

Home »Practice» Opinions of the CPDP for 2018 »Opinion of the CPDP on the installation of input-output cameras for facial recognition related to the electronic diary of the school Opinion of the CPDP on the installation of input-output cameras for facial recognition related to the electronic diary of school

OPINION OF THE COMMISSION FOR PROTECTION OF PERSONAL DATA reg. № NDMSPO-17-916 / 01.11.2018 Sofia, 21.12.2018 SUBJECT: D.I.B. ent. № NDMSPO-17-916 / 01.11.2018 / by Ms. Albena Mihailova, in her capacity of Secretary General of the Ministry of Education and Science (MES), which request is based on a report received by the MES with ent. № 0602-1000 / 25.09.2018, by Ms. ZA - Director of PGKIT (PGKIT) "DIB", P., where questions are raised regarding the implementation of the recommendations of RWU - P. for installation of input-output cameras for facial recognition, related to the electronic diary of school, in connection with the provisions of the Personal Data Protection Act and the requirements 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 (General Regulation on the protection of personal data). During an inspection by a commission from the Ministry of Education and Science of the presence of students in school hours and recording their absences in the diaries of classes in PGKIT, P., it was found that 63% of students are absent from school hours, and absences are not reflected in class diaries and there is no control over the presence of students by the school principal. The results of the inspection were presented to the Minister of Education and Science in a report № 8089403-14 / 17.05.2018. Pursuant to the resolution of the Minister of Education and Science, the head of the RWU - P. the school and to give him a recommendation for the installation of input-output cameras for facial recognition, connected to the electronic diary of the school in order to prevent and effectively control the absences of students for disrespectful reasons. The director of PGKIT "D.I.B.", P., received the recommendation from the head of the Regional Department of Education - P. and convened a parents' meeting to acquaint parents with the measures to be taken. As a result of the meeting, the parents submitted declarations that they did not agree with the installation of these cameras, referring to the provisions of the Personal Data Protection Act (PDPA). Disagreement over the installation of the cameras was also expressed by the teachers from the school, who also informed the Union of Bulgarian Teachers. The installation of input-output cameras for facial recognition in the school is dictated by the need for effective control of student attendance during school hours, which in turn is extremely important in a number of aspects, such as: -Protection of life and health of students, as well as the vital interests of students and society; - Timely undertaking of adequate measures for overcoming the reasons for unjustified absences of the students, including additional support; -Prevention of the risk of early dropout of

students from the educational system and social exclusion, leading to providing an opportunity to acquire competencies necessary for successful personal and professional realization and active civic life in modern communities; - Preventing illegal spending of financial resources, including fair distribution and use of social products; - Compliance with legal obligations; - Public interest. According to Art. 53, para. 1 and para. 2 of the Constitution of the Republic of Bulgaria, the right to education is a fundamental right of all, but it is also a basic obligation of citizens until they reach 16 years of age. The presence of students in school is an obligation of the students, as well as of their parents, whose non-compliance is secured by a sanction (Art. 172, para. 1, item 1, Art. 210, para. 1 and Art. 347, para. 2 from the Preschool and School Education Act); Given the high importance of school education, in order to ensure the best interests of the child and society as a whole, primary and secondary education in state and municipal schools in Bulgaria is free and the legislator has not left the right to choose the child or parents his, and has regulated its obligation, on the one hand, and on the other hand, has established in a number of acts the training of persons as a condition for receiving social support and assistance - Law on Social Assistance (Art. 12, para. 2, item 5).), Regulations for application of the LSA (Art. 9, para. 3; Art. 10, Art. 11, Art. 14), Family Benefits for Children Act (Art. 2, Art. 7, Art. 8c, Art. 10a, art. 12), Regulations for the implementation of the Social Insurance Act, the Social Security Code (art. 82), the Health Insurance Act (art. 40, para. 3) and many others. etc. Preventing children and students from dropping out of school is essential for the whole society and a state priority, in view of which it has been reflected both in the legislation and in a number of European and national strategic documents: Law on Preschool and School Education (Art. 5, para 2), Child Protection Act, Strategy for reducing the share of early school leavers (2013-2020), National Strategy for Child Protection (2008-2018), Strategy Europe: 2020, Management Program of the Government of the Republic of Bulgaria for the period 2017-2021 (goal 95) and others. The Mechanism for joint work of the institutions for coverage and inclusion in the educational system of children and students of compulsory preschool and school age, created with the Council of Ministers No 100 / 8.06.2018, is also described. The mechanism regulates the interaction of institutions, the implementation of a set of measures for coverage and inclusion in the education system and prevention of early dropout of children at risk, including organizing regular exchange of information between the institutions involved and coordinating their joint actions to impose sanctions. the order of the Child Protection Act and the Preschool and School Education Act of parents whose children of compulsory preschool and school age do not attend school, as well as control of the issued health notes to apologize for absences for valid reasons of children and students . Pursuant to § 1, item 11, letter “e” of the Transitional Provision of the

Child Protection Act (CPA), a child at risk is a child for whom there is a risk of dropping out of school or who has dropped out of school. Regular school attendance by children is one of the indicators for determining the risk of dropping out of school. In this regard is the normatively established in Art. 6a, para. 4, item 3, letter "c" of the CPA authority and obligation of the Minister of Education and Science to carry out activities for prevention and solution of the problem with students who do not attend school. The realization of these powers requires the availability of timely and reliable information, which is crucial for taking adequate measures and implementing policies in this area. On the other hand, unjustified absences from school are a prerequisite for violating the vital interests of students themselves and society as a whole, given the risk of early school leaving and social exclusion, including risk to their lives and health. Last but not least, the significant public interest in taking effective measures to overcome the cases of fictitiously enrolled students, inequality in the fulfillment of the obligation to attend school by all students of compulsory school age, as well as rational and lawful spending should be noted. of financial resources for education. In view of the above, Ms. Mihaylova asks the CPDP for an opinion on whether the installation of input and output cameras for facial recognition, related to the electronic diary of PGKIT, P., violates the provisions of the Personal Data Protection Act and the requirements of Regulation (EU) 2016/679 of the European Parliament on the protection of individuals with regard to the processing of personal data. Attached to the request for an opinion is a report from the school principal, as well as declarations of disagreement with the installation of video cameras for facial recognition. Legal analysis: In connection with the mass penetration of video surveillance in all spheres of life, the issue of protection of privacy is becoming increasingly important. In the spirit of the dynamic development of technology, the role of video surveillance in everyday life is constantly increasing due to its accessibility and applicability. Until recently, video surveillance systems were a priority for special sites, bank offices and large enterprises, but today they are used to guard schools, housing estates, hospitals, hotels, offices, shops and more. The risks of excessive intrusion and personal privacy of individuals are further increased by linking video surveillance with facial recognition technologies, which are based on algorithms and processes of artificial intelligence and which create conditions for automated decision-making with important consequences for data subjects. Regulation (EU) 2016/679 (General Data Protection Regulation), which applies directly from 25 May 2018, is the normative act laying down rules relating to the protection of individuals with regard to the processing of their personal data. data and on the free movement of such data within the EU. Within the meaning of Art. 4, item 1 of the General Regulation, "personal data" means any information relating to an identified natural person or a natural person who may be directly or indirectly identified.

The implementation of video surveillance is an action for processing personal data within the meaning of Art. 4, item 2 of the Regulation, namely an operation or set of operations performed with personal data or a set of personal data by automatic or other means such as collection, recording, organization, structuring, storage, adaptation or modification, extraction, consultation, use, disclosure by transmission, dissemination or other means of making the data accessible, arranging or combining, restricting, deleting or destroying it.

Certain categories are by their nature particularly sensitive to the fundamental rights and freedoms of individuals and special protection is provided for them. These include "biometric data", which by virtue of Art. 4, item 14 of the General Regulation are personal data obtained as a result of specific technical processing, which are related to the physical, physiological or behavioral characteristics of a natural person and which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data. Recital 51 in the preamble to the Regulation states that when photographs or video recordings are processed by special technical means allowing the unique identification or authentication of an individual, biometric data processing takes place. Undoubtedly, facial recognition systems fall into this hypothesis.

The processing of personal data should be carried out in accordance with the principles of Art. 5 of the General Regulation, including the principles of legality, necessity and proportionality.

The General Regulation prohibits the processing of special categories of personal data, including "biometric data", except in cases where there are any of the explicitly stated exceptions under Art. 9 (2) of the Regulation. Possibly applicable hypothesis in the case under consideration could be the one under Art. 9, para. 2, p. "G" - processing is necessary for reasons of overriding public interest based on Union law or the law of a Member State, which is proportionate to the aim pursued, respects the nature of the right to data protection and provides for appropriate and concrete measures to protect fundamental rights and the interests of the data subject. The threshold for justifying the proportionality of the processing of sensitive data is even higher when the data subjects are children, as is the case here.

The installation of input-output cameras for facial recognition, connected to the electronic diary of the school, aims at prevention and effective control of absences due to disrespectful reasons of students and more generally prevention of early dropouts from the education system, overcoming cases of fictitiously enrolled students, as well as the rational and lawful spending of financial resources for education.

Without denying or diminishing the public importance of the pursued educational and social goals, they are not proportional to

the proposed extremely intrusive processing of sensitive personal data. For these reasons, the use of face recognition cameras at school is not responsible for the mandatory requirements of the General Regulation on the lawfulness and proportionality of the processing of personal data. In this regard, the socially useful goals envisaged by the RWU - P. at the Ministry of Education and Science should be realized in other ways than by processing biometric data of children.

In addition to the above, according to the provisions of Art. 22, para. 1 of the General Regulation, the data subject has the right not to be the subject of a decision based solely on automated processing, including profiling, which has legal consequences for him or similarly affects him significantly. Connecting facial recognition cameras to the school's electronic diary suggests a similar hypothesis of an automated solution. In order to be admissible, it must be provided for in the legislation or be based on the explicit consent of the data subject, respectively of his / her parent or guardian. In the specific case, explicit declarations were submitted, with which the parents refused to take pictures of their children through video surveillance cameras.

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

OPINION:

1. The processing of personal data through the installation of input-output cameras for facial recognition, related to the electronic diary of PGKIT "D.I.B.", P., contradicts the mandatory requirements of Regulation (EU) 2016/679 for legality and proportionality, in particular of Art. 5, Art. 9 and Art. 22 of the Regulation.

2. Achieving the goal of prevention and effective control of absences for disrespectful reasons of students in PGKIT "DIB" should be realized in other ways that do not require processing of special categories of personal data.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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