

Home »Practice» CPDP opinions for 2018 »CPDP opinion on personal data processing by the Prosecutor's Office of the Republic of Bulgaria when publishing press releases and providing information for journalistic purposes CPDP opinion on personal data processing by the Prosecutor's Office of the Republic of Bulgaria at publishing press releases and providing information for journalistic purposes OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA Reg. № NDMSPO - 01-502 / 2018 Sofia, June 26, 2018 ABOUT: Processing of personal data by the Prosecutor's Office of the Republic of Bulgaria when publishing press releases and providing information for journalistic purposes Commission for Personal Data Protection (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on June 22, 2018, considered a file with ent. № NDMSPO-01-502 / 07.06.2018 by the Prosecutor General of the Republic of Bulgaria on the application of Regulation (EU) 2016/679 when publishing press releases and providing information for journalistic purposes by the Prosecutor's Office of the Republic of Bulgaria (PRB). The letter states that as a controller of personal data, the PDB has an obligation to comply with relevant regulations, including the said regulation. In this regard, the understanding of the prosecution is that the correct application of Regulation (EU) 2016/679 requires not to disclose data sets that can directly or indirectly identify an individual. Such data could be two or three names, position and place of work, family ties, military ranks, etc. In view of the above, the PDB addresses to the CPDP the following specific issues: 1. Is it a violation of regulations in the field of personal data protection: a) The publication of personal data of participants in pre-trial proceedings (accused persons, witnesses, etc.). ) on the websites of the prosecutor's offices? b) The provision of personal data to participants in pre-trial proceedings for journalistic purposes? If so, in which cases? How does the treatment in these cases relate to the presumption of innocence? 2. If there is no obstacle to the provision of personal data, is there a restriction and what is their volume (aggregate) so as to protect the rights of citizens? It will be useful to give specific examples in the answer. Legal analysis: The new European Union legal framework for personal data protection, applicable from May 2018, includes two main pieces of legislation - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to personal data. persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation) and Directive (EU) 2016/680 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 by the competent authorities for the prevention, investigation, detection or prosecution of criminal offenses or the execution of penalties and on the free movement of such data, and repealing

Framework Decision 2008 / Council Directive 977 / JHA (Directive). The General Regulation has direct effect and has been in force since 25 May 2018. The Directive is to be transposed into national legislation by amending the Personal Data Protection Act (PDPA). In terms of their scope, they are mutually exclusive, ie. with regard to the form and purpose of the processing of personal data, either the General Regulation or the Directive should apply, but not both acts at the same time. The processing of personal data by the public prosecutor's office in pre-trial proceedings for the prevention, investigation, detection or prosecution of criminal offenses falls within the scope of Directive (EU) 2016/680 and is subject to specific rules. Unlike the processing of personal data for the purposes of criminal proceedings, the publication of press releases and the provision of information to the media containing personal data of participants in pre-trial proceedings constitutes processing for purposes other than the statutory role of the prosecution in criminal proceedings; the General Regulation applies to it (argument of Article 9 (1) of the Directive). In this situation, in order for the processing to be lawful, the administrator, in this case the PDB, should have an independent legal basis under Art. 6 of the General Regulation, respectively under Art. 9 of the Regulation, if it concerns special categories (sensitive) personal data. In these cases the provision of art. 85 of the General Regulation, which obliges EU Member States to reconcile the right to the protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes. The rights in question are equal and therefore a proper, reasonable and proportionate balance should be sought in the exercise and protection of them. In this context, it should be taken into account that the Prosecutor's Office and other bodies of the judiciary, in view of their legally defined competence, do not process personal data for journalistic purposes, respectively the special rules applicable to the media do not apply to them. Notwithstanding the above, the publication of information from pre-trial proceedings, including personal data, in certain cases could be considered necessary for the performance of a task of public interest within the meaning of Art. 6, paragraph 1, b. "E" of the General Regulation. The public interest could be justified by various factors to be assessed by the PDB, as the controller of personal data, in each case: First, the principle of publicity, transparency and accountability of the judiciary ensures public scrutiny. on the bodies of the judiciary in order to achieve justice, legality and independence, as well as to strengthen public confidence in the institutions. The PDB, as part of the judiciary, is also subject to public scrutiny, one form of which is the publication of information about its activities. In addition to the general statistical information, in some cases the public interest within the meaning of Art. 6, paragraph 1, b. "E" of the General Regulation may prevail over the interests of the individual, as a result of which it is permissible and justified to provide personal data, which should, however, be proportionate to the purpose.

The public interest could also be present in the field of general prevention, and the publication of data on accused persons could be seen as a tool for achieving an educational effect on society as a whole. In these cases, the PBB, as a controller of personal data, should each time assess whether the public benefit, for which the information is published on the website of the PBB or in the media, can not be achieved by applying the approach described in Art. 64 of the Judiciary Act, namely in a way that does not allow the identification of the natural persons mentioned in them (eg replacement of names with initials, etc.). If, in view of the public benefit in question, it is impossible or inappropriate to publish the information in anonymised or pseudonymous form, then indicating the name, position or place of work of the accused would be sufficient to raise public awareness. persons outside the process, etc. would be excessive. The RDP should also take specific measures to avoid misidentification of another person in the event of a coincidence of names. Additional attributes, including aliases, age, location, etc., could be used for this purpose, as long as the additional information is not excessive. Secondly, by virtue of Art. 204 of the PPC, the pre-trial authorities should make extensive use of public assistance to detect crimes and clarify the circumstances of the case. Where this is justified and proportionate to the public danger of the perpetrator or the criminal act, the PWB could also seek the assistance of citizens through its website and / or the media, including by publishing personal data - photos, names, address or others. facial data. A third hypothesis in which the public interest in information could prevail over the protection of personal data is the participation in the criminal proceedings of a person holding a senior public office within the meaning of Art. 6 of the Anti-Corruption and Confiscation of Illegally Acquired Property or Other Person Act, which due to the nature of its activity has an impact on society. With regard to these persons, the Constitutional Court of the Republic of Bulgaria clearly states that the state power in general, as well as political figures and civil servants may be subjected to public criticism at a level higher than that of private individuals. (...) In principle, the protection of the personal data of these individuals is much lower than the protection of other citizens. " (see Decision № 7 of 4 June 1996 under Code of Civil Procedure № 1/1996 and Decision № 4 of 26 March 2012 under Code of Civil Procedure № 14/2011). draws particular attention to the relationship between the processing of personal data in the publication of press releases and the provision of information for journalistic purposes, on the one hand, and the presumption of innocence as a fundamental constitutional right of every citizen, on the other. According to Art. 16 of the Criminal Procedure Code, the accused is presumed innocent until the contrary is established by an effective sentence. It is clear from the provision that only the court can determine a person guilty or not guilty. In this sense, the CPDP considers that the publication of information from the PDB, when justified by the public

interest, does not violate the presumption of innocence, but only provides information about the undertakings. by the prosecutor's office actions for detection and investigation of criminal acts. An important element of the assessment of the proportionality of the publication of personal data by the prosecutor's office is the distinction between the accused persons and the other participants in the pre-trial proceedings, such as witnesses, experts and others. With regard to the second category of persons, as a rule, there is no overriding public interest and their personal data should not be made public. There may be an exception for senior public officials or where the publication of information protects the vital interests of the data subject, e.g. when searching for a missing person.

Last but not least, the controller should make an assessment on the basis of objective criteria for what period of time it is justified and necessary for the personal data of the respective accused person to remain published on the website of the prosecutor's office. For example, in the termination of criminal proceedings or the entry into force of a conviction acquitting the person, his right to privacy and protection of personal data prevails over the public interest in information, respectively the information about the accusation should be deleted as inaccurate or out of date.

In connection with the above and on the grounds of Art. 10, para. 1, item 4 of the Personal Data Protection Act, the Personal Data Protection Commission expresses the following

#### OPINION:

1. The publication of personal data of accused persons in pre-trial proceedings on the websites of prosecutors' offices, as well as their provision to the media for journalistic purposes, is lawful when there is a legal obligation or there is an overriding public interest. In cases where it is impossible or inappropriate to publish the information in anonymised or pseudonymous form for public benefit purposes, then indicating the name, position or place of work of the accused would be sufficient to achieve public awareness, while publishing PIN, address, links with third parties outside the process, etc. would be excessive.
2. As a general rule, personal data of other participants in pre-trial proceedings, such as witnesses, experts or third parties related to these categories, etc., shall not be published or disclosed insofar as there is no legal obligation to them or overriding public interest. There may be an exception in respect of persons holding senior public positions within the meaning of Art. 6 of the Anti-Corruption and Confiscation of Illegally Acquired Property or Other Person, which due to the nature of its activity has an impact on society, or when the publication of information protects the vital interests of the data subject.
3. In all cases of publication of personal data of participants in the pre-trial proceedings or their provision to the media, the

principles for processing personal data in Art. 5 of Regulation (EU) 2016/679, in particular the principles of data minimization in order to achieve the goal, accuracy of data and limitation of storage time.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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