

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-63/21.01.2021 Decision on appeal with reg. No. PPN-01-63/21.01.2021 DECISION no. PPN-01-63/2021 Sofia, 20/06/2022 The Commission for the Protection of Personal Data (PCPD) in composition: Chairman: Ventsislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 18.05. 2022, based on Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1, letter "f" of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data (Regulation , GDPR), examined the merits of complaint No. PPN-01-63/21.01.2021 filed by T.A. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The Commission for the Protection of Personal Data was referred to a complaint filed by T.A., through Adv. G. and Adv. N. from SAC, containing allegations of unlawful processing of the personal data of Mrs. T.A. - three names, uniform civil number, address and mobile phone number, from "G.I. " Ltd. in connection with an application submitted to the Agency for Geodesy, Cartography and Cadastre (AGCC) ***** The complainant claims that during an inspection of the AGCC website in December 2020, she found that her personal data had been unlawfully processed data, as a request was submitted on her behalf for the issuance of a sketch for an apartment located in the city of Sofia, ***** Mrs. T.A. informs that on 04.01.2021, in response to her express request, she was informed in writing by AGKK that the application was submitted electronically on her behalf, through an employee of "G.I. " Ltd. - D.Y., with a request for an amendment to the cadastral register of real estate, issuance of a sketch of a landed property and identifier ***** and issuance of a scheme of a separate object in a building with identifier ***** *. He adds that copies of the application and the attached documents - a contract for the sale of state residential property issued in the name of her late parents S.S. and P.P.S., certificate of 2007 heirs of S.S. and certificate of heirs of P.S. with ext. No. 212/21.10.2020. She is categorical that she did not submit an application, nor did she authorize another person in this regard. He claims that he has no relationship with "G.I. Ltd. - D.Y., never contacted the company, did not provide her personal data to the company and/or Mr. D.Y., did not provide the documents attached to the application. Considers that the actions of "G.I. Ltd. are illegal in violation of Art. 6, § 1 of the GDPR and the principle of "lawfulness, good faith and transparency" - Art. 5, § 1, letter "a" of the GDPR. He is asking the commission to investigate the case and sanction the company. Requests the commission to demand from the AGKK all documents issued by "G.I. " Ltd. on the application and to provide information on what changes in the cadastral register of real estate were made based on it. Requests the commission to oblige the company to present evidence of how, when and by

whom it was assigned to perform the service according to the application. Relevant evidence is attached to the complaint - a copy of a request to the head of the OGKK, a letter from the OGKK office ex. No. *****, application No. *****, contract for sale of state housing property dated 13.01.1966, certificates for heirs, power of attorney and contract for legal protection and assistance. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, "G.I. Ltd. has been informed about the administrative proceedings initiated in the case, it has been given the opportunity to submit a written statement on the allegations presented in the complaint and to present evidence relevant to the case. In response, an opinion was expressed about the unfoundedness of the complaint, with explanations of D.Y. attached to it. - technical director of the company who points out that a mistake was made when submitting the application - the complainant is named as the service requester, which she is not, instead of St.S. He adds that "When entering the EGN (Bulstat) or the name of an individual or company, the SGKK system only generates the remaining data, such as address, phone, email, which the AGKK system has. Therefore, the address and telephone number of the applicant are written in the Application. A certified copy of the Internal Rules for the Security of Information and Personal Data is attached to the statement, without date and specifics for the company to which they refer. Officially, information relevant to the proceedings has been requested from the AGCC. In response and by letter PPN-01-63#4/26.08.2021, the AGKK informs that it provides official documents and references under the conditions and order specified in Ordinance No. RD-02-20-4/11.10.2016 for provision of services from cadastral map and cadastral registers. They add that the regulation specifies the rules that should be applied by legal entities when carrying out the activity of administrative services, incl. the requirements of Regulation (EU) 201 (5/679) and of the Personal Data Protection Act: the types of services that the legal entity provides to users through regulated access to the cadastral-administrative information system (CAIS) are listed - sketch of land, sketch of suffering, scheme of an independent object and certificate of presence or absence of data, as well as acceptance of applications for amendment of the cadastral register of real estate. The listed services are provided throughout the territory of the country for which there is an approved cadastral map and cadastral registers. They add that KAIS and the Register of Persons with Legal Capacity are administered by AGKK. according to the cadastre, entered in the Register of Legal Entities with Order No. 797/31.08.2001 of the Executive Director of the AGCC. In the register under Article 12, item 8 of the Civil Code, it is noted that the company provides administrative services with cadastral information from 04.12. .2019. They say that with Application No. *****, an amendment was requested in the cadastral register of real estate ("to enter the correct TIN"), issuance of a sketch of a landed property with

identifier 68134.514.18 and a scheme of an independent object with identifier *****. The application was registered in KAIS by D.Y. employee of "G.I. Ltd. They add that Mr. D.Y. is a person with legal capacity according to cadastre, who is included in the specialized composition of the company and is designated as a person to carry out the activity of administrative service with cadastral information. They inform that the amendment in the cadastral register of real estate was carried out by an employee of SGKK - city of Sofia and represents the elimination of a technical error - wrongly written EGN of P.D. (co-owner of the properties cited above) and specify that the TIN of the owners and holders of other real rights to the real estate is not part of the content of the official documents issued by the AGCC, including a sketch of a land title and a scheme of an independent object. The agency points out that the sketch and scheme submitted by T.A., through "G.I. " Ltd. were issued automatically through KAIS and were received on 24.11.2020 in the company's user profile. The fee for the services from the application was paid from the account of the registered user of electronic services in KAIS "G.I. Ltd. The user's account was loaded via electronic payment EPAY No. *** from 12.11.2020. From the loaded account in the company's user profile, a payment of BGN 28 was made on 13.11.2020 for the requested sketches of the land and scheme on a separate object. In the course of the proceedings, Mrs. T.A. informs about a complaint submitted to the Sofia District Prosecutor's Office with entry No. ***** and an inspection of the case carried out by 06 RU-SDVR. In this regard, information on the progress and results of the initiated proceedings has been requested ex officio from the SRP, and in the case of the expert report prepared for the case/expertise on the signatures placed under the process documents, a copy of the same. In response, the SRP informs that the preparation of expert examinations assigned to the case is pending, but they refuse to provide additional information and materials from the prosecutor's file. At a meeting of the commission held on 20.10.2021, a decision was made to collect additional evidence before ruling on the admissibility of the complaint, the preparation of a handwriting examination was allowed. The subject of the examination is to establish whether the signature placed under the application ***** according to the inventory of the AGKK was signed by T.A. The Agency for Geodesy, Cartography and Cadastre (AGCC) has requested a certified copy of documents, application, declarations, powers of attorney in connection with application ***** , in which it is stated that they come from Mrs. T.A. and bear the signature of Mrs. T.A. For the purposes of the examination, the applicant provided comparative material, which was sent to the National Institute of Forensic Science (NIK). A graphic examination was prepared, reflected in Protocol No. ***** dated 22.03.2022, according to the inventory of the NIK, sent to the CPLD with a cover letter, with the conclusion that the signature in the column "Signature" in the lower right corner of a copy of Application *****

according to the inventory of AGKK is a copy of a signature that was not signed by T.A. The Commission for the Protection of Personal Data is an independent state body that protects individuals in the processing of their personal data and access to such data, as well as control of compliance with the GDPR and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data. In order to exercise its powers, the commission must be validly referred. The complaint contains the mandatory required details: data about the complainant, the nature of the request, date and signature, the passively legitimized party is indicated and the date of knowledge of the violation, in view of which the complaint is regular. The complaint was filed by a natural person with a legal interest against the proper party "GI" OOD - personal data controller within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679. The subject of the complaint is unlawful processing of the personal data of Mrs. T.A. - three names, uniform civil number, address and mobile phone number, from "G.I. " Ltd. in connection with an application submitted to the AGKK *****. The Commission was notified on 21.01.2021, less than two months after the alleged violation was committed, which makes it necessary to conclude that the complaint was filed within the period under Art. 38, para. 1 of the Labor Code. Referred to is competent to rule - CPLD, which according to its powers under Art. 10, para. 1 of the Labor Code in connection with Art. 57, § 1, letter "f" of Regulation (EU) 2016/679, examines complaints filed by a data subject against acts and actions of personal data controllers that violate the rights of natural persons related to personal data processing, as there are no exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities carried out by an individual in the course of purely personal or domestic activities and/or activities carried out by courts in the performance of their judicial functions. For the stated reasons and given the absence of the negative prerequisites specified in Art. 27, para. 2 of the APC, at a meeting of the commission held on 30.03.2022, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: complainant - T.A. and respondent - "G.I. Ltd. An open hearing has been scheduled to consider the merits of the complaint on 18.05.2022 at 1:00 p.m., of which the parties are regularly notified and are informed of the expertise prepared for the case, a copy of which has been provided to them for perusal and opinion. Disregarded, as not relevant to the subject of the dispute, was the evidentiary request made by the complainant that the commission ex officio demand from AGKK all documents issued by "G.I. Ltd. on the application, as well as information on what changes in the cadastral register of real estate were made based on it. In order to clarify the case from a factual point of view, internal rules and/or policy for the

protection of personal data have been requested from the defendant again, in which the procedure for processing personal data by the company, in its capacity as a personal data administrator, is specified, by whom it is provided Certificate of spouse and family ties, attached to the application submitted to the AGCC, as well as evidence of how, when and by whom the service was commissioned according to the application. It has been specified that the copy of the Internal Rules for the security of information and personal data, attached by the defendant to the opinion dated 01.11.2021, are without date and specifics for the company to which they refer. The statement of the company was sent to the AGCC for information, that the reason why the address and telephone number of the petitioner Mrs. T.A. were entered in the procedural application. is that "When writing the EGN (Bulstat) or the name of an individual or company, the SGKK system itself generates the rest of the data, such as address, phone, email, which the AGKK system has". In this regard, the agency has requested information on whether, before 13.11.2020, data about the applicant was stored in the AGKK system and in what volume, as well as whether it was generated automatically when specifying the person's personal identification number in an application ***** according to the inventory of AGKK, submitted electronically. In response, ***** from AGKK does not deny the statements made by the defendant. They specify that "when an application is submitted by a legally competent person, in the event that the applicant was a client of AGKK in connection with a certain administrative proceeding, for which he provided his data, the system stores and visualizes them on a screen, and there is an option by pressing a button "Editorial", the same to be used, deleted and amended by the legally competent person". They add that in connection with a submitted application ent. No. ***** from the complainant, the AGKK information system stores her personal data for address, telephone, three names and social security number. On 18.05.2022, half an hour before the hearing, the defendant filed an uncertified copy of the title page of the Internal Rules for the Security of Information and Personal Data presented at an earlier stage in the proceedings of "G.I. " Ltd., dated 20.02.2018 and certificate No. 0016649 for administrator of personal data. It clarifies that the source of the processed personal data of the complainant is the arrays of AGKK. It states that the certificate of kinship, attached to the application submitted to the AGCC, as well as all the evidence certifying the co-ownership of the applicant, which coincides with that of the applicant, are submitted by the co-owner or an authorized person - a lawyer, and these documents are available to every co-owner and are receive from the relevant administrative offices of the municipalities. They claim that service on the application was requested by the attorney (attorney G.) of a co-heir of the applicant and was provided on the date it was recorded as having been received. At a meeting of the commission held on 18.05.2022, the complaint was examined on its merits. The complainant - regularly notified

appears in person and through an attorney. N. with a power of attorney on the file. The respondent - regularly notified, is not represented at the meeting before the commission. The complainant and Adv. N. state that they are familiar with the evidence collected in the file, including the evidence and information submitted by the defendant before the hearing. They do not point to new evidence, they have no requests for evidence. They support the complaint and ask the commission to accept it as well-founded. In its capacity as an 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 APC, requiring the existence of established actual facts, and given the evidence collected and the allegations made, the commission accepts that the substantively examined complaint No. PPN-01-63/21.01.2021 is well-founded. The subject of the complaint are allegations of unlawful processing of the personal data of Mrs. T.A. - three names, uniform civil number, address and mobile phone number, from "G.I. " Ltd. in connection with an application submitted to the AGKK ***** From the evidence gathered in the case file, it was established, and it is not disputed between the parties, that in the cadastral-administrative information system (KAIS) of the AGKK, an Application with No. **** from T.A., filed through "G.I. Ltd. The application was submitted electronically and it requested an amendment to the cadastral register of real estate, the issuance of a sketch of a landed property with the identifier ***** and a scheme of an independent object with the identifier *****. The application was registered in KAIS by D.Y. employee of "G.I. " Ltd., a legally competent person according to the cadastre, who is included in the specialized composition of the company and is designated as a person to carry out the activity of administrative service with cadastral information. The application contains three names and the applicant's social security number, as well as an address and contact telephone number, in her capacity as a petitioner requesting the service. A contract for the sale of state residential property issued in the name of the deceased parents of the applicant S.S. was attached to the application submitted to the AGCC. and P.P.S., certificate of 2007 heirs of S.S. and certificate of spouse and relationship of P.S. with ext. No. **** of the Metropolitan Municipality, "Serdika" district, in which certificates contain personal data - names, TIN of the applicant and family ties. It is not in dispute that the complainant is not a requester of the service, a fact which is confirmed by the defendant, and also by a graphic examination prepared for the case, reflected in Protocol No. ***** of 22.03.2022, according to the inventory of the NIK, with the conclusion that the signature in the column "Signature" in the lower right corner of a copy of Application ***** according to the inventory of AGKK is a copy of a signature that was not signed by T.A. It is not disputed that Mrs. T.A. did not provide her personal data to G.I. " Ltd. that there is no contractual relationship between the parties, that she did not authorize the company to submit an application on her

behalf to AGKK for the specific service and that there is no consent for the company to process her personal data. Given the above, it is necessary to conclude that the applicant's personal data were processed, in the hypothesis of use, by "G.I. " Ltd. for submitting the application on behalf of the complainant to the AGCC without grounds and in violation of Art. 6, § 1 of the GDPR. The company only recognizes that the applicant for the service is a person other than the applicant, namely St.S., her nephew, but the applicant was wrongly named as the applicant in the submitted application and the latter's social security number was entered in the application. The fact that the rest of the applicant's data - names, address and telephone number - contained in the application were not indicated/entered by the company, but were automatically generated by the AGCC, does not change the conclusion that the company unlawfully processed the personal data of Ms. T.A. in connection with the service requested before the AGCC, insofar as the data entered in the application have been confirmed by the sender D.Y., an employee of "G.I. " Ltd., a legal entity according to the cadastre, although Mrs. T.A. is not an applicant for the service, a fact known to the company and the legal entity at the date of submission of the application. In addition, the system allows "editing" of the information filled in the application, which was not done, therefore the principle of accuracy of the processed data was not respected. In this regard, the commission does not credit the company's claims of a technical error, as the application is given the appearance that it originates from the complainant and is signed by her, which testifies to the purposefulness of the actions of the sender, knowing that the complainant is not a requester of the service insofar as the company does not have a contract with it for the assignment of the service. The complainant's claims that her personal data were processed by the company without her knowledge and consent for the purposes of the submitted application correspond with the evidence collected in the file. There is no evidence to justify the legality of the processing based on a contract concluded between the parties for the implementation of any necessary processing of personal data of Mrs. T.A. or to take steps at the data subject's request prior to entering into the contract. There is no legally established obligation of the company to process personal data of the person for the stated purpose. The hypothesis of the existence of a legitimate interest of the administrator that is superior to the interest of the affected natural person is not applicable. The remaining conditions are irrelevant - they are applicable in other, different and incompatible with the present hypotheses, which refer to the processing of personal data for the purpose of protecting vital interests related to the life and health of the data subject or the performance of a task of public interest, as well as in the exercise of official powers, which in the present proceedings have not been found to have been delegated to the company. An analysis of the collected evidence leads to the conclusion that the applicant's personal data were processed in

violation of Art. 6, § 1 of the Regulation, without any of the conditions specified in the regulation for the legality of the processing, as the rights of the person who referred the CPLD were violated.

Due to the nature of the detected violation and in the conditions of operational independence, the commission considers that, in view of the established factual situation and the collected evidence, the measures under Art. 58, § 2, letter "a", "c", "e", "f", "g", "h" and "j" of Regulation EU 2016/679 are inapplicable, and the imposition of corrective measures under Art. 58, § 2, letters "b" and "d" of the GDPR is inappropriate and disproportionate to the violation and the circumstances in which it was committed by the controller. Considers it expedient, dissuasive and proportionate, given the gravity of the violation, the large volume of processed personal data and the fact that the same was completed and purposeful, the involvement of the administrative-criminal liability of the company with the imposition of a pecuniary sanction for violation of Art. 6, § 1 of the GDPR.

When determining the type and amount of the corrective measure imposed on the administrator, the commission qualifies as aggravating the circumstances that the processed personal data is in a large volume, the violation has been completed, the actions of the representative of the administrator are targeted, and the violation has become known to the CPLD as a result of the referral from the injured person. As mitigating factors, the commission considers the following circumstances: it concerns a violation of the rights of an individual; until now, in relation to the administrator, CPLD has not exercised corrective powers; the company is a micro-enterprise within the meaning of art. 3, para. 3, item 1 of the Law on Small and Medium Enterprises insofar as the announced average number of personnel is 10 people, and the total value of the assets, according to the last published report for 2020, is BGN 259,000. The circumstances under Art. 83, § 2, letters "b" and "i" of the Regulation are irrelevant insofar as it concerns an administrator - a legal entity that does not constitute guilt, and at the time of the offense approved codes of conduct, respectively approved certification mechanisms are not introduced.

Based on the stated considerations, the commission considers that, in view of the principle of proportionality between the severity of the violation and the amount of the penalty, the imposed sanction should be in the amount of BGN 3,000 (three thousand BGN) - an amount around the minimum and well below the average provided for in the regulation on this violation.

Taking into account the purpose of the punishment, which should have a deterrent and warning function, the nature and severity of the violation, the public relations it affects, the categories of personal data affected, the commission considers that the corrective power exercised in terms of type and amount undoubtedly meets the requirements of the LLPD and Regulation

2016 /679 effectiveness and deterrent effect, while at the same time not violating the principle of proportionality and the requirement of proportionality.

Based on the above and based on Art. 38, para. 3 of the Polish Data Protection Authority, the Commission for the Protection of Personal Data,

RESOLVE:

1. Declares complaint No. PPN-01-63/21.01.2021 as well-founded.
2. Based on Art. 83, § 5, letter "a" in connection with Art. 58, § 2, letter "i" of Regulation EU 2016/679 imposes on "GI" OOD with EIK *****, an administrative penalty - a property sanction in the amount of BGN 3,000 (three thousand BGN) for violation of Art. 6, § 1 of the Regulation.

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

After the entry into force of the decision, the amount of the imposed penalty should be transferred by bank transfer:

BNB Bank - Central Bank, IBAN: BG18BNBG96613000158601

BIC BNBBGGSD

Commission for Personal Data Protection, BULSTAT 130961721.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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