of the condition of art. 6, § 1, item "e" of the ORD - the processing is necessary for the performance of a task of public interest. of her personal data is inadmissible. According to Art. 6 of the ORZD, in order for the processing of personal data to be admissible, it should be carried out only in the cases when at least one of the conditions provided for in the cited provision is present. These conditions or still defined as grounds for admissible processing of personal

data are alternatively provided in Art. 6 of the Regulation. Some of them presuppose the consent of the natural person to whom the data relate, but there are also those in which the consent of the person is not required. In this connection, despite the lack of express consent on the part of the applicant, the processing of her personal data by the controller was carried out admissible in the presence of the condition of Art. 6, § 1, item "e" of the ORD for the purposes of journalistic activity - to gather the necessary information on the topic of the existence of abuses in the spending of funds in the field of health care by ZZ, which topic is undoubtedly of public interest, to verify its authenticity and to inform members of the public about this case. It should be noted that the proceedings did not involve evidence of the processing of personal data under a special regime - the applicant's state of health. According to the allegations made by the parties, as of 03.07.2018 of AA questions were asked by the team of N.B.G. concerning her stay in the hospital and the treatment she provided, to which she expressly stated that she had not responded and therefore it could not be considered that such a category of data had been processed. Based on the above and taking into account the fact that the published article and the broadcast report on the topic does not contain information about the complainant, incl. personal data for the latter follows that the administrator has achieved a balance between the fundamental rights of AA - art. 32 of the CRB (protection of personal privacy of citizens) and freedom of information - Art. 39 - art. 41 of the CRB, Art. 16, para. 1 of the Radio and Television Act, processing the information / data on the topic - subject of journalistic investigation, incl. the personal data of the applicant, in a way that data related to the personal life (§ 1, item 21 of the RTA) of A.A. have not been made available for distribution, while the published article and the broadcast on the topic have guaranteed the public the opportunity to assess what is happening in the field of healthcare. The complaint in the remaining part should be accepted as unfounded - allegations for failure to pronounce the administrator within the term on an application submitted to him under Art. 17 of the OrzD. to *****, objectifying request for deletion of shots taken with it. On 05.07.2018 a second message was sent from the same e-mail with sender AA, with which the latter requested information on whether the application submitted on 03.07.2018 was granted. On July 6, 2018, A.A. An electronic message was sent, together with an attached file - a sample request from a data subject, from the Personal Data Protection Officer of NBG. AD, whereby A.A. instructions are given on the procedure and manner of exercising the right to start. 17 of the ORZD. It is evident from the evidence presented in the file that no data is established that the applicant has complied with the instructions of the administrator - to submit the application - a sample in person at the specified address or electronically, signed with an electronic signature. The CPDP has repeatedly requested from the complainant evidence concerning the

request under Art. 17 of the ORZD, incl. regarding the order and manner of its submission to the addressee, as such evidence has not been presented. As can be seen from the letter with ref. № 323 dated 03.07.2018 addressed to the Executive Director of NBG AD is that the procurator of Z.Z. - K.B. has requested the deletion of all data - his and the employees of the medical institution, collected by the team of N.B.G. on 03.07.2018 in the building of Z.Z. In response to NBG AD with a letter to K.V. is informed about the procedure and the manner of exercising this right. Given that there is no proper exercise of the right under Art. 17 of ORZD by AA, incl. there were not enough data to establish that the right is exercised by the person named as the sender, it can not be assumed that the administrator has an obligation to rule on the same. Motivated by the above and on the grounds of Art. 38, para. 2 of LPPD in connection with Art. 39, para. 2 of PDKZLDNA and under arg. at 142, para. 1 of the APC HAS DECIDED AS FOLLOWS:

1. Announces a complaint with registration № PPN-01-544 dated 06.07.2018 filed by A.A. against N.B.G. AD for unfounded.

The decision of the Commission for Personal Data Protection may be appealed before the Administrative Court of Sofia within 14 days of its receipt.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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