

Decision on appeal with registration № PPN-01-554 / 10.07.2018 DECISION» PPN-01-554 / 2018 Sofia, June 25, 2019

Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 05.09.2018, based on Art. 10, para. 1, item 7 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 / General Regulation), considered on the merits the complaint № PPN-01-554 / 10.07.2018 filed by IM The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint filed by IM, which alleges illegal processing of his personal data - two names, a public position and a personal mobile phone number ***** from the Association " FIGHTER. (BOEC) by publishing them on 03.07.2018 on the association's Facebook page available at *****. The applicant alleged that his personal telephone number had been distributed to an unlimited number of visitors to the page, to which he had unrestricted access, as a result of which he had received numerous messages on his personal telephone number from unknown persons with extremely obscene and degrading content. Considers that the actions of the association are in violation of its rights under the LPPD and constitute an interference in his personal life and violate his privacy, as published by the association mobile number is personal and not among the listed and publicly known phone numbers published on the website of the from him MTITC. Relevant evidence is attached to the complaint, including a reference from A1 Bulgaria EAD, evident from the content of which the procedural number "is the property of Mr. IM ". In the conditions of the official beginning of the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case on 12.07.2018, screen printouts were made of information published on the site **** concerning the subject of complaint PPN-01-554 / 10.07.2018, as well as screen printouts of information about the complainant published on the page of the BOEC Association in the social network Facebook, attached to Protocol № PPN-01-554 # 1 / 12.07.2018, according to the inventory of the CPDP. In order to assess the admissibility of the complaint and constitute parties to the proceedings, a reference was made to the register of non-profit legal entities maintained by the Ministry of Justice, which shows that the BOEC association is entered in the register under № **** with subject of activity : "To support the spiritual and intellectual realization of citizens through tolerance, mutual understanding, freedom of thought and speech, justice and equality, respect

for human beings, exchange of experience and development of communication between different social groups in society; - to promote the cooperation between the institutions, the non-profit organizations and the business circles for sustainable development and to assist in the expansion of the opportunities for direct participation of the citizens in determining the priorities for development of the separate regions and the country; - to support and implement initiatives for civil control over municipal, state and others. Authorities, by stimulating dialogue and reaching agreement on identifying needs and problems; to support social, economic and social development by strengthening the democratic foundations of civil society; to support the preservation of national and cultural heritage and build a highly developed national self-awareness, combined with a common European cultural identity; to promote the social cohesion of different social groups in order to overcome social differences and isolate and protect human rights; - to support the implementation of activities related to the rational use of national resources, ecology and development of individual regions and the country; - to encourage and support the free exchange of information and ideas with organizations with related activities; to support and implement initiatives in the field of business, social work, education, healthcare, environmental protection, social and ethnic integration; - to participate in the development and implementation of national and European programs and projects; to provide additional financial and material resources to achieve the goals and take all initiatives and carry out all activities in accordance with the laws of the Republic of Bulgaria. "In order to clarify the case from a legal and factual point of view with a letter PPN-01-554 / 13.07.2018, the association requested a written opinion and relevant evidence. In response, G.G. - Chairman of the Board of Directors of the association expresses a written opinion Reg. PPN-01-554 # 4 / 25.07.2018 for unfoundedness of the complaint. He informed that in his personal profile on the social network Facebook and in his personal capacity he published a post containing the mobile number of the complainant, actions which he claimed were dictated by feelings of solidarity with NK He added that the post was printed and shared by many sites, pages, media and subscribers of the social network. He considers that the claims against the BOEC association are unfounded, as there is a "reprinted text" on the association's website, which has already been published by him before and has become publicly and publicly known. He asserted that the information concerning the applicant's mobile number had been disclosed personally by Mr IM. at a pre-election meeting held in 2014 in the town of V. with citizens from constituencies. He claims that the practice of the European institutions "shows that the telephone numbers of public figures who are part of the high-level legislature and the executive, including MPs and ministers, are not personal data but a tool for contact and feedback from citizens, in their capacity as taxpayers with the senior officials to whom they pay their salaries, all

the more so when the deputies themselves and the candidates themselves announce their numbers to their constituents during the election campaign. ' Mr. G.G. considers that there has been no violation of the applicant's rights by the association and urges the Commission to terminate the administrative proceedings against the BOEC association. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and 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 Complaint № PPN-01-554 / 10.07.2018 contains the required details specified in the provision of Art. . 30, para. 1 of the PDKZLDNA, namely: there are data about the complainant, the nature of the request, date and signature, in view of which it is regular. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest. The subject of the complaint is the processing of personal data of the complainant by the Association BOEC in the amount of two names, public office and personal mobile number, in the case of their publication on the social network Facebook on the page of the association available at ***** and distribution to an unlimited number of people visiting the site. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD / respectively Art. 55, § 1 of Regulation (EU) 2016/679, considers complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data, and there are no exceptions under Art. 2, § 2, letter "c" and "d" and Art. 55, § 1 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities or activities performed by courts in the exercise of their judicial functions. The presence of a personal data controller is an absolute procedural prerequisite for the admissibility of the complaint. In the present case, the complaint is directed against the Association "B.O.EC", which in view of the evidence gathered in the file, including ex officio collected and statements made by the parties undoubtedly has the capacity of controller of personal data in respect of the complainant according to the definition given in Art. 4, § 7 of the Regulation. For the stated reasons and in view of the lack of prerequisites from the category of negative under Art. 27, para. 2 of the APC, at a meeting of the Commission held on 25.07.2018 the complaint was accepted as procedurally admissible and as parties to the proceedings were constituted: complainant - I.M. and the respondent party - the association "B.O.E.C. " (FIGHTER). The parties have been notified of the meeting scheduled for September 5, 2018 for consideration of the complaint on the merits. In order to clarify the case from the

factual point of view on 29.08.2018 a screen printout was made of information about the complainant published on the page of the BOEC Association in the social network Facebook, attached to Protocol № PPN-01-554 # 10 / 30.08.2018. , according to the inventory of the CPDP. Upon a check made on the same date on the website of the association, the existence of the procedural publication containing the telephone number of the complainant was not established. However, on 05.09.2019 it was established that a copy of the complaint submitted to the CPDP, subject to the present proceedings, published on the website of the association, without deletions or deletions on the document, which also shows the address of the complainant - *****. In the text below the document there is an invitation to the supporters of the association to attend the open meeting of the Commission for consideration of the complaint on the merits, for the date and time of which the association has published in full and a notification letter PPN-01-554 / 02.08. 2018, according to the inventory of the CPDP. At a meeting of the CPDP held on September 5, 2018, the complaint was submitted for consideration on the merits. The applicant - regularly notified, did not appear, did not represent himself. The respondent party BOEC Association - regularly notified, is represented by G.G. - Chairman of the Association. Members of the association are also present in the hall, without them participating in the meeting. The representative of the association does not point out new evidence, there are no evidentiary requests. He supports the opinion and the statements set out in it, which he repeats at the meeting. He specifies that he is the administrator of the BOEC Facebook page and the BOEC website. Confirms that on 04.09.2018 on the official website of the association was uploaded submitted by Mr. IM complaint to the commission, a fact that has been established ex officio. It does not consider that the association's actions infringe the applicant's rights and asks the Commission to dismiss the complaint as unfounded. 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 Code of Administrative Procedure, requiring the existence of established facts, given the written evidence gathered and the allegations of the parties, the Commission considers that considered on the merits of the complaint № PPN-01-554 / 10.07.2018 is justified. From the evidence gathered in the file, it was established and the parties do not dispute that the BOES Association has a profile on the social network Facebook, which is freely available and on which the association publishes information and materials related to the position of the association on all issues. It was found that the site is administered by the association, in particular by G.G. - Chairman of the Association. It is not disputed that on July 3, 2018, the page of the BOEC Association on the social network Facebook was published with the following content: "SHARE and help save one human life! Send an SMS to number ***** - Minister IM with the text "LIFE FOR BOSSIA!

RESIGNATION! Kolyo Bosiya has been on hunger strike for 21 days in protest against the mafia and the corruption that has taken over the Ministry of Transport and our country. Bacho Kolyo is ready to sacrifice his own life in this battle. And no one will hear it. The fight against evil and the battle to awaken civil society. He believes that the Bulgarians have a spark of pursuit of justice and is trying to ignite the fire of freedom from all this spark through his own self-sacrifice for all of us. To awaken the Bulgarian spirit and restore the faith in our souls that we can change our lives and our country for the better by facing the mafia that kills and robs us! Kolyo Bosiya will not give up and will not stop until his body goes out. The only way to save him and save his life is to help him achieve his goals. One of his goals is the resignation of Minister IM - directly responsible for corruption in the State Automobile Inspectorate and the Ministry of Transport, for the thousands of purchased driver's licenses, for the thousands of victims on the roads. For the thousands of Bulgarians who lost their lives because of the corrupt and incompetent rulers who turned our country into a cemetery! And we believe that there are vigilant and uncompromising Bulgarians who will stand by Kolyo Bosiya! That there are Men among us. FIGHTER, we stand by Bossia and thank everyone who has supported him so far! This is a common battle of the citizens against the mafia! Bow and respect to the spirit and strength of NK! A bow to you, brave Bulgarians, for the courage to stand next to him! "As can be seen from the official reference made and as of August 29, 2018, this information is available on the website of the association. Identical information on 04.07.2018 was published on the website of the association *****, where it was available as of 12.07.2018, and as of 29.08.2018 it is no longer available. The published information about the complainant is in the volume of two names, position and mobile number. It is not disputed between the parties, and evidence has established that the telephone number indicated in the publication is personal and is used by the complainant in a personal capacity and not in his capacity as a public figure, as contact numbers on the website of the head of Mr. IM Ministry listed other telephone numbers - **** and ****, which are different from his personal telephone number *****, specified in the publication. The long-standing practice of the CPDP in considering similar cases, confirmed by a court, is that information about the telephone number can be considered as personal data of a particular individual only in combination with other individual data of the person, such as full name, address, PIN. In the present case, according to the information thus provided, the telephone number together with data on the applicant - two names and a public office, may lead to the individualization of a particular individual. It therefore falls within the definition of personal data and therefore enjoys the protective effect of the Personal Data Protection Act and the Regulation. The dissemination of personal data of a natural person data subject, in particular the information about his personal mobile number,

is a form of processing of personal data according to the legal definition specified in Art. 4, para 2 of the Regulation, given the fact that the publication of such information is an operation through which the data have become available, in this case to an unlimited number of persons. With regard to the lawful conditions under which the processing of personal data is allowed, the provisions of Art. 6 of the Regulation, according to which the processing of personal data is lawful when there is at least one of the exhaustively listed and given alternative conditions for admissibility of processing. It is a well-known fact that at the date of publication of the information the applicant was the Minister of Transport, Information Technology and Communications and was a public figure. In this regard, the personal data relating to him - names, image and position held, enjoy a lower degree of protection than those of persons who are not public figures. However, the publication of information - names and position held, together with the complainant's personal telephone number, violates the privacy of the person, which even public figures undoubtedly have. By publishing this information - the complainant's personal telephone number on the association's Facebook page, which is publicly available, the data controller violated 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. The data - personal telephone number of the complainant were published and disseminated by the association in violation of Art. 6, § 1 of the Regulation - without the presence of any of the conditions for legality of the processing specified in the provision. As a result, the complainant's personal telephone number was available and distributed to an indefinite number of visitors to the association's Facebook page, and it should be noted that a reference to the website found that the publication had been shared 177 times. The allegations of the representative of the respondent party for lack of violation by the association are unfounded. Even if the published information is available and published by other users of the social network, contrary to what was stated by Mr. GG, the responsibility for the personal data published on the website of the association lies with the personal data controller, such as BOES. . The latter only determines the content of the materials published on the site and their compliance with the provisions of the General Regulation on Personal Data Protection, respectively is responsible for these actions. In this connection and with regard to the allegations of the respondent that the complainant provided / indicated his telephone number to the general public at a pre-election meeting in the town of V. with supporters, it should be noted that even so, given the circumstance that there is no evidence in this regard, it can not be considered a condition for legality for its publication on the administrator's page given the context in which it was published on Facebook and the call for short text messages for the resignation of Minister I.M. There is no evidence in the file of the

applicant's consent to the processing of his personal data by the association for the specific purpose. The conditions specified in Art. 6, § 1, letter "c", "b" and "e" of the Regulation, insofar as the processing is not necessary to comply with a legal obligation applicable to the administrator; it is not necessary for the performance of a contract to which the data subject is a party; not necessary for the legitimate interests of the administrator or third parties. The hypothesis of Art. 6, § 1 (d) of the Regulation, given the fact that data processing cannot be justified as necessary to protect the vital interests of other individuals, much less those of the data subject, Mr I .M. From the evidence gathered in the file, the conclusion of inapplicability in the specific case and the provision of Art. 6, § 1, letter "e" of the Regulation insofar as the processing / distribution of the personal telephone number of the person, be it a public figure, is not necessary to perform a task that has the characteristics of such in the public interest. and the fact that at the time of the statement the information on the applicant's personal telephone number was freely available on the association's Facebook page by an unlimited number of persons, the Commission considered it appropriate to order the association to of personal data - personal telephone number of the complainant with the provisions of the Regulation, removing from his Facebook page the information concerning the personal telephone number of the complainant. The regulation in art. 58, §2, letter "i" allows the possibility for the same violation to be imposed simultaneously in addition to the above corrective measure and to engage the administrative-criminal liability of the offender by imposing an administrative penalty - in this case a sanction.

In this connection, the Commission considers it appropriate and effective to impose on the association a sanction for processing the personal data of the complainant in violation of Art. 6, § 1 of the Regulation in the period from the publication of the information on its Facebook page and until the moment of ruling with this decision. The Commission considers the same to be appropriate as the imposition of a sanction as a corrective measure has a different function from the corrective measure under point (d) and while the injunction aims to put an end to the infringement, the imposition of a sanction has a rehabilitative and dissuasive function. As a purely sanctioning measure, a reaction of the state to the violation of the statutory rules, the property sanction has a disciplinary effect, especially since the administrator has not taken any measures to eliminate the violation within two months, and so far, despite that he is informed about the initiated proceedings. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided for in the Regulation and arising from his subject of activity, human and economic resources. In the specific case, however, the neglect of the rules in the field of personal data protection by the controller is evident, as a result of which the rights of the person referring to the

CPDP have been violated. In support of the above are the actions of the administrator to publish without legal basis in full the complaint referred to the Commission on the website of the association, which action, although not the subject of the present proceedings is related to it and shows a clear and unambiguous attitude of the administrator to the rules for processing personal data.

In determining the amount of the sanction, the Commission took into account that the infringement was first for the controller of personal data, and that the personal data concerned were not sensitive within the meaning of the law and that it violated the rights of an individual. An aggravating circumstance was the fact that the information was published on a social network and was available to an unlimited number of persons, as well as the fact that the dissemination of data and their accessibility led to negative interference in the complainant's personal sphere. It is not a simple act, it is harmful. The fact that the administrator did not take action to terminate the violation is also consistent.

Guided by the above, the Commission for Personal Data Protection,
HAS DECIDED AS FOLLOWS:

1. Announces complaint PPN-01-554 / 10.08.2018 filed by IM against the B.O.E.C.
2. On the grounds of art. 58, § 2, letter "d" and for violation of Art. 6, § 1 of EU Regulation 2016/679 orders the Association "BOEC" in its capacity as controller of personal data to comply with the operations of personal data processing - personal telephone number of the complainant with the provisions of the Regulation, within 7 days of entry is the force of the decision, deleted from its Facebook page the information concerning the complainant's personal telephone number, the implementation of which to notify the Commission and provide evidence.
3. On the grounds of art. 83, § 5, letter "a" in connection with "Art. 58, § 2, letter "i" of the Regulation imposes on the association BOEC with Bulstat *****, with registered office and address **** administrative penalty - property sanction in the amount of BGN 1,500 (one thousand five hundred levs)) for processing the personal data of the complainant in violation of Art. 6, § 1 of the Regulation.

After the entry into force of the decision, the amount of the imposed penalty to be paid in cash at the box office of the Commission for Personal Data Protection, located in Sofia, Blvd. "Prof. Tsvetan Lazarov "№ 2 or transferred by bank transfer: Bank of the BNB - Central Office, IBAN: BG18BNBG96613000158601, BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court - Sofia.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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