Home »Practice» Opinions of the CPDP for 2020 »Opinion of the CPDP on the processing of personal data by the Supreme Bar Council for the purposes of disclosing decisions on disciplinary proceedings Opinion of the CPDP on the processing of personal data by the Supreme Bar Council for The purposes of disclosure of decisions on disciplinary proceedings OPINION OF THE COMMISSION FOR PERSONAL DATA PROTECTION Reg. № PNMD-01-82 / 2020 Sofia, 24.09.2020 SUBJECT: Court and Disciplinary Courts at the Bar Associations The Commission for Personal Data Protection (CPDP) composed of - Chairman Ventsislav Karadzhov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a regular meeting held on 16.09.2020, considered a letter with ent. . № PNMD-01-82 / 10.08.2020 by the Chairman of the Supreme Bar Council with a request to the CPDP to express an opinion on the grounds of Art. 57, para. 1, letter “c” and Art. 58, para. 3, letter “b” of Regulation (EU) 2016/679, in connection with Art. 51, item 2 of the Rules of Procedure of the Commission for Personal Data Protection and its administration on the following issues: “1. Is it lawful and admissible under the conditions of Art. 6, para. 1, p. "E" and b. "C" of Regulation (EU) 2016/679, the Supreme Bar Council as a controller of personal data processing personal data within the meaning of Art. 10 of the ORZD, on grounds applicable to the administrator, for legality of processing (Art. 6, para. 1, letter “c” of Regulation 2016/679 EU, in conjunction with ZA, section II of ZA), for the purposes of implementation of the decisions of the General Assembly of Lawyers of the country, held on 22.02.2020, under the Law on Advocacy, to process personal data related to convictions and violations of lawyers in the form of publishing and publishing them on the Internet on the website (website) of the Supreme Bar Council with address www.vas.bg, in the menu “Official entrance”, and in general, of the decisions rendered in disciplinary proceedings under the Law on Advocacy (motives and operative part with deleted personal data of lawyers), of the Supreme Disciplinary Court and the Disciplinary Courts of the Bar Associations, which impose disciplinary sanctions on disciplinary accused lawyers, and to which section all registered lawyers, who currently number more than 13,500, have access. registered access through the use of two-factor protection (password and unique username and QES), and if it applies the technical means for anonymization of data in accordance with Opinion 05/2004 of the Working Group under Art. 29, adopted on April 10, 2014? 2. Is it lawful and admissible under the conditions of Art. 6, para. 1, p. "E" and b. "C" of Regulation (EU) 2016/679, the Supreme Disciplinary Court through its chairman, without being a controller of personal data, but processing personal data within the meaning of Art. 10 of the ORZD, on grounds applicable to the administrator for legality of the processing (Art. 6, para. 1, letter “c” of Regulation 2016/679 EU, in conjunction with ZA, section II of ZA), for the purposes of implementation of the decisions of the General Assembly of Lawyers of the country, held on 22.02.2020, under the

Law on Advocacy, to process personal data related to convictions and violations of lawyers in the form of publishing and publishing them on the Internet on the website (the website) of the Supreme Bar Council with address www.vas.bg, in the menu “Official entrance”, and in its entirety the decisions (motives and operative part with deleted personal data of the lawyers) issued in disciplinary proceedings under the Law on Advocacy, of the Supreme disciplinary court and the disciplinary courts at the bar associations, which impose disciplinary sanctions on disciplinary accused lawyers, and to which section all registered lawyers, who currently number more than 13,500, have access, after re registered access through the use of two-factor protection (password and unique username and QES), and if it applies the technical methods for anonymization of data, in accordance with Opinion 05/2004 of the Working Group under Art. 29, adopted on April 10, 2014? “Legal analysis: In the provision of art. 4, item 7) of Regulation (EU) 2016/679 defines the definition of the term "administrator", which means a natural or legal person, public authority, agency or other entity that alone or jointly with others determines the purposes and means of processing of personal data; where the purposes and means of such processing are determined by Union law or the law of a Member State, the controller or the specific criteria for determining it may be laid down in Union law or in the law of a Member State. According to Art. 117 of the Bar Act (LA) The Supreme Bar Council is a legal entity based in Sofia. With the provisions of art. Art. 118-125 of the LA regulates its composition, activity and management. As can be seen from the above norms, the Supreme Bar Council processes personal data in pursuance of the objectives of Art. 122 of the LA, which introduces an exhaustive list of activities of this body. It can be reasonably assumed that the Supreme Bar Council is a controller of personal data on its own basis and as such may process personal data in compliance with the requirements of Regulation (EU) 2016/679. The activity of the Supreme Disciplinary Court and the disciplinary courts at the bar associations is regulated by the provisions of Art. Art. 128-146 of ZA. As separate structures of the professional organization, charged by law with specific, strictly regulated tasks, the Supreme Disciplinary Court and disciplinary courts also have grounds to be defined as separate administrators who determine which categories of personal data to process in view of their powers. The penalties that the Supreme Disciplinary Court may impose are exhaustively listed in Art. 133, para. 1 of the LA, as follows: 1. reprimand; 2. a fine of one to eight minimum wages; 3. deprivation of the right to be elected in the bodies of the Bar for a term of one to three years; 4. deprivation of the right to practice law for a period of 3 to 18 months; 5. deprivation of the right to practice the legal profession for a period of up to 5 years in case of repeated violation. The publication of disciplinary decisions on the official website of the Supreme Bar Council is an activity related to the processing of personal data, which can be defined as joint

between the Supreme Bar Council, as owner of the site and the Supreme Disciplinary Court and disciplinary courts as structures. ruled the decisions. The purpose of publishing the practice in disciplinary cases is general - to inform the members of the bar how decisions are made by the Supreme Disciplinary Court and disciplinary courts and what is their practice over the years. Here a significant distinction should be made for the purpose of promulgation of decisions on disciplinary cases within the meaning of Art. 144 of the LA, according to the provisions of which the Bar Council enters the disciplinary sanction in the file of the lawyer or the lawyer of the European Union and sends a copy of the decision of the Supreme Bar Council to be noted in the Unified Register of Lawyers, and the President of the Supreme Bar Council actions for promulgation in the State Gazette of the decision imposing a disciplinary sanction under Art. 133, para. 1, item 4 and item 5 of ZA. An important element of the procedure for promulgation of decisions on these two points is that although issued by the Supreme Disciplinary Court, they are moved for promulgation by the Supreme Bar Council through its chairman. Decisions imposing penalties under Art. 133, para. 1, items 1-3 of the LA. The promulgation of the decision in the State Gazette is a form of execution of the sentence. According to Art. 237 of the Law on Execution of Punishments and Detention in Custody (LESD) the penalty of deprivation of the right to exercise a certain profession or activity is executed by the bodies that recognize this right and control its exercise and by the heads of institutions, enterprises and organizations where the convicts work. If the convicted person exercises a profession or activity from which he is deprived of the right to exercise, the head of the institution, enterprise or organization shall release him immediately. Given the differentiation of the objectives, the publication of the decisions of the Supreme Disciplinary Court and the disciplinary courts in a special section with controlled access on the website of the Supreme Bar Council is data processing, which can be done on the basis of Art. 6, para. 1, p. (e) of Regulation (EU) 2016/679 (processing is necessary for the performance of a task in the public interest). The activity of the courts in question falls within the scope of Art. 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), insofar as they are delivered by decisions as a professional disciplinary body and in this sense is the settled case law of the European Court of Human Rights (ECtHR). Compte v. Belgum, A 58 (1983); 5 ECHR 533 § 29). Such a ruling should meet the requirements of a fair trial in a democratic society. Elements of the fair process are like the obligation to ensure a public hearing of punishments, because the competent bodies to rule are qualified as criminal for the purposes of Art. 6 of the ECHR (same case as Verns v. France (2011), Hurter v. Switzerland (2005), but also to persons who may be subject to prosecution before these authorities, to ensure predictability of law and practice , on the basis of which their cases will be decided, their right to appeal against

decisions before a "classical" court and the publicity of the decisions rendered. The obligation of publicity of acts is not exempt according to the case law of the ECtHR, which states that publicity of decisions can be achieved both by providing access to them through a record keeping system or register, and by summarizing the decision of the trial court (Lamanna v. Austria (2001), Crociani v. Italy № 8603/79). In this sense, ensuring access to the decisions of the Supreme Disciplinary Court and the disciplinary courts for persons whose cases may and be entrusted to the same, will allow their pronouncements to meet the requirements of Art. 6 of the ECHR, which in itself includes the implementation of a task of public interest for the purposes of justice.With regard to the promulgation of the decisions under Art. 133, para. 1, item 4 (deprivation of the right to practice law for a period of 3 to 18 months) and item 5 (deprivation of the right to practice law for up to 5 years in case of repeated violation) of the LA there is a legal obligation in accordance with Art. 6, para. 1, p. (c) of Regulation (EU) 2016/679, but it does not cover processing for the purpose of publishing on the website of the Supreme Bar Council itself, moreover, not all disciplinary decisions should be made public, while all decisions will be published .

Within the meaning of Art. 148 of the LA, the Supreme Bar Council keeps unified law registers for lawyers, junior lawyers, law firms and foreign lawyers and it is in these registers that disciplinary sanctions are entered after receiving the relevant disciplinary decision and, subject to these conditions, the decisions are send for promulgation. According to Art. 149 of the LA, the lawyer's registers are public and therefore everyone interested has the opportunity to be informed about the disciplinary sanction imposed on a lawyer, and depending on the sanction imposed, this information is also available in the State Gazette. In this sense, the publication on the website of the Supreme Bar Council of a decision with deleted personal data of the punished person, aims not to disclose the specific violation of a particular person, what information is publicly available in one way or another, but to promote the decision without focus on the data of the individual.

The method of promotion - by publishing on the website of the Supreme Bar Council, but after anonymizing the decision, implies that personal data will be processed before, not by publishing. Anonymisation of data in publication decisions is a good practice in view of the purpose (awareness of the practice of disciplinary courts) and should be done in a way that does not allow further identification of specific individuals. This means that any information that would lead to the identification of the data subjects concerned should be deleted. Anonymisation is a widely applicable practice in publishing case law within the meaning of Art. 64, para. 3 of the Judiciary Act. Controlled access to the specialized section of the site is also an appropriate measure for data protection if the purpose is related only to the awareness of the members of the bar and not of the whole

society. An assessment of this is made by the controller, insofar as they determine the purposes and means for the processing of personal data.

As the decision to publish the practice in disciplinary cases was taken by the General Assembly of Lawyers in the country, one more clarification should be made. The specific decision reads as follows:

"The General Assembly of Lawyers of the country to oblige the President of the Supreme Disciplinary Court to publish the practice of disciplinary courts and the Supreme Disciplinary Court in a certain place on the website of the Supreme Bar Council, given the full text of the reasons, deleted data and the decisions of the court meetings, which are held twice a year. "

As can be seen from the above, the President of the Supreme Disciplinary Court, and not the Supreme Bar Council, was instructed to publish the decisions discussed above, and the processing of personal data is specified in the decision of the General Assembly of Lawyers in the country. . In view of the same and given the fact that the Supreme Disciplinary Court processes the data from its decisions on its own grounds, there is no legal obstacle to delete the data from the same body and the decisions to be submitted for publication to the Supreme Bar Council after deletion. publishing documents will not contain personal data. It is important to keep in mind that in case of data deletion, ie. anonymization of the information, the subsequent disclosure does not constitute the processing of personal data, as they no longer appear in the published document. In this sense, there is no legal impediment to making decisions accessible even to a wider range of stakeholders, including the impediment to disclosing additional information that cannot specifically identify the person (for example, the bar to which the convicted person belongs). ).

The fact that the Supreme Bar Council processes the same data, including from the disciplinary courts of the bar associations for the purpose of entering them in the unified registers, is also an independent ground for processing. Both the Supreme Bar Council and the Supreme Disciplinary Court may objectively proceed to anonymize decisions by deleting personal data in them for the purposes of the public interest in promoting the practice of the court in question. The technical uploading of the already anonymized personal data by the President of the Supreme Disciplinary Court on a website maintained by the Supreme Bar Council, by its characteristics does not fall within the legal definition of activities carried out by "personal data processor" under Art. 4, item 8 of Regulation (EU) 2016/679, insofar as in these cases the President of the Supreme Disciplinary Court will not act on behalf of the Supreme Bar Council.

It is important to clarify that insofar as the decisions aimed at publication will be completely deleted personal data and will not

allow the identification of the individual by reverse, this specific processing (disclosure by disclosure) does not fall into the material scope of art. 10 of Regulation (EU) 2016/679, insofar as it will not include personal data.

The analysis is based entirely on the long-standing practice of the CPDP related to the processing of personal data of data subjects, as well as on the case law on complaints in this matter and the guidelines of the European Data Protection Board in this regard. The opinion of the CPDP has an advisory nature for the controller of personal data in applying the relevant legal norms. This opinion has only an explanatory character on the application of the norms commented in it, without creating rights and / or obligations for the interested parties. Pursuant to Regulation (EU) 2016/679 - General Regulation on Data Protection, the controller of personal data alone or jointly with another controller determines the rules and procedures for data processing, which must comply with the law and the Regulation. The rules of accountability, transparency, good faith and the norms related to administrative and criminal liability regarding the legality of the processing carried out by him / her shall apply to the data processing actions taken by the controller or joint administrators.

In connection with 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. There is no obstacle for the Supreme Bar Council and / or the Supreme Disciplinary Court to process anonymized personal data related to convictions and violations of lawyers in the form of their publication on the website of the Supreme Bar Council at www.vas. bg, in the menu “Official entrance” on the grounds of art. 6, para. 1, p. e), in compliance with the basic principles within the meaning of Art. 5 of Regulation (EU) 2016/679.

2. By analogy with Art. 64, para. 3 of the Judiciary Act, published decisions in full, issued in disciplinary proceedings under the Bar Act, should be done in a way that does not allow the identification of individuals mentioned in these acts, after registered access, using two-factor protection (password and unique username and QES).

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

Maria Mateva / p /

Veselin Tselkov / p /

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