

DECISION № 3073 Sofia, 08.05.2019 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 58 panel, in a public session on 31.01.2019 in the following panel: JUDGE: Snezhanka Kyoseva with the participation of Secretary Zor Dimitrova, considering case number 2120 on the inventory for 2018 reported by the judge, and to rule took into account the following: The proceedings are under Article 145 et seq. Of the Administrative Procedure Code / APC /. It was formed on the complaint of A. G. S. from [settlement] against Decision № Ж-92/2017. from 09.01.2018 of the Commission for Personal Data Protection / CPDP / in its part under item 2 and item 3. In the complaint are developed arguments for illegality and incorrectness of the appealed administrative act, as ruled in contradiction with the substantive legal norms. It is alleged that the CPDP incorrectly assessed the facts of the case and the evidence provided by the complainant, on the basis of which it reached incorrect conclusions. It is stated that a security contract was presented to the Commission, concluded between the complainant and [company] on 29.09.2017, under which the security company also provides the “video verification” service. In order for the security company to provide the said service, the presence of cameras located in and around the real estate was required, regardless of whether the cameras were owned by the service user or the service provider. Due to the mentioned facts, although the owner of the cameras, the complainant did not process personal data within the meaning of the LPPD, and this was done by a registered controller of personal data - [company]. Defendant - the Commission for Personal Data Protection, through its legal representative Jurk. A. disputes the appeal and considers it unfounded. He claims that the applicant installed and used the cameras before concluding a contract with [company] and before filing the complaint with the CPDP, that [company] does not make records and the service itself does not include records and that there is no evidence that the condominium decision to install CCTV cameras. He claims to be awarded legal fees. The constituted as an interested party - [company] is represented by a lawyer. K., which sets out details of the mechanism of the security service provided by the company and its technical specifications. A written statement on the complaint was also submitted. It does not claim costs. S. G. D. - interested party considers that the complainant has access to DVR passwords and video surveillance. Expresses an opinion that since the condominium has not taken a decision regardless of the applicant's contract with [company] the company has no right to see her, her husband and her children. The interested party M. S. Z. claims that during the inspection the CPDP found that the cameras had filmed and continue to film. Constituted as stakeholders - G. M. S.; I. I. K. and I. V. S., regularly summoned, did not appear in court, did not send a representative and did not express an opinion on the appeal. Sofia City Prosecutor's Office does not participate in the proceedings. The court,

taking into account the evidence gathered, accepted as established on the factual side the following: The proceedings before the CPDP were instituted on appeal Reg. № G-92 / 22.02.2017 of GS; I. K.; S. D .; IS and MZ - all living in a building on [street] in [settlement], for the fact that without the consent of the residents of the building their neighbor AS has installed CCTV cameras, for which no decision has been made by the general meeting of the condominium. The complaint also alleges that video camera footage and photos were used illegally by S. to 06 RU of SDVR and others. In connection with the complaint thus filed, AS was given the opportunity to express a written opinion on the complaint, as well as to present evidence. Evidence was presented by the parties, as the content of the documents shows that the signals are due to deteriorating neighborly relations, and forensic certificates of bodily injuries to persons who filed a complaint to the CPDP and AS and his girlfriend. Open meetings of the CPDP were held, for which the parties were regularly summoned. The Commission has asked the parties to settle the dispute by agreement, but the parties have not agreed. At its meeting held on 07.09.2017, the CPDP has decided on the admissibility of the complaint filed by GS; I. K.; S. D .; IS and MZ and its consideration on the merits in open court, the parties are constituted. In connection with the complaint on 07.09.2017 An inspection was carried out by an inspection team of the CPDP, for the results of which a statement of findings was drawn up. At a regular meeting held on 11.10.2017, objectified in Minutes 57/2017, the complaint was postponed for consideration on the merits for 08.11.2017 at 13.00, as [company] was constituted as a party. In the course of the administrative proceedings with Order № RD-14-276 / 18.09.2017. The Chairman of the CPDP has ordered a subsequent inspection of compliance with and application of the LPPD in the condominium. The results of the inspection are objectified in Finding Act № PPN-02-378 / 05.10.2017, which states that the address recorded in the complaint is a 4-storey residential building consisting of one entrance. For the purposes of security activities and after encroachments on Mr. S. and his property, in apt. 20 a video surveillance system was built by [company], which company maintains the system. It was found that the video surveillance system consists of 3 video cameras and a DVR-video recorder, stored in the apartment of S. residents, but at the time of the inspection, according to S., this system was not working. The described cameras installed by S. were not part of the others, placed with the consent of all residents at the address. The first camera was located on the wall next to the front door and covered the space under the frame of the front door of the app. 20, being protected by a grille. The second camera was installed inside the apartment and filmed the corridor. The third camera was installed under the window sill of the app. 20 and was also protected by a metal guard. It covered the entrance of the residential building, part of a road leading to underground garages, part of the property fence and parts of a

neighboring property. The first camera recorded the movement, and the third constantly. Using a DVR-video recorder, the video surveillance system allows video recording for a period of about 4-5 days. After filling the memory (1 terabyte) of the DVR, the old recordings are automatically deleted in the order in which they were received. The incoming video image and the recordings from the video cameras were visualized through the software installed on S.'s personal laptop. Only S. had access to the video surveillance system and the recordings made by entering a username and password in the software used. Video frames and recordings were not remotely accessed. The video surveillance system allowed the identification of individuals. At the time of the inspection, no information boards were posted warning about the video surveillance. In order to document the results of the inspection and in the presence of S., 4 graphic images were taken from the video surveillance system, described in the statement of findings and attached to the statement of findings. S. also provided the inspection team with a Warranty Card H [PIN] for the video surveillance system, which described the technical characteristics of the devices. The inspection team found that there was a functioning video surveillance system at the address indicated in the complaint. From the warranty card attached to the statement of findings it is established that the video surveillance system was installed by [company] on 26.11.2016. By letter dated 06.10.2017. The CPDP of [company] was given a three-day period to express a written opinion and present relevant evidence as a party to the dispute. [company] informed the commission in writing that a contract for protection of property was concluded between the company and AS № 1407-03009, as of 29.09.2017. As an additional service, video verification of the site was agreed. It was explained that "video verification" is a service in which only in the case of a registered alarm signal from the site in the monitoring center on duty, the information received from the connected cameras is verified in real time. " The components required to perform the service were not installed or maintained by [company]. The video surveillance system was owned by S. . A technical team of the company has set up to centralize the signals to the monitoring center of [company] in order to implement the video verification service. The opinion presents the cited contract for protection of property. In addition to the opinion filed with Reg. of the authenticity of the alarm operation, by means of video activation of the camera without making recordings. In view of the above, the CPDP established that there was a violation of the LPPD and issued decision № G-92/2017 of 09.01.2018, with item 1, which it disregarded as unfounded complaint with reg. № G-92 / 22.02.2017, filed by S. D., I. K., G. S., I. S., M. Z. v. A. S. with regard to the camera, which is positioned inside the app. 20 on the grounds of the provision of art. 1, para 9 of LPPD. With item 2 of the same decision, the CPDP upheld as a well-founded complaint with reg.№ G-92 / 22.02.2017. in the part It is related to the video surveillance

performed by the two cameras, respectively located on the wall next to the front door and covering the space under the frame of the front door of the app. 20 and under the window sill of the app. 20, in the scope of which public places fall, according to the established factual situation, due to violation of the principle regulated in art. 2, para 2, item 3 of LPPD personal data to be relevant, related and not exceeding the purposes for which they are processed . In connection with item 2 of the CPDP with item 3 of the decision it issued a mandatory prescription to AS within 10 days from the entry into force of the decision to dismantle the two chambers, the scope of which includes common areas in the building and public areas outside her. The testimony of the witnesses questioned in the case - VI. I. and G.M. are in accordance with the opinions presented by VIP SE in the proceedings before the CPDP. LEGAL PARTY The complaint is procedurally admissible - it was filed by a competent party and within the statutory time limit. As can be seen from the return receipt attached to the case, the applicant was notified on 12 January 2018. for the challenged administrative act, and the appeal against the act was filed with the court through the administrative body on January 26, 2018, ie within the statutory 14-day period. Considered on the merits, the appeal is unfounded for the following reasons: The contested decision in the present proceedings was issued by a competent administrative body - CPDP in accordance with its powers under Article 38, paragraph 1 and paragraph 2 of LPPD in connection with Art. 10, para. 1, item 7 of LPPD / ed. SG, no. 7 of January 19, 2018 /. On the grounds of art. 9, para 4 in connection with para 3 of LPPD / in the applicable wording / the decisions of the commission are taken by a majority of the total number of its members / art. 7, para. 1 of LPPD - chairman and 4 members and art. 4, para. 1 of the Rules of Procedure of the CPDP and its administration / PDKZLDNA; Of the Rules // during an open meeting. It should be signed by all members who participated in the vote, and should comply with the special rule of Article 12 of the Rules governing the validity of the decision, when it can be taken in absentia, if the chairman and all members of the committee are agree and sign it. According to Article 11, paragraph 4 of the PDKZLDNA "the chairman or a member of the commission who does not agree with a decision shall sign it with a dissenting opinion." As can be seen from Minutes № 52 / 07.09.2017, three members of the Commission were present at the meeting - open in nature. The latter signed the disputed decision taken by the required majority. In view of this, the court considers that the act was issued by a competent authority and there is no ground for revocation under Article 146, item 1 of the APC. As there is no explicit provision in the LPPD regarding the form and content of the decision, Article 59, paragraph 2 of the APC is applicable. In this case, the act contains the requisites required by this provision, as well as the signatures of the persons who participated in the voting / Art. 7, para. 1 of LPPD in connection with

Art. 4, para. 1 of the Regulations /, and in accordance with Article 12 of the Regulations signature of a person who was not present, therefore there is no reason for its cancellation within the meaning of Article 168, paragraph 1 in connection with Article 146, item 2 from the APC. The court finds that there are no significant violations of the administrative-procedural rules. The proceedings were instituted in accordance with the provision of Art. 38, para. 1 of LPPD in connection with Art. 28, para. 1, item 1, art. 29, para. 1 and Art. 36 et seq. Of the Regulations. The illegal processing of personal data covers a period of time from 26.11.2016. / the date of installation of the video surveillance system by [company] / which has not been suspended at the time of filing the complaint to the CPDP /22.02.2017. /. It should be noted that the complaint to the CPDP does not specify when the violation was committed, but given the established date of installation of the video surveillance system, the deadlines under Article 38, paragraph 1 of the LPDP are met. This determines the conclusion on the admissibility of the administrative proceedings. With a decision from a meeting, objectified in the minutes, the appeal was declared admissible, the parties in the proceedings were constituted and the consideration of the dispute on the merits was envisaged. Since the complaint can be filed by any person, it follows that the CPDP has been duly notified. The provision of art. 40 of the PDKZLDNA, according to which the CPDP collects evidence, appoints experts and summons, as well as performs other actions in the proceedings under Section II "Consideration of complaints by individuals" under the APC. An on-site inspection has been appointed, the results of which are objectified in the Statement of Findings and the Statement of Findings / Art. 10, para. 1, item 3 and Art. 12, para. 1, para. 4 and para. 5 of LPPD; Art. 38, para. 2 of the Regulations; Art. 9, para. 1 of the APC /. The parties to the proceedings were given the opportunity to acquaint themselves with the evidence attached to the file and to express an opinion. In ruling on the merits of the dispute, the written evidence presented in the file was discussed, as well as the opinions expressed on the allegations made in the complaint. The right of defense of the complainant, regularly notified of the open hearing before the CPDP is not limited, as his participation in the administrative proceedings is guaranteed, and the latter was conducted in accordance with the special provisions of the CPDP, Art. 34 et seq. Of the APC and the principles of the process - the principles of truthfulness, equality, accessibility, publicity and transparency / Art. 7, Art. 8 and Art. 12 of the APC /. The transcript-extracts of minutes from held meetings of the CPDP attached to the case correspond to the provision of art. 11, para 2 of the Regulations. Decision № Ж-92/2017 from 29.01.2018 of the CPDP, taken with the required majority and signed by the persons participating in the voting on 07.09.2017. and in absentia, it was not ruled in case of significant violations of the rules of court proceedings. In view of the above, the court considered that there are no grounds for revocation within the meaning of

Article 168, paragraph 1 in connection with Article 146, item 3 of the APC. In the specific case the complainant AS does not have the capacity of administrator, entered in the register under art. 10, para 1, item 2 in connection with art. 3, para 1 and para 2 of LPPD. Nevertheless, with the written evidence presented in the case, it was established that S. processed personal data - recorded with an automatic means, video surveillance system. This follows from the findings in the statement of findings and the statement of findings and the attached photos. As a recording from the camera located on the wall to the front door is carried out when recording movement, and recording from the installed camera under the window sill of app.20 constantly. Thus, the set of actions performed by the complainant falls within the concept of "processing", the legal definition of which is given by the legislator in § 1, item 1 of the Additional Provisions / RD / of LPPD "Processing of personal data" is any action or set of actions which may be carried out in respect of personal data by automatic or other means, such as collecting, recording, organizing, storing, adapting or modifying, restoring, consulting, using, disclosing by transmitting, distributing, providing, updating or combining, blocking, deleting Article 2, item "b" of Directive 95/46 / EC, transposed in Bulgaria - § 1a of the Additional Provisions of the LPPD. be the addressee of the decision under Article 38, paragraph 2 in connection with paragraph 1 of the LPPD According to the legal definition given in Article 3, paragraph 1 and paragraph 2 of the LPPD, personal data controller is a natural or legal person , as well as a state body the government or the local self-government, which alone or together with another person determines the purposes and means for processing personal data, as well as which processes personal data, the type of which, the purposes and means for processing are determined by law / Art. 2, p. "D" of Directive 95/46 / EC /. According to Article 2, paragraph 1 of the LPPD / in the applicable version / personal data are any information relating to a natural person who is identified or can be identified directly or indirectly by identification number or by one or more specific features. The purpose of the LPPD / in the applicable wording / is to guarantee the inviolability of the person and privacy, protecting individuals from illegal processing of personal data related to them and regulating the right of access to collected and processed such data. The protection of personal data provided by law is not absolute and is subject to restriction in cases expressly provided by law. Exactly such data are the shots taken by S. It was established from the presented evidence and from the opinion of the security company that the video cameras are owned by S., that only he has a password to access the recorded video files and that the video surveillance system allows identification of individuals. S.'s laptop displays the incoming video image and video recordings. The provision of art. 4, para 1 of LPPD / in the applicable wording / regulates seven alternative hypotheses in which the processing of personal data is admissible. The processing of

personal data is permissible only in cases where at least one of the conditions exhaustively listed in the norm is present.

According to the provision of Art. 7, p. "F" of Directive 95/46 / EC Member States provide that the processing of personal data may take place only if the processing is necessary for the legitimate interests pursued by the controller or by a third party or persons to whom it is disclosed data, except in cases where these interests take precedence over interests related to the fundamental rights and freedoms of the individual concerned, which require protection under Article 1 (1). This provision is also reflected in Art. 4, para. 1, item 7 of LPPD / in the applicable wording /. In the present case, it is necessary to determine whether that provision existed. The interests of A.S., related to the bad neighborly relations, should prevail over the interests of the natural persons who filed the complaint, but such is not established. In such cases, her rights should be taken into account the freedoms of data subjects and the rights and

the freedoms of data processors. From the evidence under the case established that the applicant S. processed data of others natural persons - in the specific case of residents and visitors to the residential building, through video recording, which is why it is correct

The CPDP noted this processing of personal data through "Video recording" is a violation of Art. 2, para. 2, item 1, item 2 and item 3 from LPPD / in the applicable wording.

In support of the stated reasons is the decision of the Court of 11.12.2014. on Case C - 212/13 on a reference for a preliminary ruling, in the operative part of which stated that the second indent of Article 3 (2) of Directive 95/46 must be interpreted as meaning that the use of a video surveillance system performing video recording of people stored on a device for long - term storage, namely a hard drive that is installed by a natural person in his family house for protection of property, the health and lives of homeowners, as the system covers and public places does not constitute the processing of personal data by performing entirely personal or domestic activities within the meaning of this

provision. To the extent that video surveillance covers, albeit partially, public places and is therefore directed outside the personal sphere of the person which performs data processing in this way, it cannot be considered to be an activity which is wholly "personal or domestic" within the meaning of Article 3 (2), second indent of Directive 95/46.

In this case the prerequisites of the provision of art. 4, para 1, item 1 are not present either of LPPD / in the applicable wording / - the processing is necessary for fulfillment of a statutory obligation of the administrator of personal data. The parties do not dispute that in the building in which they are installed cameras and video surveillance is set to condominium. The General Assembly of the condominium accepts decisions to incur costs that are necessary or urgent for the maintenance or for the restoration of the common parts / art. 11, para 1, item 10, item "a" of the Condominium Management Act - ZUES / s majority, more than 50 percent of the presented ideal parts of the common parts of the condominium / art. 17, para 3 of ZUES /. In the present case evidence of a decision taken by the general meeting of the condominium property for the installation of cameras by the applicant S. are not presented. Given the above, video surveillance with a range of capture in public places, from the two cameras mounted, respectively on the wall to the front door, covering the space under the front door frame of app.20 and under the window sill of app.20 violates the regulations principle in art. 2, para 2, item 3 of LPPD / in the applicable wording / and is not in fulfillment of a statutory obligation of the administrator of personal data.

The objection of the applicant S. that the proceedings were unfounded



video cameras are needed in connection with his contract for security with the company [company]. As can be seen from the company's opinion, a and from the interrogation of the technician who installed the alarm system - the cameras for video surveillance were installed by S., the same are his property and only he has access to the software that manages them and to the recorder device. The security company has access to video the signal, only when the alarm signal is activated, if not can make or copy records. Precisely because of what was stated by the constituted interested party could not be accepted S.'s defense that he was obliged to install cameras as part from its terms of the contract with [company]. The same were installed long before the applicant S. had concluded his security contract. Except this contract with [company] was concluded on September 29, 2017, and the complaint is filed on 22.02.2017 and concerns a period of time preceding the moment of concluding the contract with the interested party.

In view of the above, the court finds that the complaint of A.S. is unfounded and unproven and as such should be rejected.

Given the existence of illegal processing of personal data correctly, the CPDP with item 3 of the contested decision has issued a mandatory one prescription of A. S. within 10 days from the entry into force of the decision to dismantles the two cameras, within the scope of which the common ones fall parts of the building and public areas outside it.

Given the outcome of the case and the request for the award of legal fees from the legal representative of the defendant, as well as on the grounds of art. 143, para 4 of the APC, the applicant

should be ordered to pay the defendant the sum of 100

BGN, representing legal consulting remuneration determined under

the order of art. 37, para 1 of the Law for the legal aid and art. 24 of the Ordinance for payment of legal aid.

Thus motivated and on the grounds of Art. 172, para. 2 of the APC, the COURT

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And:

DISMISSES the appeal of A. G. S. from [settlement] against Decision №

G-92/2017 dated January 9, 2018. of the Commission for Personal Data Protection in its part under item 2 and item 3., as unfounded.

ORDERS A. G. S. of [settlement] to pay the Commission for protection of personal data the amount of BGN 100 / hundred /, representing legal fees.

The decision can be appealed to the Supreme Administrative Court of RB, within 14 days of its notification to the parties.

JUDGE: