Home »Practice» Opinions of the CPDP for 2018 »Opinion of the CPDP with methodological guidelines to the judiciary with a view to the accurate and uniform application of the LPPD, Regulation (EU) 2016/679 and Directive (EU) 2016/680, in particular when publishing the acts of the judiciary and information about their activities on their official websites) 2016/680, in particular when publishing the acts of the judiciary and information about their activities on their official websites OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA reg. № NDMSPO-17-192 / 21.03.2018 Sofia, 02.05.2018 SUBJECT: Instructions to the judiciary with a view to the accurate and uniform application of the Personal Data Protection Act, Regulation (EU) 2016/679 and Directive (EU) 2016/680, in particular when publishing acts of the judiciary power and information about their activities on their official websites. The Commission for Personal Data Protection (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov, at a meeting held on 18.04.2018, considered a request for an opinion with ent. № NDMSPO-17-192 / 21.03.2018 by Ms. Tsvetinka Pashkunova - Chair of the Committee on Legal and Institutional Affairs (CPTB) at the Supreme Judicial Council (SJC). The request states that at a meeting of the said commission to the SJC item 11 was considered in connection with a letter from Mr. Lozan Panov - Chairman of the Supreme Court of Cassation (SCC), which appealed to the SJC to issue a normative act or instructions to all judicial bodies in the country, in view of the uniform and accurate processing of personal data of individuals in pre-trial and court proceedings, as well as magistrates and employees in the judiciary. The letter from the SJC notes that the council adopts bylaws in cases explicitly provided by law. Outside of these cases, he does not have the power to give binding instructions to the judiciary on the application of the law. It is added that the legislator has provided for a special body to exercise comprehensive control over compliance with regulations in the field of personal data protection, such as the Commission for Personal Data Protection (CPDP). According to the provision of art. 10, para. 1, item 5 of the Personal Data Protection Act (PDPA), the Commission shall issue mandatory prescriptions to the controllers in connection with the protection of personal data. It is stated that all bodies of the judiciary are registered controllers of personal data, and only the CPDP has the power to issue mandatory instructions to controllers in connection with the protection of personal data. The Supreme Judicial Council cannot give a binding interpretation of the LPPD, the General Regulation on Personal Data Protection (Regulation (EU) 2016/679) and the Directive on Personal Data Protection in Police and Criminal Affairs (EU Directive). 2016/680). In connection with the above and in pursuance of a decision of the CPIP under item 11 of Protocol № 7 / 12.03.2018, the SJC appealed to the CPDP to issue mandatory instructions to the judiciary in view of the accurate and uniform application of the

LPPD. , Regulation (EU) 2016/679 and Directive (EU) 2016/680, in particular when publishing acts of the judiciary and information on their activities on their official websites. Attached to the request for opinion are: 1. Extract from Minutes № 7 of a meeting of the CPIP, held on March 12, 2018; 2. Letter of the Chairman of the Supreme Court of Cassation (issued № I-153 / 26.02.2018) to the SJC; 3. Opinion of the Head of the Criminal Chamber of the Supreme Court of Cassation with registration № A-79 / 19.02.2018 The opinion presented as an appendix states that on the official website of the courts, judicial acts are published with deleted personal data of individuals , but on the website of the Supreme Court of Cassation official information is published on current lists of criminal proceedings under measures 20-22 (20. Monthly publication on the website of the Supreme Court of Cassation of the forthcoming cases related to corruption crimes; 21. Immediate publication 22. Monthly information through inquiries to the Supreme Judicial Council and the Ministry of Justice about the issued judicial acts in cases related to corruption crimes (41-43). Monthly publication on the website of the Supreme Court of Cassation of the forthcoming cases related to organized crime; 42. Immediate publication in the the website of the Supreme Court of Cassation on the Internet of the decisions rendered in cases of organized crime; 43. Monthly information through inquiries to the Supreme Judicial Council and the Ministry of Justice about the issued judicial acts in cases related to organized crime) of the Action Plan for implementation of the recommendations of the Report of the European Commission of January 2017 under the mechanism for cooperation and evaluation. The publication of these lists of cases is in implementation of Decision № 139 / 23.02.2017 of the Council of Ministers of the Republic of Bulgaria, which approved an action plan for 2017 for the implementation of these recommendations. Based on the said decision, an Order of the Chairman of the SCC № 474 / 01.03.2017 was issued for the mechanism for implementation of the adopted measures concerning the competence of the SCC. In the published lists the defendants initially appeared with their three names, but after a request from the defendant in criminal proceedings for deletion of her personal data, in the lists of criminal proceedings conducted in the SCC, which are published on the official website of the SCC, the names of the defendants publish only with personal name and surname. Thus, the lists from May 2017 to the present are published. It is added that the requests of defendants with a request to delete their personal data from information published on the website of the Supreme Court of Cassation are becoming more frequent. The opinion states that in order to guarantee the rights of individuals to the protection of their personal data, as well as the uniform and accurate application by all judicial authorities in the country of the LPPD, Regulation (EU) 2016/679 and Directive (EU) 2016 / 680, it is necessary to issue uniform instructions from the SJC, which should be binding on the judiciary. In these instructions, the SJC should also rule on

the question of whether the names of the panel of judges who issued the judicial act should be deleted. In many cases, these names have also been deleted, although it is emphasized that the composition of the court must always be public and known not only to the parties but also to the public. Legal analysis: In 2016, the European Parliament approved a new legal framework in the field of personal data protection - Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Regulation). on data protection) and the Directive on the protection of personal data in police and criminal matters (Directive (EU) 2016/680). Directive (EU) 2016/680 should be transposed into Bulgarian legislation by 6 May 2018. The regulation has been postponed - in practice it will start to apply on May 25, 2018, after all national measures have been taken. This act is binding and will be directly applicable in all countries of the European Union. The aim of the European co-legislators (Council of the EU and European Parliament) is to fully harmonize the understanding of the concepts in the field of personal data protection, the same level of their protection in the individual Member States, as well as to create equal conditions for personal data processing. individual sectors of public life. Successful implementation of Regulation (EU) 2016/679 requires cooperation between all actors in the field of personal data protection. Shortly after Regulation (EU) 2016/679 entered into force in 2016, the European Commission began working with Member States, national data protection authorities and stakeholders to prepare for the implementation of the Regulation, as well as to provide support and advice. . It is in the implementation of these actions that on 24.01.2018 the European Commission circulated a Communication (COM (2018) 43 final) to the European Parliament and the Council. The Communication draws particular attention to the fact that, in view of the direct application of Regulation (EU) 2016/679, a simplification of the legal environment is expected and the transposition of the Regulation into national law is unacceptable and cannot be used to add additional conditions or interpretations. with regard to the rules directly applicable under the Regulation. The European Commission explicitly reminds that when Member States do not take the necessary actions required by the Regulation or take advantage of the provisions of Regulation (EU) 2016/679 in a way that contradicts it, the Commission will use all the tools at its disposal, including recourse to infringement proceedings. The above clarification is important in view of the specific issues raised by the SJC. The new legal framework, Regulation (EU) 2016/679 and Directive (EU) 2016/680, lays down special rules regarding the processing of personal data by the judiciary. Article 55 (1) of the Regulation outlines the competence of the national supervisory authority to carry out the tasks and exercise the powers conferred on it under the Regulation in its own country. Simultaneously with the above, paragraph 3 of Art. 55 introduces a derogation according to

which the national supervisory authorities are not competent to supervise the processing activities carried out by the courts in the performance of their judicial functions. Recital (20) of the Preamble to the Regulation states that 'The competence of supervisory authorities should not cover the processing of personal data when courts act in the exercise of their judicial functions in order to ensure the independence of the judiciary in the performance of its judicial duties, including decision-making ". Similar provisions have been introduced in Art. 45 (2) of Directive (EU) 2016/680, as well as recital (19) of the Preamble to the Regulation, which clarifies the right to protection of personal data of individuals in connection with their processing by the competent authorities for the purposes of prevention, investigation, the detection or prosecution of crimes or the execution of imposed penalties. In the context of national law, the activity of courts in the performance of their judicial functions, including decision-making, is governed by the relevant procedural laws. In cases where the processing of personal data is necessary for the purposes of litigation, the supervisory competence of the national data protection authority is excluded. In these cases, according to recital (20) of the Regulation, "It should be possible to entrust the supervision of such data processing operations to special bodies within the judicial system of the Member State, which should in particular ensure compliance with the rules of the Regulation, to raise awareness among members of the judiciary of their obligations under the Regulation and to deal with complaints in connection with such data processing operations ". The fact is that at present at the national level there is no legally designated body within the judiciary to take over the functions set out in the Regulation and the Directive. A public discussion of the amendments to the Personal Data Protection Act the proposals of the interested parties from the system of the judiciary can be analyzed, adopted and written in the transitional and final provisions of the Amendments to the LPDP through additions to the special laws regulating the activity of courts in performing their judicial functions. Apart from the above, it is important to note that so far the Commission for Personal Data Protection, in accordance with the current rules of Directive 95/46 and the Personal Data Protection Act, has expressed an active position in relation to the lawful processing of personal data in activities related to justice. In 2014, the CPDP issued an Opinion Reg. the functions and the organization of the activity of the criminal records bureaus. In 2017, with opinion Reg. № P-598/2017, the CPDP ruled at the request of Ms. Elka Atanasova - member of the SJC and head of a working group that drafted an Ordinance on the maintenance, storage and access to the register of the acts of the courts. In practice, with this opinion the CPDP has answered the questions raised in this request regarding the protection of personal data when publishing the acts of the bodies and information about their activities on their official websites. In the reasons of the opinion the CPDP emphasizes some

inconsistencies and contradictions of the draft ordinance with basic principles in the processing of personal data, respectively the protection of personal privacy of citizens: (Attention was paid to the texts of Article 13, paragraph 3 of the draft , according to which "In case of need for specific assessment regarding the publication of a judicial act or its depersonalization, an opinion on the need for publication or depersonalization of data in the content of the judicial act to be announced shall be given by the judge-rapporteur or other judge appointed by the administrative The CPDP pointed out that the cited text was in contradiction with Article 15, paragraph 1 of the Law on Normative Acts. This provision of the draft does not correspond to a normative act of a higher degree, in this case the Judiciary Act. of the draft ordinance allows the possibility of making a subjective assessment of the depersonalization of data that allow the identification of the natural persons mentioned in the judicial acts. The performance of such an assessment is not based on objective criteria, as the draft ordinance does not define the term "specific assessment" and does not set generally valid and mandatory criteria for expressing an opinion on the depersonalization of data reflected in judicial acts. . In general, allowing such a possibility greatly expands the powers of the judge-rapporteur or other judge appointed by an act of the administrative head, contradicts the statutory restrictions set out in the JSA and in practice can seriously infringe the right to privacy of individuals, mentioned in the judicial acts, the identification of which is allowed. In this case, it is necessary to provide for the fact that the presence of undisclosed personal data of individuals in the judicial acts to be published, especially when after publication they may be publicly available on the Internet, create preconditions for creating unwanted profiles of these persons. , due to automatic processing, most often by Internet search service providers. It is possible that such profiles may be used for other purposes for which individuals do not have information and for which they have not had the opportunity to express their consent. Despite the publicity that guarantees the fairness of the process and the protection of the public interest, it is necessary to seek a balance with regard to the interests of the specific individuals whose data are contained in judicial acts. That is why so far, pursuant to Art. 64, para. 2 and para. 3 of the JSA, the public announcement of judicial acts is done by publishing the names with initials, deletion of a single civil number, and other data that are not relevant to the purposes of publicity, as one of the main guarantees of fairness of the trial. Therefore, despite the public interest in a fair, lawful and independent trial, the legislator must provide for the protection of individuals with regard to their personal data by setting clear and unambiguous criteria for the depersonalization of the acts to be published). In the same opinion of the CPDP an analysis was made of the provision of Art. 14, para. 5 of the draft, according to which personal data of specific individuals should be published when they were of substantial procedural or

substantive importance for the outcome of the case and their deletion would render meaningless the content of the judgment or change the meaning of the same . (In practice, the wording of Article 14, paragraph 5 of the draft allows the publication of non-anonymized judicial acts under unclear criteria and in particular the criterion of "substantial procedural or substantive significance for the outcome of the case". The case law establishes that there is still contradictory case law in the process of law enforcement, interpretation and reference of facts and circumstances of essential procedural or substantive importance for the outcome of the case. 1 of 19.02.2010 in interpretative case № 1/2009, which aims to unify the contradictory case law in connection with the selection of cassation appeals and the grounds for admission to cassation appeal of the decisions of the appellate instances on substantive or procedural issues of importance for the outcome of the specific case, due to the fact that it is true In order to determine and specify which substantive or procedural issues and data should be considered essential for the outcome of a particular case, the interpretative decision of the Supreme Court of Cassation recognizes that they can be more than one, as long as they determine the decisive will of court, and also that they are not always covered by the force of res judicata. It is possible that they only prepared its formation on the subject of the dispute, but did not overlap with it. Variants and hypotheses are ambiguous. This example was given with the main purpose to support the thesis that the adoption of a norm regulating the mandatory disclosure of judicial acts subject to publication with indelible personal data, when they were of essential procedural or substantive importance for the outcome of the case, and that their deletion may lead to the invalidity of the judicial act, poses a real threat of misinterpretation and proper application in practice. The results would be the publication of a number of invalid judicial acts with indelible personal data, which in turn could cause serious breaches of privacy and irreparable damage to persons whose data have become public. An important point in this case is the fact that any errors in the assessment of the essential procedural or substantive significance of certain data on the outcome of the case (since the announced acts are subject to subsequent appeal) can not be corrected, given the fact that immediate public announcement of the judicial act, its content becomes available to an unlimited number of subjects). In the analysis thus described, the CPDP adopted the following opinion: “In view of the protection of individuals in the processing of personal data contained in the judicial acts subject to immediate public announcement, the texts of Art. 13, para. 3 and Art. 14, para. 5 of the draft Ordinance on the keeping, storage and access to the register of acts of the courts should be dropped due to their contradiction with the provisions of Art. 64 of the Judiciary Act, as well as the universally valid principles of the Personal Data Protection Act ”. The opinion of the CPDP was sent to the SJC by letter ex. № P-786 / 03.02.2017 (received in the SJC on 06.02.2017, evident from

the returned delivery notice). On April 4, 2017, in issue 28 of the State Gazette, an Ordinance on the keeping, storage and access to the register of court acts was promulgated. The ordinance was issued on the grounds of Art. 360 of the JSA and was adopted by a decision of the Plenum of the SJC under item 38 of Protocol № 10 of 16.03.2017. This is in practice in pursuance of Art. 30, para. 2, item 17 of the JSA, according to which the SJC issues by-laws in the cases provided by law. In the officially promulgated content of the ordinance the opinion of the CPDP on the texts of Art. 13, para. 3 and Art. 14, para. 5 of the submitted for approval project. With regard to the question of whether the names of the members of the judicial panel that issued the judicial act should be deleted, there are currently written rules. In Art. 14, para. 6 of the Ordinance discussed above states that they are not subject to depersonalization: 1. The names of the magistrate who issued the judicial act, respectively of the court panel; 2. The names of the prosecutor involved in the case; 3. The names of the Registrar; 4. The names of the controlling parties. Regarding the request from the SJC for issuing mandatory prescriptions to the CPDP on the grounds of Art. 10, para. 1, item 5 of the LPPD, it should be noted that the mandatory prescriptions of the Commission constitute a coercive administrative measure, which has a legally binding effect and its implementation is secured by state coercion. In essence, the prescriptions are a manifestation of subordination, of relations of power and subordination, characterizing the administrative legal relations, which is why they bind the administrators with the duty of specific, adopted by the CPDP as lawful behavior. In view of the above, the mandatory prescriptions of the CPDP have an objective feature of the concept of an administrative act within the meaning of Art. 21, para. 1 of the APC - it should give rise to obligations, resp. to affect the powers of the referred subjects. In the specific case there are no prerequisites for issuing a mandatory prescription within the meaning of Art. 10, para. 1, item 5 of LPPD.With regard to the processing of personal data of employees in the judiciary, they should be subject to the general rules set out in the new legal framework in the field of personal data protection. This processing is performed in the context of the employment / service legal relations for which the CPDP has competences and powers for supervision.

In view of the above and on the grounds of Art. 10, para. 1, item 4 of LPPD, the Commission for Personal Data Protection expresses the following

OPINION:

Article 55 (1) of Regulation (EU) 2016/679 outlines the competence of the Commission for Personal Data Protection to perform the tasks and exercise the powers conferred on it in accordance with the Regulation in the territory of the country.

Simultaneously with the above, paragraph 3 of Art. Article 55 of the Regulation introduces a derogation according to which

national supervisory authorities are not competent to supervise the processing activities carried out by the courts in the performance of their judicial functions. Similar provisions have been introduced in Art. 45 (2) of the Directive on the protection of personal data in police and criminal matters (Directive (EU) 2016/680).

At present, there is still no legally designated body within the judiciary to take over the functions set out in Regulation (EU) 2016/679 and Directive (EU) 2016/680. A public discussion of the amendments to the Personal Data Protection Act is forthcoming, in connection with which the proposals of stakeholders from the judiciary can be analyzed, adopted and written in the transitional and final provisions of the AAS of LPPD through amendments to special laws governing the activity of the courts in the performance of their judicial functions.

The competence of the CPDP should not cover the processing of personal data when the courts act in the performance of their judicial functions in order to ensure the independence of the judiciary in the performance of its judicial duties, including decision-making / arg. rec. 20 of Regulation (EU) 2016/679 /.

Upon the request of the SJC for issuing mandatory prescriptions to the CPDP on the grounds of Art. 10, para. 1, item 5 of the LPPD, it should be noted that the mandatory prescriptions of the Commission constitute a coercive administrative measure, which has a legally binding effect and its implementation is secured by state coercion. In their essence, the prescriptions are a manifestation of subordination, of relations of power and subordination, characterizing the administrative legal relations, due to which they bind the administrators with the duty of specific, adopted by the CPDP as lawful behavior. In view of the above, the mandatory prescriptions of the CPDP have an objective feature of the concept of an administrative act within the meaning of Art. 21, para. 1 of the APC - it should give rise to obligations, resp. to affect the powers of the subjects concerned. In the specific case with regard to the judicial activity there is no legal relationship, which presupposes the issuance of a mandatory prescription within the meaning of Art. 10, para. 1, item 5 of the LPPD, as it concerns the operative activity and independence of the judiciary, explicitly excluded from the application of the Regulation.

With regard to the processing of personal data of employees in the judiciary, they should be subject to the general rules set out in the new legal framework in the field of personal data protection. This processing is performed in the context of the employment / service legal relations for which the CPDP has competences and powers for supervision.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsvetelin Sofroniev / p /

Maria Mateva / p /

Veselin Tselkov / p /

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