

Home »Practice» Opinions of the CPDP for 2018 »Opinion of the CPDP on issues related to the introduction of video surveillance in kindergartens (nurseries and kindergartens), as well as in schools Opinion of the CPDP on issues related to the introduction of video surveillance in kindergartens (nurseries and kindergartens), as well as in schools OPINION OF THE COMMISSION FOR PROTECTION OF PERSONAL DATA Reg. № P - 5375/2017, Sofia, 30.04.2018 REGARDING: Request with ent. № P-5375/2017 by the Chairman of the State Agency for Child Protection, on issues related to the introduction of video surveillance in kindergartens (nurseries and kindergartens), as well as in schools. The Commission for Personal Data Protection (CPDP, the Commission) composed of: members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on March 28, 2018, considered a file with ent. № P-5375/2017 by the Chairman of the State Agency for Child Protection (SACP), in which he states that the SACP has received a letter with ent. № 04-22-11 / 29.06.2017, by Ms. Svetlana Yordanova - Deputy Minister of Health, with a request to express an opinion on the introduction of video surveillance in kindergartens / nurseries and kindergartens / and whether this will violate children's rights. The Chairman of the SACP asks, in connection with his competence, the CPDP to express an opinion on the topic. The request states that for the State Agency for Child Protection it is of paramount importance that the rights of every child in the Republic of Bulgaria are guaranteed and protected and believes that fruitful cooperation between institutions will fully ensure the rights and interests of children. A copy of a letter with ent. № 04-22-11 / 29.06.2017 and a response from the SACP to the Ministry of Health. In his letter, the Deputy Minister of Health noted that the issue of video surveillance of children in kindergartens has recently been announced and commented on in various media, in order to improve the security and transparency of care, as well as to resolve conflicts in the upbringing of children. children in kindergartens. In this regard, the Ministry of Health has received a number of letters from parents and medical professionals with questions on the topic under discussion. In connection with the above, a copy of an open letter was sent to the CPDP by the staff of 31 nurseries in Sofia, requesting an opinion, given the competence of the SACP, whether video surveillance can be considered a violation of the rights of healthy children or children with disabilities, in carrying out daily activities conducted in nurseries and under what conditions. The proposal to install video surveillance in nurseries is a result of the reaction of specific parents, widely covered in the media. Quite naturally and justifiably, this provoked a reaction from the management and staff of the nurseries not only in the capital, but throughout the country. When considering an administrative file and a thorough analysis of the legislation, the initial conclusion that can be made is that at the moment there is no clarity and specific regulations for the issues raised in the request. Due to the great public interest and

in view of the fact that the State Agency for Child Protection, the Ministry of Health and the Ministry of Labor and Social Policy are directly involved in the case, a request was made for an opinion to the heads of the above departments. The Ministry of Health expressed the following opinion: The structure and operation of crèches is regulated by the provisions of Ordinance № 26 of 2008 on the structure and operation of crèches and kitchens and health requirements for them. The requirements for kindergartens are regulated by the provisions of the Regulations for the implementation of the Public Education Act and Ordinance № 3 of 2007 on the health requirements for kindergartens. At present, the provisions of the above-mentioned by-laws do not regulate the implementation of video surveillance in nurseries and kindergartens. Legal analysis: The issue of lawful video surveillance has been repeatedly raised by the CPDP, in accordance with the imposed regulatory powers as a national supervisory authority to protect individuals in the processing of personal data. At present, the work of the Commission on this issue is reflected in decisions on complaints of citizens, opinions on the application of the Personal Data Protection Act (PDPA), answers to questions and issued Penal Decrees. The practice of the CPDP on the topic of video surveillance in recent years shows that with the development of technologies on a national and global scale, technologies in the field of video surveillance systems are also developing. By installing different types of video surveillance systems, widely available on the market, individuals and legal entities are given the opportunity to monitor various subjects and objects, both locally and through remote access to output images from video cameras and video recordings. This development of technologies and their indirect impact on public and private life cannot be ignored by the Commission when deciding on the legality and admissibility of video surveillance. Due to the fact that in Bulgaria video surveillance, as a type of personal data processing is not regulated in detail, when considering individual cases, the CPDP also analyzes international legislation and practice related to personal data processing through video surveillance. When performing video surveillance, as a type of technical form of personal data processing, which is becoming more accessible and easily applicable in various areas of modern life, there is a need for detailed regulations. In connection with the mass penetration of video surveillance in all spheres of life, the issue of protection of privacy and privacy is becoming increasingly important. In general, the basic principles of privacy and family life are enshrined in a number of European and international acts - the Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, Convention 108 of the European Parliament on the protection of individuals automated processing of personal data, as well as the latest European legal act with direct effect in the Member States - 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 and repealing Directive 95/46 / EC (General Data Protection Regulation / GeneralDataProtectionRegulation (GDRP)). a general objective of respect for the rights and fundamental freedoms of every natural person, and in particular his right to privacy regarding the automated processing of personal data relating to him. Video surveillance as a type of automated processing of personal data falls under the regulation of this convention. Detailing of the general principle of privacy and family life has been achieved in the General Data Protection Regulation, as a basic legal act governing the protection of personal data in the European Union. The application of Regulation (EU) 2016/679 has been suspended, namely: from 25 May 2018. Simultaneously with the above legal acts, in relation to the category of subjects (children and adolescents), the provisions of the UN Convention on the Rights of the Child guarantee the right of children to privacy. A normative study found that individual countries in the European Union have regulated the issue of video surveillance in different ways - through laws, guidelines, opinions. This has necessitated the adoption of common rules in the euro area in view of diversified practices. The Working Group on Article 29 of Directive 95/46 / EC has a key role to play in harmonizing practice across Member States. A working document on the processing of personal data through video surveillance was prepared at a meeting of WG 29. WG 29 also has "Opinion 4/2004 on the processing of personal data by video surveillance" in this regard. Issues related to video surveillance can be analyzed in several directions: - Protection of life and health of persons subject to video surveillance; - Public interest; - Detection, prevention and control of violations / crimes; - Protection of property; - Other legitimate interests. The conclusion that can be made is that when using technical means of video surveillance it is extremely important to apply the principles of adequacy and proportionality in the processing of personal data through video surveillance: - First of all, this is the quality of data processed. Images from video cameras, as well as video recordings stored on different types of media, must be processed in good faith and lawfully, for specific and specific purposes; - Given the above regarding the lack of specific regulations in relation to the request for an opinion, it is necessary to meet at least one of the following conditions: protection of important vital interests of data subjects, performance of a task performed in the public interest; - Thirdly, these are the right to information, the right of access and the right to request correction by the person subject to video surveillance; - Last but not least is the need to take sufficient technical and organizational measures to protect personal data processed through video surveillance systems. The fact is that currently no regulation has been created to specify rules for installation and implementation of video surveillance systems, both in kindergartens (nurseries and kindergartens) and in schools. These

actions constitute actions for processing personal data within the meaning of § 1, item 1 of the Additional Provisions of LPPD, as well as the legal definition, written in Art. 4, item 2) of Regulation (EU) 2016/679. Only the provisions of Regulation (EU) 2016/679 (applicable from 25 May 2018) will be referred to below. The processing of personal data, in this case by video surveillance, may be carried out in the presence of one of the hypotheses described in Art. 6 of Regulation (EU) 2016/679 and in strict compliance with the principles referred to in Art. 5 of the Regulation. In the specifically considered case, two of the alternatively listed preconditions for legality of the processing, described in Art. 6 of Regulation (EU) 2016/679, namely: Art. 6, para. 1, letter d) - the processing is necessary in order to protect vital interests of the data subject or of another physical, as well as art. 6, para. 1, letter e), proposed first, processing is necessary to perform a task of public interest. The argument in the request for an opinion on the need to introduce video surveillance to improve the security and transparency of care, as well as to resolve conflicts in the upbringing of children in kindergartens and schools, is a valid motive to protect life and health of the most vulnerable category of society as a whole - children and minors Bulgarian citizens. In this sense, the relevance of the above provision of Art. 6, para. 1 (d) of Regulation (EU) 2016/679 is directly related to the analyzed case. Simultaneously with what has been stated so far, the issue under consideration is also the result of the reactions of many parents, widely covered in the media. In this case, the public interest in introducing transparency in the care of children and adolescents should also be taken into account. When referring to the concept of "public interest" it is necessary to take into account the fact that it is an abstract legal, political, philosophical and socio-economic category, the content of which depends on the state of society at a particular historical moment and individual interests of individual members of society. In practice, the issue of security, life and health of Bulgarian children and students is of paramount importance to society as a whole. Therefore, the provision of Art. 6, para. 1, letter e), proposed first of Regulation (EU) 2016/679 is also a legal prerequisite for the processing of personal data by video surveillance. Apart from the above, it is important to note that given the specifics of nurseries and kindergartens (the young age of children, identifying them as one of the most vulnerable groups), shared sleeping and playing rooms, and shared bathrooms, the introduction of video surveillance in children's recreation and personal hygiene facilities are contrary to their rights. In order to protect the personal rights of children, it is excluded to place one in the dormitories, as the devices available in these premises do not give children the right to privacy and preservation of their personal dignity, and is a violation of the right to privacy. the personality. This would create preconditions for excessive interference in their personal lives, in violation of Art. 16 of the UN Convention on the Rights of the Child. According to the provision, space in children's services and institutions

must be provided to guarantee the privacy of children, which is why round-the-clock surveillance of their private rooms is inadmissible. Permanent video surveillance in common areas and yards is permissible, which will ensure the safety of children and students during games, activities and in their free time. Such monitoring is permissible only to be applied to the places of activities, if they are separated from the places of sleep and rest, and in the common parts of the building. Apart from the above normative analysis of the legal preconditions in connection with the case, it is necessary to take into account the obligations and responsibilities of data controllers, who should comply with the actions of personal data processing through video surveillance systems with new standards of protection. personal data entered by the provisions of Regulation (EU) 2016/679. According to Art. 24 of the General Data Protection Regulation, taking into account the nature, scope, context and purposes of the processing, the controller should put in place appropriate technical and organizational measures to ensure and at all times be able to demonstrate that the processing is carried out in accordance with the rules of the Regulation. In the specific case, already at the stage of construction of video surveillance systems, the risks with different probability and severity for the rights of individuals subject to video surveillance should be taken into account and appropriate measures (technical and organizational) should be introduced to ensure lawful conduct. of processing activities. In this way the requirements of art. 25 of the Regulation - data protection at the design stage and by default. In this case, it is important to note that the requirements for lawful and conscientious processing of personal data in accordance with the rules of the General Data Protection Regulation also apply to personal data processors who will process data on behalf of data controllers (eg third parties who will maintain video surveillance systems). If in the course of the data processing activities for the controllers there is a need to use the services of a personal data processor, the relations and responsibilities should be settled in accordance with the provisions of Art. 28 of Regulation (EU) 2016/679. An important obligation for administrators is introduced by Art. 30 of Regulation (EU) 2016/679, according to which each administrator is obliged to maintain a register of processing activities for which he is responsible. In this case, for the purposes of the video surveillance of certain categories of persons, they should maintain a separate register "Video Surveillance", with the one exhaustively indicated in Art. 30 of the Regulation information. An important moment in connection with the lawful conduct of personal data controllers is the implementation of the provisions of Art. 12 and 13 of Regulation (EU) 2016/679 on the provision of the necessary information to data subjects, as well as notification of individuals about their rights in relation to the same regulation. indicate the persons who will carry out the video surveillance and will have access (local and remote) to the video frames and recordings of the video surveillance systems, the

clear indication of the scope of shooting and the areas where the technical means will be used, as well as contact data with the administrator. In the context of this case, administrators should inform the parents / guardians of children and underage students, as well as underage students, through information boards placed in a prominent place, about the use of technical means of video surveillance and control. In this way the actions of the administrators will be in compliance with the provisions of Art. 32, para. 2 of the Constitution of the Republic of Bulgaria, which stipulate that no one may be monitored, photographed, filmed, recorded or subjected to other similar actions without his knowledge. In connection with the above and on the grounds of Art. 10, para. 1, item 4 of the Personal Data Protection Act, the Personal Data Protection Commission expresses the following OPINION: From the point of view of personal data protection, the introduction of video surveillance in nurseries, kindergartens and schools is permissible in order to improve security and transparency care, as well as resolving conflicts in the upbringing of children in kindergartens and schools, as well as to protect the lives and health of the most vulnerable category of society as a whole - children and minors Bulgarian citizens. At the same time, the public interest in introducing transparency in the care of children and adolescents should be taken into account, as the issue of security, life and health of Bulgarian children and students is of paramount importance for society as a whole. The provisions of Regulation (EU) 2016/679 (General Regulation on Personal Data Protection - applicable from 25 May 2018) as well as the national legislation in force until 25.05.2018 should be applied in the specific case as a normative legal prerequisite. written in the Personal Data Protection Act. In this case, two of the alternatively listed prerequisites for legality of the processing, described in Art. 6 of Regulation (EU) 2016/679, namely: Art. 6, para. 1, letter d) - the processing is necessary in order to protect vital interests of the data subject or of another physical, as well as art. 6, para. 1, letter e), proposed first, processing is necessary to perform a task of public interest. In the current Personal Data Protection Act the provisions of Art. 4, para. 1, item 4 and item 5. In order to protect the rights of children and students, it is inadmissible to conduct video surveillance in sleeping rooms, bathrooms, rest rooms and personal hygiene of children, as the available devices in these rooms do not give children the right to privacy. and preservation of their personal dignity, as well as a violation of the right to privacy. It is permissible to carry out video surveillance in common areas and yards, which will ensure the safety of children and students during games, activities and in their free time. Such monitoring is permissible only to be applied to the places of activities, if they are separated from the places of sleep and rest, and in the common parts of the building. ) 2016/679, as well as to bring the actions for data processing by video surveillance in line with the new standards of personal data protection introduced by the provisions of the

Regulation, described in detail in the explanatory memorandum to this opinion. The controllers of personal data must inform the parents / guardians of the children and underage students, as well as the underage students through information boards, placed in a visible place, about the use of technical means for video surveillance and control. In this way the actions of the administrators will be in compliance with the provisions of Art. 32, para. 2, proposed first of the Constitution of the Republic of Bulgaria

Four members of the CPDP voted - Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva - for, Veselin Tselkov - against.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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