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» Decision on appeals No. PPN-01-88/31.01.2022 and No. PPN-01-89/31.01.2022 Decision on appeals No.

PPN-01-88/31.01.2022 and No. PPN-01- 89/31.01.2022

ANSWER

No. PPN-01-88/2022

Sofia, 07/06/2022

The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Ventsislav Karadzov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a regular meeting held on 18.05.2022, on the basis of Art. 10, para. 1 of the Personal Data Protection Act (PDPA) in connection with Art. 57, § 1, b. "f" of Regulation (EU) 2016/679 examined the merits of complaints No. PPN-01-88/31.01.2022 and No. PPN-01-89/31.01.2022 filed by I.G. Administrative proceedings are in accordance with Art. 38 of the Labor Code.

The Commission for the Protection of Personal Data considered complaints No. PPN-01-88/31.01.2022 and No. PPN-01-89/31.01.2022 of I.G. against for the fact that the administrator did not respond to a request, with which the person considers that he has exercised his right to deletion under Art. 17 of Regulation (EU) 2016/679. The complainant states that he wants to call on TV X to permanently delete all videos featuring him, but despite numerous attempts to contact TV X, there was no result.

In accordance with Art. 26 of the APC for the initiation of proceedings, the X. foundation was notified, as a registered provider of a linear media service (television operator) of the X. television, based on Decision No. RD-05-103/25.09.2019 of the CEM. The complainant was notified of the initiated proceedings, and was given the opportunity to express an opinion on the collected evidence.

With protocol No. PPN-01-88#5/15.03.2022, it was established that the list of videos with the participation of the complainant, described in the complaint, are contained on the YouTube page "television X".

In the additionally provided response period, an opinion was received with entry No. ППН-01-88#7/23.03.2022 of the H. Foundation, in which the appeals are contested as groundless. The Internal rules for the protection of personal data in the association are presented, effective from 01.10.2019. The opinion requests that the complaints be disregarded, due to the fact

that all shows in which the person IG participated have been removed from the official "Television X" YouTube channel.

With protocol No. PPN-01-88#11/28.03.2022, it was established that the YouTube channel in question contains one video with the participation of the complainant.

The present complaint was submitted prematurely - before the one-month deadline under Art. 12 § 4 of Regulation (EU) 2016/679, as the person notified the administrator with a request to delete his personal data on 25.01.2022, and the complaint was filed on 31.01.2022. Insofar as the administrator did not submit a response under the meaning of Art. 12 § 4 of Regulation (EU) 2016/679 after the expiration of the one-month period and given the provision of art. 142 of the APC, that the compliance of the administrative act with the substantive law is assessed at the time of its issuance, then by the decision of the Commission dated 30.03.2022 the appeals were accepted for consideration as regular and admissible. Due to the fact that they have identical parties and subject matter, but to complaint No. PPN-01-89/31.01.2022 the videos for which the complainant requests to be deleted are listed, it was decided to consider them in one proceeding with parties: applicant I.G. and Defendant X Foundation.

In the opinion of the administrator No. ППН-01-88#25/19.05.2022 it is stated that the applicant expressed consent to participate in the filming and distribution of an audio-visual work, a project of TV X. An undated declaration of consent was submitted of compilation and no date of presentation to the administrator.

The complaint was considered in substance at a meeting of the Commission for the Protection of Personal Data held on 18.05.2022, for which the parties, regularly notified, did not appear or represent themselves.

From the nature of the broadcast videos, it is clear that the individual does not appear in a personal capacity, but as a candidate for the representative of a given party. In the broadcast, policies, opinions and positions are explained, the aim being to familiarize the viewing audience and potential voters of the respective party, on whose behalf the candidate for national representative stands.

The administrator refers to journalistic purposes as a legal basis for processing personal data in accordance with Art. 25h of the Personal Data Protection Act. Even when this legal basis is present, the administrator should bear in mind that the processing of personal data must be done with respect for privacy. When processing personal data for journalistic purposes, the legislator did not foresee a derogation from the provisions of Art. 12-21 of Regulation 2016/679. Administrators processing information for journalistic purposes are required to respect the fundamental rights enjoyed by the subject of personal data.

The subject of personal data has exercised his right to contact the administrator with a request to delete his personal data.

According to Art. 12, § 4 of Regulation (EU) 2016/679, if the controller does not act on the data subject's request, the controller shall notify the data subject without delay and at the latest within one month of receiving the request of the reasons for not taking action and the possibility of submitting a complaint to a supervisory authority and seeking legal protection. In case the controller has a legal basis for processing personal data, it should notify the data subject that his application cannot be honored.

Regardless of whether the processing of information is for journalistic purposes or not, the personal data administrator should comply with the provisions of Art. 12 – Art. 21 of the Regulation. In the event that he does not comply with the request of the data subject, the administrator in accordance with Art. 12, § 4 of Regulation (EU) 2016/679 should notify without undue delay and within a period of one month at the latest from receipt of the request that it will not be honored, indicating the reasons for not taking action and the possibility to file a complaint with a supervisory authority and seek legal protection.

In the present case, the controller did not comply with the data subject's request, but should have informed the person of the reasons. The defendant's arguments that the processing of personal data is based on the consent of the individual could not be accepted. The submitted document entitled "declaration" (without date and addressee) does not constitute consent within the meaning of Regulation (EU) 2016/679, but would have the characteristics of a written contract to participate in a television program if it were signed bilaterally. The listed clauses provide for a different way of processing personal data than the Regulation and for presenting the person's claims, which have different legal consequences than the provision and withdrawal of consent in the sense of the Regulation. According to the written agreements, in case the consent is withdrawn, the controller will cease to process the person's personal data and use his image in his advertising campaign. It is envisaged that the organizer and personal data processors will store the personal identification data of all participants within a period of 6 months from the end of the competition. In this case, this period has expired and according to the agreement between the parties, the broadcasting of the program in question should have been stopped.

Due to the fact that consent was not granted in the sense of the Personal Data Protection Regulation, the applicant cannot invoke the so-called right "to be forgotten" in accordance with Art. 17 of Regulation 2016/679.

Regardless of the above, the administrator should rule on the request of the subject of personal data, explicitly indicating on what basis it processes his personal data. In the present case, the administrator did not issue a decision not only within the

one-month response period, but also at the request of the person, which is why the provision of Art. 12, § 4 of the Regulation. The supervisory authority may assess the appropriateness of which corrective authority under Art. 58 § 2 of the Regulation of Exercises, so that the same is appropriate and dissuasive.

In view of the above and taking into account that the non-pronunciation in time for the data subject did not result in damages within the meaning of the Regulation, as well as that the violation was of a relatively low degree of danger, it would be appropriate to issue an official warning to the administrator for a violation of Art. 12, § 4 of the Regulation.

Thus motivated and based on Art. 38, para. 3 of the Personal Data Protection Act, the Commission for the Protection of Personal Data

RESOLVE:

1. Declares complaints No. PPN-01-88/31.01.2022 and No. PPN-01-89/31.01.2022 as well-founded.
2. Based on Art. 58, § 2, b. "b" of Regulation (EU) 2016/679 issues an official warning to the H. Foundation for non-compliance with Art. 12, § 4 of the Regulation.

This decision can be appealed within 14 days of its delivery through the Commission for the Protection of Personal Data, before the Administrative Court of Sofia-city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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