

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-748/23.10.2020 Decision on appeal with reg. No. PPN-01-748/23.10.2020 DECISION no. PPN-01-748/2020 Sofia, 13/05/2022 The Commission for the Protection of Personal Data (PCPD) composed of: Chairman: Vencislav Karadjov and members: Tsanko Tsolov and Veselin Tselkov at a meeting held on 02/02/2022. , pursuant to 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-01-748/23.10.2020. The 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 request submitted by G.N. complaint No. PPN-01-748/23.10.2020, with alleged allegations of unlawful processing of personal data, in the hypothesis of an act carried out by her neighbors O.Y., R.P., B.P. and K.K. video surveillance, by means of video surveillance cameras installed above the entrance doors of private properties owned by individuals, respectively app. 7, app. 11, studio 25 and apartment 31, in a condominium building located in the city of Sofia, ****. Mrs. G.N. informs that he is the chairman of the Management Board of the condominium and claims that the video surveillance is carried out without a decision of the General Assembly of the condominium, as well as without the consent of the residents of the building. He believes that the purpose of the video surveillance is to psychologically harass the other co-operators and demonstrate illegal actions by O.Y., R.P., B.P. and K.K. and disregard of the law. She asks the commission to investigate the case and stop the video surveillance, which she claims is carried out against her will and in violation of her privacy. In addition, Mrs. G.N. also claims to sanction the passively legitimized parties for their committed violation of the GDPR and the GDPR by means of video surveillance. Relevant evidence is attached to the complaint - notification under Art. 46b of the ZEUS, addressed to the Mayor of the Capital Municipality, "Vitosha" district and an image of the location of four cameras. According to the principles of equality of the parties in the proceedings and truthfulness, the passively legitimized parties O.Y., R.P., B.P. and K.K. are notified of the filed complaint, and are given the opportunity to submit a written statement and relevant evidence. In response and by letter PPN-01-748#5/18.03.2021, R.P. commits an opinion on the inadmissibility of the appeal, with arguments for lack of legal interest, respective legal capacity and delay. It states that the complaint was not filed by an individual, but on behalf of the condominium, as evidenced by the evidence attached to the complaint - notification under Art. 46b of the EUES and the fact that in the complaint to the CPLD Mrs. G.N. indicates that he is the house manager of the condominium. In addition and as

an independent ground for inadmissibility of the appeal, Mrs. R.P. claims that the complaint is overdue, filed outside of those specified in Art. 38, para. 1 of the WPLD, exclusive deadlines for referral to the WPLD, insofar as the video surveillance has been carried out since March 2018, which is also the date of the complainant's knowledge of the video surveillance.

Alternatively, arguments for the groundlessness of the complaint are presented, with relevant evidence attached. In the course of the proceedings, a written opinion PPN-01-748#6/19.03.2021, by O.Y., through Adv. B., for inadmissibility, respectively unfoundedness of the complaint, with attached evidence related to it. It is claimed that the video surveillance has been carried out since March 2018, by the user of the property, in view of which the complaint is overdue, filed outside the preclusion periods under Art. 38, para. 1 of the Labor Code. In addition, it is alleged that Mr. O.Y. does not have the status of a personal data administrator, does not live in the residence that is his property, did not install the process camera, does not have access to images and/or recordings from it. Alternatively, arguments for the groundlessness of the appeal are presented. In order to clarify the case from a factual point of view, an inspection was carried out on the subject of the complaint, the results of which are objectified in Constitutive Acts PPN-02-268/28.05.2021, PPN-02-269/28.05.2021, PPN- 02-271/28.05.2021 and PPN-02-272/28.05.2021 with their annexes, including discovery protocols from 12.05.2021, graphic images of the location and range of the cameras and completed questionnaires. Constitutive act PPN-02-268/28.05.2021 The main task of the inspection is: To establish whether a video surveillance system has been built and what are its technical parameters, in real estate, located at the address: Sofia, ** ***. The inspection opened on 12.05.2021 at the address indicated in the complaint, with the delivery of the inspection order to B.P., which assisted and ensured access and collection of evidence by the inspection team. From the performed inspection, the following was established: At the address indicated in the complaint, there is a nine-story residential building, with one entrance, in condominium mode. The complainant owns properties in the cooperative - an apartment, shops and parking spaces. Mrs. B.P. is the owner of atelier 24. Mrs. B.P. informed the inspection team that more than a year and a half ago, after trespassing on her property - a lock stuck on the front door of the apartment, she installed a video surveillance system. The system consists of a video camera, a recording device and a TV, on which the output image and recordings from the camera are monitored. The video surveillance system was installed by an acquaintance of Mrs. B.P. The installed video surveillance system allows permanent recording and storage of the output image for a period of 90 days, after which they are automatically deleted in the order of their arrival. At the time of the check, the last record is from 13.02.2021. Only Mrs. B.P. has access to the outgoing image and records. The technical parameters of the camera allow the

"night" mode of operation and do not allow the transmission and recording of an audio signal. The camera is mounted above the front door of the apartment. 24, and the lower part of the entrance door of studio 25, a small part of the entrance door of apartment falls within the scope of video surveillance. 23 and adjacent part of the corridor on the floor. An information sticker has been placed on the front door, warning about the video surveillance being carried out. The owner of at. 25 – A.G. has declared written consent, personally and for his wife, for the processing of their personal data by Mrs. B.P. through a video surveillance system. Constitutive act PPN-02-269/28.05.2021 The main task of the inspection is: To establish whether a video surveillance system has been built and what are its technical parameters, in real estate located at the address: Sofia, ** ***.

The inspection opened on 12.05.2021 at the address indicated in the complaint, with the delivery of the inspection order to K.K., who assisted and ensured access and collection of evidence by the inspection team. From the performed inspection, the following was established: At the address indicated in the complaint, there is a nine-story residential building, with one entrance, in condominium mode. The complainant owns properties in the cooperative - an apartment, shops and parking spaces. Mr. K.K. is the owner of apartment 31 on the seventh floor. Mr. K.K. informed the inspection team that more than a year and a half ago (beginning of 2019), after frequent encroachments on property in the block, he installed a number of video surveillance cameras on the front door of the apartment. 31. The model (Eques Veiú mini Doorbell) of the installed video spy is equipped with a built-in stationary video camera with a 120° viewing angle, doorbell, battery, built-in memory, slot for additional memory, two-way audio signal, the ability to record a photo or video, the ability to wireless connection to a home network (and from there - remote access to the device using a software application installed on a mobile phone) and allows "night" mode of operation. Functional capabilities of the device allow sending a warning message (alarm) to the mobile phone (via the installed software application) when moving within the video surveillance range of the camera. Initially, the installed video spy was set not to record an outgoing image from the camera, but due to encroachments on the property of Mr. K.K., around 29.04.2021, it was set to record an outgoing image (photo) when moving in the camera's video surveillance range. During the inspection, it was found that 12 pcs are stored in the device. snapshots of output image from 05/12/2021, with record files from previous days deleted same days. Only Mr. KK has access to the output image and recordings, and access is on the device only, with no remote access settings. The video spy is mounted on the front door of the apartment. 31, and the scope of video surveillance includes an opaque aluminum entrance door, separating a separate corridor in front of the apartment. 30 and app. 31 and a small part of this corridor in front of the front door of apartment. 31. There is no information sign/sticker on the front

door warning about video surveillance. Mr. K.K. informs the examining team that he received verbal consent from his neighbor from Apt. 30 for the mounted video spy. Constitutive act PPN-02-271/28.05.2021 The main task of the inspection is: To establish whether a video surveillance system has been built and what are its technical parameters, in real estate, located at the address: Sofia, ** ***. The inspection was opened on 12.05.2021 at the address specified in the complaint, with the delivery of the inspection order to R.P., which assisted and ensured access and collection of evidence by the inspection team. From the performed inspection, the following was established: At the address indicated in the complaint, there is a nine-story residential building, with one entrance, in condominium mode. The complainant owns properties in the cooperative - an apartment, shops and parking spaces. Mrs. R.P. is the owner of apartment 11 on the third floor. Mrs. R.P. notified the inspection team that after frequent encroachments on property in the block, on 11.03.2018 she installed a video spy on the front door of the apartment. 11. The model (Eques Veiu mini Doorbell) of the installed video spy is equipped with a built-in stationary video camera with a 120° viewing angle, doorbell, battery, built-in memory, additional memory slot, two-way audio signal, the ability to record a photo or video, the ability to wireless connection to a home network (and from there - remote access to the device through a software application installed on a mobile phone) and allows "night" operation mode. The functional capabilities of the device allow sending a warning message (alarm) to the mobile phone (through the installed software application) when moving within the camera's video surveillance range. Installed by Mrs. R.P. a video spy is set to record the output image from the camera (a 5-second video clip) when there is movement within the camera's video surveillance range. Recordings are stored in video format, with the oldest recording in the device being from 18.02.2021, and are deleted in the order in which they are received. Only Ms. R.P. has access to the output image and recordings. Mrs. R.P. and remotely access the device and its recordings through an installed application on your mobile phone. The video spy is mounted on the front door of the apartment. 11, and the corridor leading to her apartment and the front door of the apartment fall within the scope of video surveillance. 10. There is an information sign on the front door warning about video surveillance. Mrs. R.P. informs the examining team that she received verbal consent from her apartment neighbor. 10 for the mounted video spy. Constitutive act PPN-02-272/28.05.2021 The main task of the inspection is: To establish whether a video surveillance system has been built and what are its technical parameters, in real estate located at the address: Sofia, ** ***. By letter with ex. No. PPN-01-748#11/13.04.2021 to O.Y. a verification questionnaire is sent and the person is notified of the verification. By letter with No. PPN-01-748#12/20.04.2021 by O.Y. has been deposited in the CPDP answers to the sent questionnaire. And in

the completed questionnaire and after a telephone conversation with Mr. O.Y., he informed him that he is the owner of the apartment at the address indicated in the complaint and since the beginning of 2018 he does not live in or own the property. The apartment is also owned and lived in by his wife - A.T. The inspection was opened on 21.05.2021 at the address specified in the complaint, with the delivery of the inspection order to A.T., who assisted and ensured access and collection of evidence by the inspection team. At the address indicated in the complaint, there is a nine-story residential building, with one entrance, in condominium mode. The complainant owns properties in the cooperative - an apartment, shops and parking spaces. Owner of the apartment. 7 on the second floor of a housing cooperative at the address indicated in the complaint is O.Y., and Mrs. A.T. owns the apartment. Mrs. A.T. notified the inspection team that after frequent encroachments on properties in the block, including flooding the front door of the apartment. 7 with an oily substance and littering in front of the door, in 2020 she installed a video spy on the front door of the apartment. 7. The model (Smart Doorbell Digital Door Peephole Viewer) of the installed video spy is equipped with a built-in stationary video camera with a 166° viewing angle, bell, battery, two-way audio signal, the ability to record a photo or video, the ability to connect wirelessly to a home network (and from there - remote access to the device using a software application installed on a mobile phone) and allows "night" mode of operation. Functional capabilities of the device allow sending a warning message (alarm) to the mobile phone (via the installed software application) when moving within the video surveillance range of the camera. Installed in the app. 7 video spy is set to record the outgoing image from the camera (picture) when moving in the camera's video surveillance range. Records are stored for a period of 1 month, after which they are deleted. Mrs. A.T. informs that it has not charged the battery of the device for quite a long time and is currently only using the bell function. Ms AT has access to the output image and recordings, having previously also remotely accessed the device and recordings via an installed application on her mobile phone, but this feature is currently not being used. The video spy is mounted on the front door of the apartment. 7, as the corridor in front of the apartment, the entrance doors of two other apartments on the floor (which are not currently occupied), the elevator door on the floor and part of the staircase fall within the scope of video surveillance. There is no information sign/sticker on the front door warning about video surveillance. Mrs. A.T. informs the inspection team that the remaining apartments on the floor are not occupied. 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 monitoring compliance with the GDPR and the GDPR. In order to exercise its powers, the commission must be validly referred. Complaint PPN-01-748/23.10.2020 contains the required details, namely:

there are data on the complainant, the nature of the request and date, the passively legitimized parties are indicated. The subject of the appeal are allegations of unlawfully carried out by O.Y., R.P., B.P. and K.K. video surveillance, by means of video surveillance cameras mounted on the entrance doors of private properties owned by individuals, respectively app. 7, app. 11, studio 24 and apartment 31, in a condominium building located in the city of Sofia, *****. The complaint is procedurally admissible, submitted within the period under Art. 38 of the Labor Code by an individual with a legal interest against passively legitimized parties - individuals O.Y., R.P., B.P. and K.K., for which it is claimed, and the commission, upon inspection, found that R.P., B.P. and K.K. have the capacity of administrators of personal data within the meaning of Art. 4, para. 7 Regulation EU 2016/679, insofar as they themselves determine the purposes and means of processing personal data through video surveillance and have access to the processed data. In the course of the inspection, it was established that the video surveillance was carried out by means of a device installed above the entrance door of the apartment. 7 in the EU chamber is not carried out by the passively legitimized party O.J., but by a person using the property - A.T., in view of which the same should participate in the proceedings as a responsible, ex officio constituted party, insofar as it is established that she, not the owner of the app. 7 Mr. O.Y., has the capacity of administrator of personal data in relation to the implemented video surveillance. 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, considers complaints against acts and actions of personal data controllers, which violate the rights of data subjects related to the processing of personal data, being not available the 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. The statements of Mrs. R.P. cannot be shared. and Mr. O.Y. for the inadmissibility of the complaint due to delay due to the fact that the video surveillance is an ongoing form of processing of personal data, the same carried out both on the date of referral to the CPLD and afterwards, on 28.05.2021, the date of the physical inspections carried out by the CPLD. The claims of inadmissibility of the complaint due to the lack of legal personality of the sender cannot be shared either. The claims that the CPDP was referred by the EU do not correspond to the content of the complaint. In the same, it is stated that it was submitted by an individual GN, who also holds the title of house manager, and these two qualities are not incompatible for referral to the CPLD. In this case, it should be assumed that Mrs. G.N. participates in the proceedings in a personal capacity - as a natural person with a legal interest, insofar as it is indisputable that

he lives in the EU, in the common areas of which he claims that video surveillance is carried out. For the above 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 24.11.2021, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: complainant - G.N. and defendants - O.Y., R.P., B.P. and KK, passively legitimized and AT, ex officio constituted party. An open hearing has been scheduled to consider the merits of the complaint on 02.02.2022 at 1:00 p.m. The parties have been notified of an official inspection carried out in the case, a certified copy of the findings of the inspection have been sent for review and opinion. Information and evidence of a general meeting held in the condominium regarding the video surveillance, and a respective decision on its implementation, were requested, but not provided. At the meeting of the commission held on 02.02.2022, the complaint was examined on its merits. The parties - regularly notified, do not appear or represent themselves at the meeting before the commission. 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 presence of established actual facts, and given the evidence collected and the allegations made, the commission accepts that the substantively examined appeal PPN-01-748/23.10.2020 is well-founded. The subject of the complaint are allegations of unlawful video surveillance in a condominium building. According to the legal concept, video surveillance is a technical form of processing and storage of personal data within the period stipulated by the law, carried out in compliance with the requirements for the protection of personal data, including filming of persons in a guarded object and recording of the data obtained. The information contained in the video recordings of surveillance devices about the physical persons as a whole - image, daily habits, behavioral reactions and social contacts, fall within the scope of the concept of personal data, since the persons can be identified in an indisputable way. The collection and storage of personal data is a form of processing within the meaning of Art. 4, § 1, item 2 of Regulation (EU) 2016/679 and, as such, should be carried out in compliance with the provisions of the GDPR and the Regulation. From the evidence gathered in the case file, it was established, and it is not in dispute between the parties, that there is a condominium building at the address, in which the parties are neighbors - they own independent apartments. Officially known, from the content of other complaints submitted to the CPLD, is that the relations between the parties are complicated and conflictual. According to the administrative file, it is not disputed that video surveillance is carried out in a building, in condominium mode, by R.P., B.P., K.K. and A.T. by means of cameras mounted on the entrance doors of flats 7, 11, 25 and 31, which cover EU common areas and entrance doors of dwellings not owned and

used by administrators.

Evidence of a decision taken by the General Assembly of the condominium to implement the video surveillance was not committed, despite the given explicit instructions in this direction, in view of which it should be assumed that such is missing. It cannot be assumed that the video surveillance is in fulfillment of a legally established obligation arising from the Condominium Management Act applicable to the administrators. In this regard, it should be emphasized that for the processing of personal data through video surveillance for the purpose of security in condominium buildings, the legislator has provided for a special order, which was not observed in this case. The video surveillance carried out by the defendants is illegal, insofar as none of the conditions specified in Art. 6, § 1 of the Regulation. Evidence to the contrary is not engaged. There is a lack of evidence to substantiate the applicability of Art. 6, § 1, letter "b" of the GDPR - existence of a contract concluded between the parties for the execution of any necessary processing of personal data by means of process cameras or for taking steps at the request of the data subject before concluding the contract. Grounds under Art. 6, § 1, letters "d" and "e" of the GDPR are irrelevant - they are applicable in other, different and incompatible with the present hypotheses regarding the processing of personal data for the protection of vital interests, the performance of a task of public interest, as well as in the exercise of official powers not delegated to the defendants. It cannot be assumed that there is also a preferential interest of the latter for video surveillance carried out outside the boundaries of their property, as evidence and even statements to the contrary are missing, therefore it should be assumed that the interest of the natural persons, for whom the data refers to that of the persons who installed the respective cameras. There is no evidence presented in the case file of illegal actions by third parties, endangering the personal integrity of the administrators or their families and property, which would justify an overriding interest of the administrators. Regarding the argument for installing the cameras, namely for the purpose of protecting property, it should be noted that the processing of personal data by means of video surveillance is lawful and permissible when it is necessary for the purposes of the legitimate interest of the controller to protect property and protect his property and insofar as the same is carried out within the property. However, to the extent that common parts of the condominium also fall within the scope of the cameras, without a decision of the General Assembly of the condominium, and given the purpose of the video surveillance, the scope and technical characteristics of the cameras, a conclusion is made that the video surveillance was carried out in violation of the principles of legality, with in view of the fact that areas outside the property of the administrators are photographed, and in the case of Mrs. A.T. outside the residence she used. Apart from that, the commission accepts that the processing does not meet

the principle of transparency as far as there are no information signs, with the exception of app. 11, about the implemented video surveillance and data for the administrators, especially since technical information is also available about the audio recording made by the cameras (at app. 7, 11 and 31), given the possibility of a "two-way audio signal". The same as a form of personal data processing is excessive for the purpose declared to the defendants – protection of their property.

The technical devices found by the CPLD team are cameras installed in the peephole of the corresponding entrance door, as evidenced by their technical characteristics, which show that these are cameras that record motion and store video footage in the form of an automatic register in memory for a period of time from one month to 90 days. Remote access to the recorded video footage is also detected, including notification to the owners of detected movement in front of the camera, therefore these cameras cannot be considered to be video intercoms for connecting the owner with the persons who are in front of his entrance and wish to establish contact with him and the visualization is for the purpose of identifying the person and guaranteeing the security of the owner of the apartment and his family. Since the cameras installed in the peepholes also carry out video surveillance of common areas in the condominium, for such video surveillance the legislator has provided a relevant order, namely a decision of the general assembly, which ensures protection of both the property of the condominium and the owners of apartments in this condominium and their families. The actions taken by the defendants circumvent this rule adopted by the Condominium Management Act. There is a lack of evidence to support the claims of the defendants that their property and families have been subjected to illegal actions by third parties, which lead to endangering their personal integrity due to which the legitimate interest of these persons cannot prevail over the interest of all other owners in the condominium. The cameras installed by them record common areas in the condominium, which are used by each of the co-owners, by their relatives or guests of the apartments they occupy.

The Commission accepts the allegations expressed during the proceedings and the inspections carried out on the spot about encroachments on property in the block, including flooding of the front door of the apartment. 7 with an oily substance and littering in front of the door, as an exercise of the right of defense, but found the same to be unproven during the proceedings. Given the nature and type of the detected violation and the fact that the same has not been suspended, and also that the affected personal data are not sensitive within the meaning of the law and there is no evidence of damage caused by the processing, the commission considers it expedient, proportionate and effective to impose a corrective measure under Art. 58, § 2, letter "d" of Regulation EU 2016/679, finding that the same will achieve the purpose of the law - it will stop the violation and

restore the established legal order regarding the processing of personal data. The remaining measures under Art. 58, § 1, letters "a", "b", "c", "e", "f", "g", "h" and "j" of the GDPR are inapplicable and inexpedient due to the nature of the violation and the circumstance, that at the time of pronouncement the same has not been suspended. The Commission finds that insofar as the violation is the first, the imposition of a fine on the administrators would be excessive and in violation of the principle of proportionality under Art. 6 of the APC, according to which "when the administrative act affects rights or creates obligations for citizens, those measures are applied that are more favorable to them, if the goal of the law is achieved in this way." However, it should be noted, that the non-implementation of the order given by the commission, within the specified period, is accompanied by a sanction in view of its effectiveness and the possibility of an additional sanctioning mechanism for verification and control of the implementation. The goal is to achieve general prevention and proportionate and lawful processing of personal data. Thus, the orders are effective, as they are attached to the corresponding sanctions in case of non-fulfilment, and the legislator provides that in case of non-compliance with an effective order of the supervisory authority, an administrative penalty of "fine" or "property penalty" will be imposed under Art. 83, paragraph 6 of Regulation 2016/679 in amounts up to EUR 20,000,000.

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-01-748/23.10.2020 as well-founded.
2. Based on Art. 58, § 2, letter "d" and for violation of Art. 5, § 1, letter "a" of Regulation (EU) 2016/679 issues an order to the personal data controllers R.P., B.P., K.K. and A.T. to cease filming common areas of the condominium by removing the cameras.
3. Deadline for execution of the order – one month from the entry into force of the decision, after which they must notify the commission of the execution by presenting the relevant evidence.

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.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Veselin Tselkov /p/

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