

Decision on appeal with registration № PPN-01-360 / 08.04.2019 DECISION» PPN-01-360 / 2019 Sofia, 22.05.2020

Commission for Personal Data Protection (CPDP, Commission) composed of, Chairman, Ventsislav Karadzhov and members:

Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a regular meeting held on 12.02.2020 and objectified in protocol № 6 /

12.02.2020, on the grounds of art. 10, para. 1 of the Personal Data Protection Act (PDPA) in conjunction with Art. 57, § 1, b.

"E" of Regulation (EU) 2016/679, considered on the merits a complaint with reg. № PPN-01-360 / 08.04.2019, filed by A.P.

against electronic media (EM). The complaint states that on February 19, 2019, accompanied by her husband, Mrs. AP has

visited a health facility (ZZ) for medical examinations. On 20 April 2019, during a review of the press, the applicant established

that on the website of the online edition of E.M. An article was published - without her knowledge and consent, in which her

personal data were published, in the volume of a photo of Mrs. A.P. and her husband, made in the laboratory without the

applicant's knowledge, and medical examinations. It is stated that the article contains a "test for estradiol, TSH, prolactin, etc.",

which are included in the applicant's research list. The applicant considered that the publication of laboratory tests was

"extremely intrusive intrusion". A.P. considers that the presence of her personal data in the public space is a violation of the

LPPD and Regulation (EU) 2016/679. 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,

by letter ref. № PPN-01-360 # 1 / 16.06.2019 of the manager of E.M. a deadline was given for expressing an opinion and

presenting relevant evidence. In response, an opinion was received stating that indeed on February 19, 2019, and not on

February 20, 2019, an article was published in which the personal data of A.P. Inform that in addition to published paparazzi

photos of unknown to E.M. persons, no personal data within the meaning of Art. 4 of Regulation (EU) 2016/679. They indicate

that they have not seen a published clinical trial. With a letter ex. № PPN-01-360 # 5 / 03.07.2019 was requested by the

lawyers of Ms. AP, within 7 days of receiving the letter to engage evidence regarding the allegations in the complaint with reg.

№ PPN- 01-360 / 08.04.2019, given the fact that such were not filed with the Commission upon receipt of the complaint,

although they are described as annexes to it. By uncertified copies of articles of E.M. The considered complaint is fully

compliant with the requirements for regularity, according to Art. 28, para. 1 of the Rules of Procedure of the Commission for

Personal Data Protection and its administration (PDKZLDNA), namely: there are data about the complainant, the nature of the

request, date and signature. The appeal was filed within the time limit under par. 44, para. 2 of the Transitional and Final

Provisions of the LPPD by a natural person with a legal interest against a competent party - personal data administrator within the meaning of Art. 4, para. 7 of the General Regulation (EU) 2016/679, given the fact that the latter themselves determine the purposes and means of processing personal data by video surveillance and is permissible. Given the above and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, the appeal was declared admissible and as parties in the administrative proceedings were constituted, A.P. and respondent EM, in the capacity of personal data controller. An open hearing was scheduled to consider the complaint on the merits on December 18, 2019, of which the parties were regularly notified and instructed to distribute the burden of proof in the process. Due to the lack of a majority in the decision, the Commission adjourned the appeal to a closed session for decision by another panel. According to Art. 10, para. 1 in connection with Art. 38 of the Personal Data Protection Act, when referring it, the Personal Data Protection Commission considers complaints against acts and actions of personal data controllers, which violate the rights of individuals under the LPPD, as well as complaints of third parties in connection with their rights under this law. According to the legal definition given in Art. 4, para. 1, item 1 of the Regulation "personal data" means any information related 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 judgment of the Court of Justice of the European Union of 14 February 2019 in Case C-345/17 stated that in order to strike a balance between the right to respect for private life and the right to freedom of expression, the European Court of Human Rights developed a series of relevant criteria to be taken into account, in particular the contribution to the public interest debate, the reputation of the person concerned, the subject of the report, the person's behavior so far, the content, form and consequences of the publication, manner and circumstances, in which the information was obtained, as well as its reliability. Account must also be taken of the ability of the data controller to take measures to reduce the scope of the invasion of privacy. From the evidence provided in the administrative file, it was established that the published articles contained two names of the applicant, a photograph, the type of research and her age. No information was published on the results of research, such as the complaints in the complaint. Recital 153 of the Regulation states that the law of the Member States should reconcile the provisions governing freedom of expression and freedom of information, including for journalistic, academic, artistic and literary purposes, with those protecting personal data. The term "journalistic goals" is not defined by the legislator, but is interpreted in

case law. The essential thing for the journalistic activity is the collection, analysis, interpretation and dissemination through the mass media of up-to-date and socially significant information. Every journalistic activity is a manifestation of freedom of speech in the rule of law. Restriction of freedom of expression and information is permissible only within the limits necessary in a democratic society according to Art. 10, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In essence, journalism requires the dissemination of information on issues of public interest. The publication of information on the media's website constitutes its public disclosure. The public dissemination of information for these purposes is a journalistic activity, as the very fact of dissemination is an expression of opinion, opinion, view, assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalism, the information must address issues of values that are genuinely socially important in view of the relationships involved. It should be pointed out that the freedom of the press and other mass media are constitutionally guaranteed by the prohibition of censorship - Art. 40, para. 1 of the Constitution of the Republic of Bulgaria. Freedom of speech is one of the fundamental principles on which any democratic society is built. The society has delegated its right to information, to free expression, in professional engagement to journalists who, in the name of the public good, are engaged in the collection, arrangement and dissemination of information. The obligation of journalists to provide information and ideas concerning issues of public interest derives from the right of the public to receive it. In this sense, freedom of speech, freedom to disseminate information without censorship is justified to the extent that it guarantees the democracy of social processes and the ability of citizens to build opinions and positions on issues of public interest. In the light of all the foregoing, the Commission considers that, in the present case, it is common ground that the applicant's personal data were processed, in the event of use and distribution, for journalistic purposes. In this connection, it considers that the processing of the applicant's personal data for the purposes of the article did not strike a reasonable balance between the right of the person concerned, the right to freedom of the press and the right of the public to be informed. no balance has been found between the public interest and the private life of a person who has approached the Commission. No balance has been struck between the importance of the public interest which requires such processing and the extent to which the data subject's right to privacy is affected. In view of the above, the CPDP considers that the processing of personal data of Ms. AP by E.M. is in violation of the principle of "minimizing data", specified in Art. 5, para. 1, "c" Regulation (EU) 679/2016, according to which the processed personal data should be appropriate, relevant and limited to what is necessary in relation to the purposes for which they are processed. The Commission considers that a distinction should be made between

the public interest and the public interest. Any information can be of public interest, but it is not in the public interest. The question is, when processing personal data for journalistic purposes, to comply with the requirements for meeting the public interest. Undoubtedly, journalists are given the necessary respect and protection by providing an objective view of society to important events, but not when their actions border on so-called "paparazzi" behavior that has nothing to do with anything significant to society as a whole. The activity of journalists requires the observance of a certain ethics, in which case they should respect the fundamental rights of citizens and not enter their personal sphere for no reason.

In view of all the above, the operational independence of the administrative body and in accordance with the functions assigned to it assesses which of the corrective powers under Art. 58, paragraph 2 of Regulation 679/2016 to exercise, the Commission considers that in this case the corrective measures under letters "a" - "h" and letter "j" of Art. 58 (2) of the Regulation are applicable. The assessment is based on the appropriateness and effectiveness of the decision, taking into account the specifics of each case and the degree to which the interests of a particular data subject are affected, as well as the public interest. In determining the corrective power, the Commission took into account the fact that the infringement was the first for the administrator and the fact that the applicant had not suffered any significant adverse effects.

In view of the above and on the grounds of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "E" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled as follows

ANSWER:

1. Announces a complaint with registration № PPN-01-360 / 08.04.2018, filed by A.P. against E.M. for justified, for violation of the provision of art. 5, para. 1, p. "C" of Regulation (EU) 2016/679.
2. On the grounds of art. 58, § 2, b. "D" of Regulation (EU) 2016/679 orders EM to comply with the processing of personal data in accordance with the provisions of Art. 5, para. 1, p. "C" and delete all the applicant's data from the site.

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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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