

DECISION № 6310 Sofia, 12.11.2020 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 29 panel, in a public session on 12.10.2020 in the following panel: JUDGE: Polina Velichkova with the participation of Secretary Kristina Bulgareva, considering case number 3891 on the inventory for 2020 reported by the judge, and in order to rule took into account the following: The proceedings are under Art. 126 et seq. Of the Administrative Procedure Code / APC / in conjunction with 38 of the Personal Data Protection Act / PDPA /. It was formed on the complaint of [company], through a lawyer. E. by AK - [settlement], against Decision № PPN-01-476 / 2018 of 23.03.20, issued by the Commission for Personal Data Protection / CPDP /, whereby the complaint of S.D. has been accepted as justified and an order has been issued [company] to carry out the operations on the processing of personal data of individuals in a manner - appropriate, related and limited to what is necessary, in view of the purposes for which they are processed. The appeal developed arguments for illegality of the appealed decision, as issued in contradiction with the substantive law. It is alleged that the person concerned, SD, gave her consent to the publication of her personal data. The court is requested to issue a decision annulling the administrative act, as well as to award the costs incurred in the case. At a court hearing, the disputing company was represented by a lawyer. E., who upheld the appeal and asked for the annulment of the appealed act. Defendant - the Commission for Personal Data Protection, through his legal representative in written notes disputes the complaint and asks to be rejected. He claims to be awarded legal fees. The interested party - SD, through his procedural representative finds the complaint unfounded. The Sofia City Prosecutor's Office, regularly notified, did not send a representative and did not take a stand on the complaint. Administrative Court - Sofia city, considering the arguments of the parties and the evidence gathered in the case, finds the following: With a complaint reg. allegations of illegally published personal data in the newspaper "S.", published by [company], [settlement]. By Decision № PPN-01-476 / 2018 of March 23, 2020, the CPDP declared the appeal of SD to be well-founded. In item 2 of the said act, given the established violation of Art. 5, § 1, letter "c" of the General Regulation on Data Protection / ORD, the Regulation /, on the grounds of Art. 58, § 2, b. "D" of the ORD, issued an order [company] to carry out operations on the processing of personal data of individuals in a way - appropriate, related and limited to what is necessary, in view of the purposes for which they are processed, as gave a 14-day period for the execution of the order, which begins to run from the entry into force of the decision. The appeal of [company] is procedurally admissible - it was filed by a competent party within the term under Art. 149, para. 1 of the APC. Considered on the merits, it is unfounded due to the following considerations: The disputed decision was issued by a competent administrative body - CPDP, in accordance

with the powers granted to it by Art. 38, para. 2 of LPPD, as well as in the form prescribed by law. From the evidence gathered in the case, it is established that in June 2018 SD, who was the administrative secretary of MHAT [company], [settlement], complained to witness PD about illegal actions committed by e. Dr. W. W., who went to her office and began insulting and threatening her. Witness D. advised her to file a complaint with the police and offered to contact a correspondent of the S. newspaper so that the case could be made public. In view of this, SD filed a complaint with the Regional Directorate of the Ministry of Interior - [settlement], which was filed with ent. № 348000-5119 / 13. 06. 2018. Subsequently, she spoke with the witness JP, who worked as a correspondent for the newspaper "S." and to whom SD sent a copy of the complaint submitted to the police through "V." . The complaint, in addition to a description of the incident, also contained SD's personal data - three names, address and telephone number. Subsequently, part of SD's complaint, including her personal data, was published in the newspaper "S." from 14. 06. 2018. In view of this, the CPDP accepted that through the described publication in the newspaper "S." the company [company] has carried out illegal processing of the personal data of SD, in the case of their dissemination, in respect of an unlimited number of persons, contrary to the principle under Art. 5, § 1, letter "c" of the General Regulation on Data Protection, as regards the publication of a facsimile of part of the frog of SD to the Regional Directorate of the Ministry of Interior - [settlement]. The Commission substantiated the conclusion that the publication of part of the complaint, without deleting SD's address and telephone number, constituted the processing of her personal data in an inappropriate, disproportionate and unrestricted manner, given the purposes for which they were processed. It also accepted that the other personal data - name, surname and professional quality of the applicant were sufficient for her identification, and that the deletion of the applicant's address and telephone number would not be contrary to the public interest. The administrative body concluded that this established a processing of personal data by a [company] that went beyond the scope of journalistic activity and consisted in disseminating its personal data to an extent that was not necessary to meet the information needs of the public. In view of this, the CPDP has concluded that [company] has violated the principle of good faith under Art. 5, § 1, letter "c" of the General Regulation on Data Protection, due to which on the grounds of Art. 58, § 2, b. "D" of the ORD issued an order to [company] to carry out operations on the processing of personal data of individuals in a manner - appropriate, related and limited to what is necessary, in view of the purposes for which they are processed. Dahl has given a 14-day period for the execution of the order, which begins to run from the entry into force of the decision. The appealed administrative act is correct. According to Art. 4/1 / 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. According to Art. 4/2 / of the Regulation "processing" means any operation or set of operations carried out with personal data or a set of personal watermelons by automatic or other means such as collecting, recording, organizing, structuring, storing, adapting or modifying, retrieving, consulting, use, disclosure, transmission, dissemination or other means of making the data accessible, arranging or combining, restricting, deleting or destroying it; According to Art. 5, § 1, b. in the Regulation, personal data are appropriate, relevant and limited to what is necessary in relation to the purposes for which they are processed / "minimizing data" /. Undoubtedly, with the publication in the newspaper "S." of the complaint of SD in the part in which it describes the incident that occurred with Dr. W., the purpose was to inform the public about the indecent behavior of a respected doctor. Therefore, in order to achieve this goal, it was not necessary to publish the personal data of SD, as in this way, contrary to the provision of Art. 5, § 1, b. "C" of the Regulation, they have not been reduced to the minimum necessary in relation to the purposes for which they are processed. The present panel finds that not only was the applicant's telephone number and address incorrectly published, but that the publication of her names was not necessary either, as this personal data did not in any way contribute to the main purpose for which part of the SD's complaint - namely - informing the public about illegal actions taken by a doctor. The Court therefore finds the Commission's conclusion that the publication of personal data, without deleting the applicant's address and telephone number, constitutes processing of personal data in an inappropriate, unrelated and unrestricted manner, given the purposes for which they were processed. Contrary to the opinion of the procedural representative of the disputing company, there is no evidence that SD gave her explicit consent to the publication of her personal data. From the interrogation of the witness P. it was established that she, although a correspondent of the newspaper "S.", does not process personal data, nor does she decide what exactly should be published in the newspaper. Even assuming that S. E. has given such consent (in which direction in the case there are two radically opposite statements by the disputing company and the interested party), this consent should have been given to the controller of personal data or to a person processing personal data, in this case - before an authorized person from [company]. It was not established in the case either by the controller of personal data - [company] that the consent of SD was requested to publish her personal data in this volume, which significantly exceeds what is necessary for this purpose, nor was it established that

she gave her explicit consent, which she has stated before the personal data controller or before an authorized person who processes personal data. There is no evidence that the personal data controller has fulfilled its obligation to provide the person with the information specified in Art. 13 of the Regulation and in particular - the purposes of the processing for which the personal data are intended, as well as the legal basis for the processing, the recipients or the categories of recipients of the personal data, if any. With the publication of this personal data / address and telephone number / not only is it allowed illegal processing of personal data, unrelated to the purposes for which they are have been processed, but also in an inadmissible manner contact details of a person for which is alleged to be the object of encroachment. Thus placed in disadvantage his security, given the specifics of the case.

The provision of Art. 25h, para. 1 of the LPPD stipulates that the processing of personal data for journalistic purposes, as well as for academic, artistic or literary purposes expression is lawful when exercised for the exercise of the freedom of expression and the right to information, while respecting privacy life. According to Art. 85 of the ORD, some exceptions and derogations are granted to the discretion of the Member States, in particular as regards the processing of personal data for journalistic purposes, for academic, literary or artistic expression / hereinafter only "processing for journalistic

They are intended to ensure the balance of the rights of the defense of personal data with other fundamental rights, in the hypothesis of Art. 85 / journalistic objectives / - with the right to freedom of expression and information, according to the principle of proportionality.

In the reasons of Decision № 8 / 15. 11. 2019 of the Constitutional Court under c.d. № 4/2019 it is stated that the application of the exceptions to the right to privacy defined as an exception for a specific purpose, in particular "The journalistic exception / exception for journalistic purposes, for the purposes of academic, literary or artistic expression / requires balancing

the two fundamental rights - protection of personal data and freedom of expression and information.

In the present case, the balance between the freedom of expression and information / on the one hand / and the protection of personal data / on the other party /, as the publication of personal data of SD / namely - address and telephone / does not in any way contribute to the main purpose for which it was disclosed part of SD's complaint - namely public information about implemented indecent actions by a doctor.

Therefore, the conclusion in the contested Decision № PPN-01-476 / 2018 of

23. 03. 2020, ruled by the Commission for Personal Data Protection that in

the specific case [company] has committed a violation of Art. 5, § 1, letter "c" General regulation on data protection, due to which and on the grounds of Art. 58, § 2, b.

"D" of the ORD, due to which an order was issued by [company] for the implementation of

the processing of personal data of individuals in an appropriate, relevant and limited manner, in view of the purposes for which they are

process.

In view of the above, the contested Decision № PPN-01-476 / 2018 of 23 March 2020,

ruled by the Commission for Personal Data Protection is lawful due to

which the action of [company] should be rejected as unfounded.

In view of the outcome of the dispute, the request for award of those made is justified

costs of the CPDP in the case, due to which the disputing company follows

order the defendant to pay the costs of the proceedings

legal counsel, and in determining the amount the court should comply with the provisions

of Art. 78, para. 8 of the Civil Procedure Code in conjunction with Art. 37 of the Legal Aid Act and Art. 24 from

Ordinance on the payment of legal aid. In this regard, taking into account

the factual and legal complexity of the case, the procedural activity of

the attorney - legal counsel, the volume and quality of the procedural

activity, the court held that costs in the amount of the defendant should be awarded

at 100 / hundred / BGN.

For the stated reasons and on the grounds of art. 172, para. 2 of the Administrative Procedure Code Administrative

Court - Second Division, 29th Chamber

RESOLVED:

DISMISSES the appeal of [company] against Decision № PPN-01-476 / 2018 of 23.03.

2020, issued by the Commission for Personal Data Protection.

ORDERS [the company] to pay to the Commission for Personal Data Protection the amount in

amount of BGN 100 / hundred /, representing legal fees

remuneration.

The decision can be appealed in cassation before the Supreme Administrative

court within 14 days from the date of notification that the decision has been prepared.

JUDGE: