Home »Practice» CPDP opinions for 2019 »CPDP opinion on the right to be“ forgotten ”in the context of processing personal data for journalistic purposes CPDP opinion on the right to be“ forgotten ”in the context of personal data processing for journalistic objectives OPINION OF THE PERSONAL DATA PROTECTION COMMISSION Reg. journalistic goals The Commission for Personal Data Protection (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev and Veselin Tselkov, at a meeting held on 27.03.2019, considered identical requests for opinion / ent. № NDMSPO-01-78 / 04.02.2019, PPN-01-233 # 1 / 11.03.2019, NDMSPO-17-58 / 30.01.2019, NDMSPO-01-125 / 06.03.2019 and NDMSPO-01-150 / 20.03.2019 / from various media on the application of the right to delete (or the right to be "forgotten") in the context of processing personal data for journalistic purposes. Some of the media inform that they have received requests for exercising the right to erasure by the person D.M.V. in connection with articles and photos published about him, concerning his conviction with an effective sentence for a crime against the person within the meaning of Chapter II of the Special Part of the Criminal Code of the Republic of Bulgaria. Questions are raised as to the validity of the requests made for the exercise of the right to be "forgotten", as well as the relevant and reasonable deadlines regarding the duration of disclosure of information containing personal data. In view of the high degree of public importance of the questions asked, there is a need to express an opinion of the CPDP. Legal analysis: The General Regulation on Data Protection (Regulation (EU) 2016/679), together with the Personal Data Protection Act (PDPA), lays down rules for the protection of fundamental rights, freedoms and interests of individuals in relation to the processing of personal data. their personal data and in particular the right to the protection of personal data. I. The right to be forgotten Regulation (EU) 2016/679 introduces a number of changes to the processing and protection of personal data. One of the major changes to citizens' rights is the more detailed regulation of the right to be erased (or the right to be "forgotten"). This right allows, when the data subject does not wish his data to be processed and there are no legal grounds for their storage, to delete them. With regard to the right to be "forgotten", reference should be made to the judgment of the Court of Justice of the European Union in the case of Google Spain (C-131-12), delivered in May 2014, aimed at clarifying several very important issues related to the right of personal data subjects to be forgotten, first objectified in repealed Directive 95/46 / EC. The court's ruling has provoked a wide response and mixed reactions both inside and outside the EU, given its importance in regulating the digital space. In it, the court concluded that the activities carried out by search engines (Google in this decision) constitute the processing of personal data, which may significantly affect fundamental rights to privacy and personal data protection, as it facilitates users to build a detailed profile. face. The main question raised by the

decision is whether it is a prerequisite for finding a fair balance between the right to privacy and the protection of personal data, freedom of expression, the right of access to information and other legitimate interests of individuals on the Internet. The Court has ruled that, in view of the main objective of Directive 95/46 / EU, namely to ensure the effective protection of the fundamental rights and freedoms of individuals, and in particular their right to privacy, the interpretation of the applicability provision of EU law cannot be restrictive. On this basis, any person, whether a citizen of an EU Member State or not, may request that the Internet search service provider in the territory of the EU Member State concerned delete links to websites containing information. , which violates his rights, even in cases where the publication of the information itself is lawful. The right to be "forgotten" is further developed in Art. 17 of Regulation (EU) 2016/679, creating a high level of protection of personal data. According to § 1 of the provision in question, the data subject may request, and the controller is obliged to delete, without undue delay, the specific personal data. The above possibility could be realized only if the following grounds are met: · personal data are no longer needed for the purposes for which they were collected or otherwise processed; · The data subject withdraws his consent on which the data processing is based; · The data subject objects to the processing and there is no overriding legal basis for continuing the processing; · Personal data have been processed illegally; · Personal data must be deleted in order to comply with a legal obligation under Union law or the law of a Member State applicable to the controller; · Personal data have been collected in connection with the provision of information society services to a child. The right to be "forgotten" as a fundamental right in the online environment should be extended by requiring the controller who made the personal data publicly available to notify the controllers who process such personal data, delete any links to such personal data or their copies or replicas. Regulation (EU) 2016/679 thus strengthens the right to erasure, clarifying that online organizations that make personal data public should inform other organizations that process personal data in order to delete the links or copies of the personal data in question. data. Although this can be a challenge for administrators, they should strive to comply with these requirements. They shall take reasonable steps, taking into account the technology available and the means at their disposal, to carry out their duties and to inform other controllers who process personal data of the data subject's request. However, there are a number of situations in which the controller has the possibility to refuse to delete the data, namely when the processing of specific data aims to: · exercise the right to freedom of expression and information; · To fulfill a legal obligation or to perform a task of public interest or exercise of public authority; · For public health purposes; · Archiving for public interest purposes, historical research or statistical purposes; or · establishing, exercising or defending legal claims.

Given the above, the right to be "forgotten" is not an absolute right. Any data subject can benefit from it only if there is a specific reason. II. Processing of personal data for journalistic purposes According to rec. 4 of Regulation (EU) 2016/679, the right to protection of personal data is not an absolute right, but should be considered in connection with its function in society and applied on an equal footing with other fundamental rights, according to the principle of proportionality. The Regulation respects all fundamental rights and respects the freedoms and principles recognized by the Charter of Fundamental Rights of the European Union, in particular respect for freedom of thought, freedom of expression and freedom of information. In rec. Article 153 of the Regulation provides that the national law of the Member States should reconcile the provisions governing freedom of expression and freedom of information, including for journalistic, academic, artistic and literary purposes, with those protecting personal data. The concept of "journalistic goals" is not defined by the legislator, but is discussed in detail and interpreted in case law. The essential thing for the journalistic activity is the collection, analysis, interpretation and dissemination through the mass media of up-to-date and socially significant information. Every journalistic activity is a manifestation of freedom of speech in the rule of law. Restriction of freedom of expression and information is permissible only within the limits necessary in a democratic society according to Art. 10, § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In essence, journalism requires the dissemination of information on issues of public interest. The publication of information on the media's website constitutes its public disclosure. The public dissemination of information for these purposes is a journalistic activity, as the very fact of dissemination is an expression of opinion, opinion, view, assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalism, the information must address issues of values that are genuinely socially important in view of the relationships involved. One of the main functions of the criminal repression of the state against society as a whole is precisely the achievement of general prevention, which has a preventive and deterrent and general educational goal - to influence citizens not to commit crimes. Undoubtedly, the dissemination of information related to the commission of crimes determines journalistic activity according to the reasons set out above. The media, and journalists in particular, are called upon to ensure transparency and information of citizens, thus helping to protect the public interest. expression and information.Art. Article 85 of the Regulation obliges Member States to harmonize with their national legislation the right to the protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes. In this regard, with the amendments and supplements promulgated on 26.02.2019 in the LPPD, in force since 02.03.2019, a national legal framework

is given, aimed at achieving a balance between the fundamental rights in the processing of personal data for journalistic purposes (Article 25h of the LPPD).

The same provision of the Regulation allows Member States to provide for derogations from some of the chapters of the Regulation. In this regard, in 25h, para. 3, item 2 of the LPPD stipulates that the controller or the processor of personal data (eg the respective media) may refuse to fully or partially exercise the rights of the data subjects under Art. 12-21 of Regulation (EU) 2016/679.

The assessment of whether to apply the derogation in question should be made on a case-by-case basis on the basis of objective criteria. The provision of Art. 25h, para. 2 of the LPPD offers a non-exhaustive list of such criteria. For example, in the specific hypothesis the criteria under Art. 25h, para. 2, items 3, 5 and 8 of LPPD:

- the circumstances under which the personal data became known to the controller (item 3) - the facts and related personal data became public with the publication of final court decisions in the criminal proceedings of the person, therefore there is guarantee of their truthfulness and objectivity;

- the importance of the disclosure of personal data or their public disclosure for the clarification of an issue of public interest (item 5) and the purpose, content, form and consequences of the statement through which the rights under para 1 are exercised. 1 (item 8) - as already mentioned above, the disclosure of information about the criminal acts committed by the person for whom he was convicted, contribute on the one hand to achieve the objectives of general prevention as an element of criminal policy of the state, on the other hand, they encourage citizens to be more vigilant so that they do not become victims of this type of crime in the future.

III. Setting a deadline for disclosing journalistic information containing personal data

According to the principles related to the processing of personal data proclaimed in Regulation (EU) 2016/679 and in particular in accordance with Art. 5, § 1, b. "E", personal data may be lawfully stored in a form that allows the identification of the data subject for a period not longer than necessary for the purposes for which the personal data are processed - a rule introducing the principle of of storage ”of the data.

In view of the above and on the grounds of Art. 58, § 3, b. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection states the following

OPINION:

1. The right of erasure (or the right to be "forgotten") is not an absolute right and its exercise may be derogated from on any of the grounds explicitly stated in Art. 17, § 3 of Regulation (EU) 2016/679, in conjunction with Art. 25h, para. 3, item 2 of the Personal Data Protection Act.

2. The media, and journalists in particular, are called upon to ensure transparency and information for citizens, thus helping to protect the public interest. In this case, there are grounds for denying the claimed right to delete personal data due to the fact that their processing is necessary for the exercise of the right to freedom of expression and the right to information and last but not least to perform a public interest task. determines the need to inform the public about both the crimes committed and the identity of the perpetrator, given its increased public danger.

3. The term for disclosure of journalistic information containing personal data should be in accordance with the principle of "restriction of storage", proclaimed in Art. 5, § 1, b. "E" of Regulation (EU) 2016/679, according to which personal data may be lawfully stored in a form that allows the identification of the data subject for a period not longer than necessary for the purposes for which they are processed the same.

THE CHAIRMAN:

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