

Home »Practice» Decisions of the CPDP for 2021 »Decision on appeals with registration № PPN-01-537 / 10.06.2019 and PPN-02-295 / 28.05.2019 Decision on appeals with registration № PPN -01-537 / 10.06.2019 and PPN-02-295 / 28.05.2019

DECISION № PPN-01-537 / 2019 Sofia, 11.02.2021 Commission for Personal Data Protection (CPDP) in composition:

Chairman: Ventsislav Karadzhov and members: Maria Mateva and Veselin Tselkov at a meeting held on 21.10.2020, pursuant to Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1 (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 (Regulation / ORZD), considered on the merits complaints № PPN-01-537 / 10.06.2019 and PPN-02-295 / 28.05.2019, filed respectively by G.G. and V.Z. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection has been seised with a complaint № PPN-01-537 / 10.06.2019, filed by GG, which sets out allegations of misuse of personal data and their use without her knowledge and consent for her appointment as a member of the Sectional Electoral Commission (PEC) № \*\*\*\* 2, at the proposal of the BBC, in connection with the elections held on 26 May 2019 for members of the European Parliament from the Republic of Bulgaria. She asserted that, as a result of the ill-treatment, she had suffered non-pecuniary and pecuniary damage in so far as her registration had prevented her from running in the elections as an interviewer. Relevant evidence is attached to the complaint. The Commission for Personal Data Protection was also seised with a complaint № PPN-02-295 / 28.05.2019, filed by V.Z. with identical allegations, namely for misuse of her personal data and their use without her knowledge and consent for her appointment as a member of the sectional election commission (PEC) № \*\*\*\* 3, at the suggestion of "B.B.C." in connection with the elections. In order to clarify the case from a legal and factual point of view and in the conditions of the official beginning of the administrative process, the Regional Governor of Shumen District requested a certified copy of the following election papers and materials from the elections for members of the European Parliament held on 26.05.2019. from the Republic of Bulgaria, namely a certified photocopy of a written proposal submitted by the BBC coalition for the composition of the PEC № \*\*\*\* 2 before the consultations with the mayor of the municipality, together with documents attached to it, Decision of the REC- Shumen for appointing the composition of PECs № \*\*\*\* 2 and PECs № \*\*\*\* 3 for the procedural elections, together with attached lists of names regarding the composition of the sectional election commissions, as well as information about a subsequent change in their composition. In accordance with the requirements of the Personal Data Protection Act, it was stated that the personal data of other PEC members other than the

complainants contained in the documents should be deleted. In response and with letters PPN-01-537 # 4 / 15.06.2020 and PPN-01-537 # 5 / 18.06.2020, the same with identical content and with letter PPN-02-259 # 2 / 17.08. In 2020, the required documents have been submitted. Given the evidence gathered in the case, the political parties PP "PB" (formerly called "BBC"), "VMRO-BND. ", "ZNS "and" DG ", in their capacity as coalition partners according to the Decision of 04.04.2014 for the formation / establishment of a Coalition of parties" BBC "(with former title "BBC", "VMRO-BND", "ZNS" and "DG") for participation in the elections for members of the European Parliament on 25.05.2014 have been notified of the submitted complaints. They were given the opportunity to submit a written statement on the allegations and to provide relevant evidence concerning the lawful processing of the applicants' personal data. Written statements, together with relevant evidence, have been submitted by VMRO-BND. "PP" DG "and PP" ZNS "with identical allegations in the direction that personal data are processed by PP" DPB ", with the previous name PP" B.B. Ts. ", Given the Agreement between the political parties participating in the coalition for the distribution of district and sectional election commissions in connection with the elections for members of the European Parliament from the Republic of Bulgaria on 26.05.2019. The Commission for Personal Data Protection is independent a state body that protects persons in the processing of their personal data and in accessing these data, as well as control over compliance with the LPPD and the PDPA. In order to exercise its powers, the committee must be properly seised. The complaint contains obligatory requisites - data about the complainants, the nature of the request, date and signatures, in view of which they are regular. The appeals are procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by natural persons with legal interest against a competent party. The subject of the complaints are the allegations of illegal processing of personal data of the complainants - three names, a single civil number, a contact telephone number, education, and in respect of Ms. V.Z. and specialty, for their appointment as members of the sectional election commission (PEC) № \*\*\*\* 2 and № \*\*\*\* 3, at the proposal of KP "BBC", in connection with the held on 26.05.2019 elections for members of the European Parliament from the Republic of Bulgaria. From the evidence gathered in the case and given the fact that at the date of referral to the commission the coalition of parties does not exist, as parties in the proceedings should be constituted political parties participating in its composition, namely: "D.P.B. ", " VMRO-BND. ", " Z.N.S. "and" D.G. “. Complaints are referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1 of LPPD in connection with Art. 57, § 1, letter "e" of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of data subjects related to the processing of personal data, as there are no the exceptions

under Art. 2, § 2, letter “c” and Art. 55, § 3 of the Regulation in view of the fact that the cases do not concern processing activities performed by a natural person in the course of purely personal or domestic activities and / or activities performed by the courts in the performance of their judicial functions. In view of the evidence gathered from the files, the commission considers that the prerequisites of Art. 32 of the APC for the consolidation and consideration of appeals in one general administrative proceeding, in view of the fact that the rights and obligations of the parties derive from the same factual situation, are filed against the same passively legitimized party and are within the competence of the same administrative body - CPDP. For the stated reasons and given the lack of negative prerequisites specified in Art. 27, para. 2 of the APC, at a meeting of the CPDP held on 02.09.2020, the appeals were accepted as admissible and given the prerequisites of Art. 32 of the APC are united for consideration in one general administrative proceeding. The following have been constituted as parties in the proceedings: the applicants: G.G. and V.Z. and respondent political parties participating in the coalition, namely: "D.P.B.", "VMRO-BND.", "ZNS" and "DG", in their capacity of independent administrators of personal data - coalition partners according to the Decision of 04.04.2014 for the formation of a coalition of parties B.B.C. . “. An open hearing was scheduled for consideration of the complaints on the merits on 21.10.2020 at 13:00, of which the parties were regularly notified and instructed to distribute the burden of proof in the process. A certified copy of written answers submitted by VMRO-BND and DG was provided to the other parties in the proceedings for information and opinion. The DPB political party requested information and evidence on technical and organizational measures introduced by the political party to protect personal data processed in the election process, as well as evidence and information on whether the complainants were members of the political party or whether they were representatives of the party in the election process before the specific elections. The legal possibility, until the date of the open hearing, to express a written opinion on the evidence gathered and the allegations made by the complainants, to make requests on the evidence and to point out evidence on the legality of the processing of my personal data. There is a lack of procedural activity on the part of political parties "D.P.B. “. At a meeting of the Commission held on 21.10.2020, the complaints were considered on the merits. The parties are regularly notified - they do not appear, they do not represent themselves. In his capacity of administrative body and in connection with the need to establish the truth of the case, as a basic principle in administrative proceedings, according to Art. 7 of the APC, requiring the existence of established actual facts and given the evidence gathered and the allegations, the commission accepts that considered on the merits of complaints № PPN-01-537 / 10.06.2019 and PPN-02-295 / 28.05.2019. are justified. It is notorious that on May 26, 2019 in the

Republic of Bulgaria were held elections for members of the European Parliament from the Republic of Bulgaria, in connection with which section election commissions were appointed. The Electoral Code sets out the rules for appointing PEC members. In accordance with the normatively prescribed procedure under Art. 91 of the Electoral Code and item 23 of Decision 150-EP of 11.04.2019 of the CEC already specifically set out the rules concerning the elections held on 26.05.2019 for members of the European Parliament from the Republic of Bulgaria. According to the normatively established rules, the PEC members are appointed by the DEC, and the appointment is preceded by consultations with the mayor of the respective municipality for the formation of the PEC members. The consultations are held with representatives of parties and coalitions represented in parliament by parties and coalitions that have members of the European Parliament from the Republic of Bulgaria elected with their candidate lists, but are not represented in parliament. The latter submit a written proposal for the composition of the PEC from the quota of the respective political entity, which contains: three names and PIN of the proposed persons, education and specialty, contact phone number and the position in the commission for which he is proposed, according to Art. 91, para. 4 of the IC. According to Art. 92, para. 6 of the Electoral Code in elections of members of the European Parliament from the Republic of Bulgaria, parties and coalitions that have elected members of the European Parliament with their candidate lists, but are not represented in parliament, are entitled to no more than two percent of members of sectional election commissions within the municipality for the respective constituency (region). In accordance with the normatively prescribed procedure under Art. 91 of the Electoral Code and item 23 of Decision 150-EP of 11.04.2019 of the CEC, in the municipality of Shoumen on 16.04.2019 consultations were held for the appointment of members of the PEC. A written proposal has been received from CP B.B.C., eligible subject according to Art. 91 of the Electoral Code, for the members of the PEC in the municipality of Shoumen. It is evident from the content of the proposal that for members of PEC № \*\*\*\* 2 and № \*\*\*\* 3 are indicated / proposed respectively G.G. and V.Z. The proposal contained three names of the applicants, their unique civil numbers, education, and for Ms V.Z. and specialty "Economics", telephone numbers for contact with them are indicated, respectively \*\*\*\*\* 1 and \*\*\*\*\* 2, the same indicated as telephone numbers for contact with them in the complaints submitted to the CPDP. A power of attorney is attached to the proposal, which shows that the members of the Conference of Presidents, which represents the BBC, have authorized N.E. "To represent KP" BBC "in the consultations with the mayor of the municipality for the appointment of sectional election commissions in the European Parliament elections scheduled for May 26, 2019 in the municipality of Shumen." Attached to the power of attorney is a Decision on the establishment of the coalition dated

04.04.2014, as well as a decision on the distribution of the PEC in connection with the conduct of the specific elections. As can be seen from the last PEC in the municipality of Shoumen are distributed to PP "DPB. ". A circumstance which is also confirmed by written statements expressed by VMRO-BND and DG submitted in the course of the proceedings before the CPDP. By Decision № 16 of 30 April 2019 of the Shumen DEC, the applicants G.G. and V.Z. are appointed as members of PEC № \*\*\*\* 2 and № \*\*\*\* 3 respectively. Subsequently, and on the basis of an application submitted by NE, an authorized representative of the coalition, dated 20.05.2019, a change was made in the composition of the respective PECs, and in place of the complainants, as members of the PEC, were appointed respectively .X. and S.V. It is known that at the date of the consultations with the mayor of the municipality and the provision of the data to the complainants, the coalition did not exist as a political entity. However, according to the Electoral Code, he has the right to have representatives in the sectional election commissions for conducting the specific elections under Art. 91, para. 2 of the IC. In this regard and given the fact that in the specific elections the parties in the coalition participate independently or in another form on April 12, 2019, a decision was signed between the coalition partners to allocate the sectional election commissions to exercise the rights under Art. 91, para. 2 of the IC. As can be seen from the content of the agreement, a political party D.P.B. ". The provision of personal data for registration of PEC members for participation in elections is a form of personal data processing and as such should be carried out in compliance with the provisions of EU Regulation 2016/679, in particular those of Art. 6, § 1 of the Regulation, the same applicable insofar as data were provided after 11 April 2019. The file indisputably established that the complainant's personal data were processed by the personal data controller of the DPB political party in the case of their inclusion in the list of persons for their appointment in sectional election commissions from the quota of the coalition "BBC" for participation in the elections on 26.05.2019 and providing these data to the mayor of Shumen municipality in connection with the consultations on Art. 91 of the IC. No processing of the applicants' personal data was established by the other political parties constituted in the proceedings - ZNS, DG and "VMRO-BND" from the composition of KP "B.B.C. ". The applicants' personal data were processed by the DPB political party for their registration as members of № \*\*\*\* 2 and № \*\*\*\* 3 of the BBC coalition quota, in violation of the ORZD. The allegations of the complainants for illegal processing of their personal data are well-founded, and it should be noted that they have not been disputed by the PP "DPB. ". Despite the instructions given to the party and the distribution of the burden of proof in the process, the latter did not commit evidence of lawful processing of the applicants' personal data for the specific purpose, therefore it follows that the data were processed in violation of Art. 6, § 1 of the Regulation insofar as there is

no condition for the legality of the provision. There is no evidence of the applicants' consent to the processing of their personal data for the specific purpose, and allegations in this regard have not even been made by the political party, which is responsible for proving the latter. In addition, the subsequent actions of the authorized representative of the eligible entity for a change in the composition of the respective PECs can be considered as indirect evidence of lack of consent, as P.H. and S.V. The hypothesis of art. 6, § 1, letter "e" of the Regulation - the interests of the administrator, in the case of PP "DPB" are not preferable to the interests of the affected individuals whose data are provided for their appointment as members of the PEC, in presented during the consultations with the mayor of the municipality, without their consent, and it is indisputable that the latter is a priority over the interest of the political entity to participate in the elections. There is also no legal obligation for the administrator to process, as the participation of political parties, ie coalitions of parties, in the election process is a legal possibility, the implementation of which should comply with statutory rules, in particular those in the field of personal protection. data according to the norm of art. 133, para. 4 of the IC - "personal data are processed and provided in compliance with the requirements for their protection." There is no evidence to justify the applicability of Art. 6, § 1, letter "b" of the ORD - the existence of a contract concluded between the parties for the implementation of which requires the processing of personal data of Ms. G.G. and Ms. V.Z. by the political party, respectively the coalition or to take steps at the request of the data subjects before concluding the contract. Grounds under Art. 6, § 1, letter "d" and "e" of the DPA are irrelevant - applicable in other, different and incompatible with the present hypotheses concerning the processing of personal data for the protection of vital interests related to the life and health of the data subject, implementation of a task of public interest, as well as in the exercise of official powers not delegated to political parties or coalitions of parties. From the evidence gathered in the file it is necessary to conclude that the personal data of the applicants were processed in violation of Art. 6, § 1 of the CPDP, without any of the conditions for legality of the processing specified in the provision, as the rights of the persons who have referred to the CPDP have been violated. It is indisputable that on May 20, 2019, about a month after the violation, actions were taken to stop it. An application was submitted by NE, an authorized representative of the coalition, dated 20.05.2019 for a change in the composition of the respective PECs, as a result of which in the place of the complainants, as members of the PEC from the quota of KP "B.B. .C. ", With Decision № 80 / 13.05.2019 of RIK Shumen, were appointed respectively P.H. and S.V. However, the actions taken in this direction do not remedy the violation. In view of the nature of the established violation, the commission considers that the corrective measures under Art. 58, § 2, letter "a", "b", "c", "d", "e", "e", "g", "h" and "j" of the Regulation are

inapplicable and inappropriate in this case, given the gravity of the infringement and the fact that it has been completed. In the present case, the pecuniary sanction under Article 58 § 2 (i) of the Regulation is the most appropriate, effective, dissuasive and proportionate for the protection of the legitimate public interest. It should be noted that in addition to a purely sanction measure, a reaction of the state to the violation of the statutory rules, the property sanction also has a disciplinary effect, in view of the non-commission of the same violation in the future. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided by law and arising from his subject of activity, human and economic resources. In view of the evidence gathered in the case, the commission considers that administrative and criminal responsibility for the violation should be borne by PP "DPB", as evidenced by the Decision on the distribution of PECs for specific elections, the data are processed by the political entity administrator of personal data, proxy of the coalition which at the date of processing does not exist, but is a entitled entity within the meaning of Art. 91 of the IC. In determining the amount of the sanction and in accordance with the conditions under Art. 83, § 2 of the Regulation, the commission took into account, as mitigating circumstances, that actions have been taken to stop the violation - an application was submitted for a change in the composition of the two PECs, even before referring to the CPDP. The circumstances under Art. 83, § 2, letters "b" and "i" of the Regulation are irrelevant insofar as it concerns an administrator - a legal entity that does not form a fault, and at the time of the violation approved codes of conduct, respectively approved certification mechanisms are not introduced. As aggravating the commission qualifies circumstances that: the rights of more than one person have been violated; data on the unique civil number of the two complainants were processed, including information on their educational qualifications, and as a result of the registration the rights of the complainants related to the election legislation and their participation in the election process were limited; the violations have become known to the CPDP as a result of its referral by the victims; there is no information and evidence of technical and organizational measures introduced by the administrator for the protection of personal data processed in connection with the election process; there is passive behavior of the political entity in the course of the administrative proceedings, there is a lack of cooperation and cooperation with the supervisory body to clarify the case on the factual side and eliminate the violation and mitigate any adverse consequences. it is not the first for the political entity, which is sanctioned for an identical violation with the entered into force decision G-167 / 12.02.2018 of the CPDP. Based on the above considerations and in view of the principle of proportionality between the gravity of the violation and the amount of the penalty, the commission considers that the imposed property sanction should amount to BGN 1,000 (one thousand leva).

Taking into account the purpose of the penalty, which should have a deterrent and warning function, the nature and severity of the violation, public relations and categories of personal data, the commission finds that the powers exercised in type and amount undoubtedly meet the requirements of LPPD and Regulation 2016 / 679 efficiency and deterrent effect, while not violating the principle of proportionality and the requirement of proportionality.

Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection,  
HAS DECIDED AS FOLLOWS:

1. Declares the complaints № PPN-01-537 / 10.06.2019 and PPN-02-295 / 28.05.2019 as well-founded.
2. On the grounds of art. 83, § 5, letter “a”, in connection with Art. 58, § 2, letter “i” of Regulation (EU) 2016/679 imposes on the political party “DPB” with Bulstat \*\*\*\*\* an administrative penalty - a property sanction in the amount of BGN 1,000 ( thousand levs) for processing the personal data of the applicants in violation of Art. 6, § 1 of the Regulation.

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.

After the entry into force of the decision, the amount of the imposed penalty should be transferred by bank transfer:

Bank of the BNB - Central Office, IBAN: BG18BNBG96613000158601, BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Maria Mateva / p /

Veselin Tselkov / p /

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