

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-913/29.12.2020 Decision on appeal with reg. No. PPN-01-913/29.12.2020 DECISION no. PPN-01-913/2020 Sofia, 07/07/2021 The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Vencislav Karadjov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, on a regular basis meeting held on 26.05.2021, on the basis of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, paragraph 1, letter "f" of Regulation 2016/679 examined the merits of complaint No. PPN-01-913/29.12.2020, submitted by S.H. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The complainant states that on 21.12.2020, between 10:00 and 11:00 a.m., he visited the "Slavia" penal parking lot, managed by CGM EAD, to release his personal car, which had been forcibly moved a little earlier the order of the Road Traffic Act. After he paid the fee for the forced relocation and refused to pay a receipt in accordance with the ZANN order, one of the officials informed him that he would proceed to draw up an act to establish an administrative violation (AUAN No. *****). For this purpose, the official requested the applicant to provide him with his identity card. The person left the room where customers are served in the parking lot, and returned after about 10-15 minutes, providing the identity card and the prepared AUAN. The complainant states that he had no visual contact with the employee in question within the specified time and I cannot say what personal data from the identity document he processed, as well as whether he photocopied/photographed the identity card or provided the data from it to third parties. According to ZANN, the AUAN is drawn up in the presence of the offender, therefore the authorized officer has the right only to take in the presence of the person the data from his identity card, necessary for drawing up the act: the first, middle and last name and age of the person, his exact address and the place of work, uniform civil number, but not to retain the card and carry out actions with it, without the immediate presence of the subject of the data being processed (arg. of Art. 40, Para. 1, in connection with Art. 42, paragraph I, item 6 of the ZANN, in connection with Article b, paragraph 1. b. "c", in connection with Article 5, paragraph 1, b. "a" of the General Regulation on data protection). The complainant admits that such a practice is in conflict with Art. 11 of the Law on Bulgarian Personal Documents, insofar as the identity card is temporarily in the de facto power of a person other than its owner and is used for purposes unknown to him. Under these conditions, the relevant official has access to much more data than is required by the ZANN for the compilation of the AUAN, i.e. the identity card, in addition to the data under Art. 42, para. 1, item 6 of ZANN, contains other personal data, incl. biometric ones (art. 16, para. 1 and art. 26, para. 1 of the Law on Bulgarian personal documents). In the factual situation presented in this way, the applicant has legitimate concerns about what

data and how it was processed when compiling the commented AUAN, as well as whether his identity card was photocopied/photographed and/or its data was unlawfully provided to third parties (whether third parties had access to them), outside the deed maker. In connection with the above, Mr. S.H. requests the CPLD to accept this complaint for examination, as well as to carry out an inspection of the activities of the municipal company, and more specifically of the organization created by it in the above-mentioned criminal parking lot for the processing of ID card data in the exercise of the control powers of its employees under the ZANN and the Road Traffic Act. Requests on the basis of Art. 84, para. 1 of the Labor Code, in connection with Art. 58, par. 2, b "b" and b. "d" of the General Regulation on data protection, in the case of detected irregularities, the CPLD shall apply an appropriate coercive administrative measure (warning or suspension) against CGM EAD: issue an official warning to the company and oblige the company to bring the data processing operations to a close when drawing up AUAN according to the order of ZANN in accordance with the legal requirements. In the conditions of the official beginning laid down in the administrative process and in fulfillment of Art. 26 of the APC, the interested party - CGM EAD (in short below CGM) has been notified of the initiation of the proceedings. The possibility under Art. 34, para. 3 of the APC for expressing an opinion with relevant evidence on the allegations made in the complaint. The following are required: the recordings from the cameras, explanations from the employee S.M., rules for exercising control activities. The Center for Urban Mobility received: 1. Order No. COA18-PД95-484/14.08.2018 of the Mayor of Sofia Municipality with approved terms and conditions for the forced relocation of improperly parked vehicles and a list of employees from the "Parking Control" sector, familiar with the order; 2. Order No. RD-09-486/2/02.07.2020 of the Executive Director of the CGM regarding the employees with the right to impose PAM, fine with a slip and draw up AUAN; 3. Copy of the employment contract of the employee S.M. ; 4. Copy of job description of "Parking Control" inspector; 5. Information from S.M. ; 6. Recording from video surveillance cameras. An opinion on the presented written evidence has not been expressed. The appellant received a reply from the Central Administrative Court in connection with his objections. Regarding the regularity and admissibility of the complaint, the CPLD finds the following: In order to exercise its powers, the Commission should be validly referred. The considered complaint complies with the regularity requirements under Art. 29 of the APC, Art. 38a, para. 2 of the Labor Code and under Art. 28, para. 1 of the Regulations for the Activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA) – there are data on the complainant; nature of the request; date of knowledge of the violation; person against whom the complaint is filed; date and signature. The complaint is procedurally admissible - submitted within the period under

Art. 38, para. 1 of the GDPR by a data subject with a legal interest. The same has as its subject an allegation of violation of rights under Regulation 2016/679 or the PPE. The complaint was referred to a body competent to make a decision - the Commission for the Protection of Personal Data, which according to its powers under Art. 10, para. 1 of the Labor Code in connection with Art. 57, paragraph 1, letter "f" of Regulation 2016/679 deals with complaints submitted by data subjects. The prerequisites for admissibility are also present under Art. 27, para. 2 of the APC. At a closed meeting of the Commission held on 31.03.2021, the complaint was declared admissible and the following were constituted as parties to the proceedings: complainant S.H., respondent - CGM EAD. The parties have been notified of the open meeting scheduled for 26.05.2021 to consider the dispute on its merits. A procedure for drawing up the AUA is required by the Central Government. The CGM points out that the legally defined procedure is followed when drawing up the AUAN. By order No. RD-09-484/14.08.2018 of the Mayor of the City of Sofia and the one acting in relation to the procedural case and on the basis of Art. 167, para. 2 of the ZDvP, the mayor of Sofia municipality has designated a unit from Tsgm EAD as a control service. The control office has control functions regarding the legality of parking according to the ZdvP, and its employees in the position of "parking control inspector" are authorized in the capacity of administrative bodies to order compulsory administrative measures "forcible relocation" against improperly parked vehicles and to impose sanctions on violators by means of a fine with a receipt and to draw up AUAN. The procedure for drawing up acts is in accordance with the ZANN: the issuance of acts such as form, content and normative texts and their delivery is in accordance with the ZANN, provides the right to object within the statutory period, after which the file is completed and sent to the Court of Appeal for issuance of a criminal decree. At the hearing held to consider the complaint in substance, the complainant appears in person. Upholds the appeal. The responding party does not send a representative. With this established, the Commission considered the complaint on its merits, accepting it as well-founded based on the following: Regulation 2016/679 and the Personal Data Protection Act (PDPA) set out the rules regarding the protection of natural persons in connection with the processing of personal data their data, as well as the rules regarding the free movement of personal data. The aim is to protect fundamental rights and freedoms of natural persons, and in particular their right to protection of personal data. On the factual side, the parties do not dispute that, in connection with the forced relocation of the applicant's car, the latter visited the penal parking lot of the Central Police Station. An employee of the company proceeded to draw up the AUAN, taking the applicant's identity document (identity card) for this purpose, leaving the room and returning after a little more than 10 minutes with a drawn up AUAN. This is also confirmed by the presented

recordings from the security cameras. In this factual situation, the subject of the complaint is about the fact that the complainant did not know during these little more than 10 minutes what data was processed in the preparation of the said AUAN and in what way it was processed, as well as whether the complainant's identity card was photocopied/photographed or its data were unlawfully provided to third parties (whether third parties had access to them), outside the deed maker. From the CCTV footage in the room where the AUAN for the violation was drawn up, it can be seen that the CGM employee enters with a document resembling an ID card, takes out a folder and begins to write information from the ID card on a sheet of paper. A little later another person enters, the notary gives the person to sign on the same sheet on which he records the data, then alone in the room continues to write on the same sheet. After that, he leaves the room with the folder and hands the complainant the same sheet on which he writes his personal data. In an open session, the complainant states that the employee of the Central Administrative Court returned with an already drawn up document, signed by a witness, which corresponds to what was recorded by the cameras. It follows from the above that copying of the applicant's identity document is not established without this being provided for by law, which violates Art. 25 years from the AZLD. The collection of personal data in a larger volume or their provision to a third party, other than an employee of the CGM, is also not established, as far as the details of the AUAN are normatively defined in the ZANN, as well as the signing of the act by witnesses, and as it was indicated - the author of the act records data only on one sheet, which it then hands to the complainant - the AUAN for the violation.

According to Art. 5, paragraph 1, letter "a" of Regulation 2016/679 personal data should be processed in a transparent manner with respect to data subjects. In this case, the applicant, as stated in his complaint, did not know how his personal data was being processed after he provided his identity card and the filer had left the premises where the applicant was. In this way, the latter does not really know whether his identity card has been copied, which is admissible only if there is a legal basis, nor whether personal data has been collected, which are not among the mandatory requisites for filling in AUAN. Therefore, in this case, the applicant's personal data were not processed in a transparent manner, which is a violation of Art. 5, paragraph 1, letter "a" of Regulation 2016/679.

In the event of such a violation, the complaint should be upheld. The Commission has operational autonomy, and in accordance with the functions granted to it, it assesses which of the corrective powers under Art. 58, par. 2 of Regulation 2016/679 to exercise. The judgment is based on considerations of expediency and effectiveness of the decision, taking into

account the particularities of each specific case and the degree of impact on the interests of the particular natural person – data subject, as well as the public interest. The powers under Art. 58, par. 2, without the one under letter "i", have the nature of coercive administrative measures, the purpose of which is to prevent or stop the commission of a violation, thus achieving the due behavior in the field of personal data protection. The administrative penalty "fine" or "property penalty" under Art. 58 par. 2, letter "i" has a punitive nature. When applying the appropriate corrective measure under Article 58, par. 2 of the Regulation takes into account the nature, severity and consequences of the violation, as well as all mitigating and aggravating circumstances. The assessment of what measures are effective, proportionate and dissuasive in each individual case also reflects the objective pursued by the selected corrective measure – preventing or stopping the violation, sanctioning the illegal behavior or both, which possibility is provided for in Art. 58, par. 2, letter "i" of Regulation 2016/679.

In addition to the above, according to Art. 10d of the CPLD when exercising its tasks and powers in relation to administrators or processors of personal data that are micro-enterprises, small and medium-sized enterprises, the CPLD should take into account their special needs and available resources. This should be taken into account when assessing whether to impose the administrative penalty "property penalty" instead of another corrective measure under Art. 58(2) of the Regulation or in addition to it. An analysis of the company's financial data shows that in the sense of Art. 3 of the Law on Small and Medium Enterprises, the administrator does not fall into the category of "small" or "medium" enterprise within the meaning of the Law on Small and Medium Enterprises.

A mitigating circumstance is that the breach is first for the controller. In addition, the other violations suspected by the applicant – copying of an identity card or collection of personal data in a larger volume – were not established. The complainant also requests the imposition of a coercive administrative measure on the administrator.

At the same time, the CPLD established that the administrator only complies with the statutory requirements of ZANN, but no rules have been drawn up for the processing of personal data in these cases.

In view of the above, CPLD finds that it should not impose an administrative penalty "property sanction" on the CGM. For the committed violation, the administrator should be ordered under Art. 58, paragraph 2, letter "d" of Regulation 2016/679 to prepare internal rules and procedures to be consistent with the ZANN procedure. The purpose of these internal rules and procedures is precisely to describe the lawful processing of personal data for the preparation of an act. Administrator employees should be trained to enforce the rules. The measure thus prescribed is intended to prevent future infringements.

CPLD indicates that in case of non-compliance with an effective order of the supervisory authority under Art. 58, paragraph 2 of Regulation 2016/679, an administrative penalty "fine" or "property penalty" may be imposed under Art. 83, paragraph 6 of Regulation 2016/679.

Thus motivated and based on Art. 38, para. 3 of the Personal Data Protection Act, the Commission for the Protection of Personal Data

RESOLVE:

1. Announces complaint No. PPN-01-913/29.12.2020 filed by S.H. against CGM EAD, for a justified violation of Art. 5, paragraph 1, letter "a" of Regulation 2016/679;
2. Based on Art. 58, paragraph 2, letter "d" of Regulation 2016/679 instructs the personal data administrator CGM EAD to comply with the personal data processing operations with the provisions of Regulation 2016/679 by developing rules and procedures for processing personal data according to the regulation and train employees to work with them.
3. Deadline for implementation of the order under item 2 – three months from the entry into force of the decision, after which the CPLD will be notified with the presentation of the relevant evidence.

This decision can be appealed within 14 days of its delivery through the Commission for the Protection of Personal Data, before the Administrative Court of Sofia - city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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