

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-566/06.08.2020 Decision on appeal with reg. No. PPN-01-566/06.08.2020 DECISION no. PPN-01-566/2020 Sofia, 24/08/2021 The Commission for the Protection of Personal Data (KPLD, the Commission) in composition, Chairman, Vencislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a regular meeting held on 30.06.2021 and objectified in protocol No. 28/30.06.2021, on the basis of Art. 10, para. 1 of the Personal Data Protection Act (PPA) in conjunction with Art. 57, § 1, b. "f" of Regulation (EU) 2016/679, examined the merits of a complaint with reg. No. PPN-01-566/06.08.2020, submitted by Y.R. The complainant informed the Commission that she was once again receiving court documents, in this case from a private bailiff (PSI). She informs the Commission that she was never a subscriber of "Toplofikatsia" EAD, did not reside at the address indicated in the documents and did not have a residence in the city of Sofia. In addition, it is stated that the debtor according to the documents is A.R., whose wife is also a debtor according to the writ of execution. Mrs. Y.R. informs that she is not the wife of A.R. and she has never been, for which she is attaching as proof a certificate of husband and consanguinity. He believes that "Toplofikatsia" EAD and PSI have violated the Personal Data Protection Act, and due to the coincidence of the names of the debtor and the debtor, the applicant's personal identification number was unlawfully obtained from and used in Toplofikatsia's file, and appeared in the court papers of PSI and address of Mrs. Y.R. Requests an inspection by the Commission. In the conditions of the official beginning laid down in the administrative process and in fulfillment of Art. 26 of the APC, for starting the production of "Toplofikatsia Sofia" EAD and PSI, an opportunity has been provided under Art. 34, para. 3 of the APC for expressing an opinion and providing relevant evidence on the allegations made in the complaint. In the opinion filed by "Toplofikatsia Sofia" EAD with reg. No. ****, it is stated that they consider that it is not a matter of unlawful processing of personal data, but of the admission of a technical inaccuracy. It is explained that on 05.08. 20202 "Toplofikatsia Sofia" EAD received a complaint with reg. No. *** from Y.R. In connection with the mentioned complaint and an inspection carried out by the company, it was found that a mistake was made when filing the court proceedings, due to a coincidence of names. In response with Reg. No. 12238/03.09.2020, they notified the person Y.R. that he is not a client of "Toplofikatsia Sofia" EAD, for which they are attaching evidence. In addition, they point out that as far as Y.R. was a debtor in enforcement case No. *** according to the inventory of the PSI "Toplofikatsia Sofia" EAD took immediate action to terminate the enforcement proceedings by filing a notice with Reg. No. *** and an opinion with Reg. No. *** to PSI, that on the basis of Art. 433, para. 1, item 2 of the Civil Procedure Code, the enforcement proceedings have been terminated. With an opinion from the PSI with

registration No. ***, it is stated that on the basis Art. 426, para. 1 of the Civil Code and Art. 19, para. 1 of the ZPSI, the bailiff proceeds to execution upon request and on the basis of a writ of execution or other act subject to execution. With the application for the initiation of the enforcement case, the claimant has entrusted the bailiff with the rights under Art. 18 of the ZPSI for a comprehensive study of the property status of the debtor, as well as to determine the method of execution. Both in the application for formation and in the executive order issued on 02.03.2020 pursuant to g.d. No. *****/2014 according to the inventory of the Sofia District Court, 68 Chamber, Y.R. is listed as the obligee and individualized with her three names and social security number. In this sense, it should be noted that the bailiff does not have the obligation to check ex officio the accuracy of the data presented in the writ of execution, but proceeds with enforcement based on the data and against the persons specified in its objective and subjective limits. An appeal was filed in executive case No. *** with entry no. No. *** from Yu.R., with which it is claimed that she is not a debtor in the case, in view of which and until the dispute is clarified, with a message with ex. . N****. the seizure of bank accounts has been lifted. The bailiff's office has received a request with entry no. *** from "Toplofikatsia Sofia" EAD, with a request to terminate the executive proceedings on the basis. Art. 433, para. 1, item 2 of the Code of Civil Procedure in relation to Y.R. Based on these circumstances, by a decree of the PSI, the enforcement proceedings regarding the same have been terminated. For the purpose of judicial enforcement, and in particular for the regularity of notification, the bailiff has prepared a reference from the General Directorate "Civil Registration and Administrative Services" ("GRAO"), a reference for the debtor's address registration. Regarding the claim that by indicating the address of the applicant in an invitation for voluntary performance, her interests were violated, it considers the same to be unfounded, in view of the fact that according to the personal data specified in the enforcement document, namely names and social security number, actions were taken to carry out of said reference for the purpose of notification and enforcement action. The algorithm for the individualization of a person is indicated, which is carried out in the following way: request from the interested party to start execution, in which the obliged person is indicated - names and social security number; the writ of execution or other act subject to execution, in which the obliged person is indicated and attached to the application for the initiation of the case, in the writ of execution, Yu.R. is named as the debtor. and its TIN is indicated, respectively, the individualization is based on both the names and the TIN, carrying out a GRAO inquiry in order to establish the permanent and current address of the obligated person, with a view to complying with the provisions of Art. 427 and Art. 38 of the Civil Code. Requests that the specified steps be accepted as established in practice rules and algorithm for the individualization of a debtor in an executive case. It states

that these steps are mandatory for every bailiff as a methodology and way for the individualization of debtors based on the legal obligations under Art. 426 of the Civil Code in conjunction with Art. 19 of the State Environmental Protection Act. In view of the above, he considers that the actions performed are correct and lawful and requests that the complaint be disregarded. The considered complaint must contain the required details specified in the provision of Art. 30, para. 1 of the Regulations for the activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA), namely: there are data on the applicant, the nature of the request, date and signature, in view of which it is regular. According to Art. 38, para. 1 of the Personal Data Protection Act (PDPA), in the event of a violation of their rights under Regulation 2016/679 and the PDPA, each data subject has the right to refer the Personal Data Protection Commission within 6 months of becoming aware of the violation, but no later than later than two years from its execution. Video surveillance is a permanent and continuous processing of personal data, which is why the complaint was submitted within the period under Art. 38, para. 1 of the Labor Code. In Art. 27, para. 2 of the APC, the legislator binds the assessment of the admissibility of the request to the presence of the requirements specified in the text. Item 6 of the said provision refers to procedural prerequisites specified in other legal acts. According to Art. 57, par. 1, 6. "f" of Regulation 2016/679 in relation to the clarification made in recital 122 to the Regulation, when referring and, the Commission examines complaints submitted by data subjects against a controller or processor of personal data, a public body or a private structure , acting in the public interest. At a meeting of the Commission, held on 28/04/2021, the complaint was declared procedurally admissible, and the following were constituted as parties to the proceedings: Y.R. and defendants "Toplofikatsia Sofia" EAD and PSI. The parties are directed to allocate the burden of proof. They were notified of the examination of the complaint on its merits. 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 Regulation 2016/679 and the Personal Data Protection Act. Considered in substance, the complaint is well-founded in relation to "Toplofikatsia Sofia" EAD. According to the administrative file, it is not disputed that the applicant, Mrs. Y.R. is not a subscriber of "Toplofikatsia Sofia EAD" and has never been, does not have real property rights on heat supplied property. It is not disputed that the debtor of "Toplofikatsia Sofia" EAD is A.R., whose wife the appellant is not, as is evident from the provided certificate of heirs. In favor of "Toplofikatsia Sofia" EAD, a writ of execution was issued on 02/03/2020 in city case No. ***** of 2014, according to the inventory of the Sofia District Court, with which Mr. A.R. and Y.R. are ordered to pay the sums specified in the executive order to Toplofication. Mrs. Y.R. filed a complaint with "Toplofikatsia

Sofia" EAD, filed with entry no. No. *** Consequence of the submitted by Y.R. complaint to the heat supply company, the latter found that Y.R. is not a client of "Toplofikatsia Sofia" EAD and that a technical error was made when filing court proceedings, due to the coincidence of the names of the complainant with those of a person having an obligation for heat energy. The response to the complainant was sent with letter No. G-12238/03.09.2020. It is undisputedly established that "Toplofikatsia Sofia" carried out the individualization of the parties in connection with the submission of an application to the court for the issuance of a writ of execution. From the collected evidence, it is established that the applicant was subject to a garnishment. The lien was imposed in the course of enforcement proceedings at the PSI, initiated at the request of Toplofikatsia Sofia on the basis of a writ of execution issued in civil case No. *****/2014 of the Sofia District Court. In the writ of execution, three names and social security numbers of the two debtors are indicated, and the three names of the applicant are identical to the three names of the wife of the actual debtor of "Toplofikatsia". The legislator has imperatively established the permissible hypotheses for the processing of personal data of natural persons. The processing of personal data is permissible when the natural person to whom the data refers has given his express consent; when necessary to fulfill an obligation under a contract to which the data subject is a party; when it is necessary to protect vital interests of the data subject or another natural person; when necessary to comply with a legal obligation that applies to the controller; when necessary for the performance of a task in the public interest or in the exercise of official powers that have been delegated to the controller; when it is necessary to realize the legitimate interests of the controller of personal data or of a third party to whom the data is disclosed, except when the interests of the natural person to whom the data refer take precedence over these interests. The file does not contain any evidence to justify the legality of the processing of the personal data of Mrs. Yu.R., in the amount of three names and personal identification number by "Toplofikatsia Sofia" EAD. Given the stated factual situation, Toplofikatsia Sofia is processed the personal data of the complainant in the amount of three names and personal identification numbers by providing them to the PSI for the purposes of conducting enforcement proceedings, without any of the conditions for the admissibility of the processing under Art. 6, paragraph 1, letters "a" to "f". Regarding the PSI – the complaint is groundless. "Toplofikatsia Sofia" EAD has submitted an application No. 24361/01.04.2020 to the PSI to initiate an enforcement case and to take actions to collect a claim from A.R. and Y.R. with address: ***. With the mentioned application, Toplofikatsia Sofia EAD has assigned to PSI on the basis of Art. 18, para. 1 of the Law on the private bailiff to examine the property status of the debtors. Attached to the application is an executive sheet dated 03.02.3020, in which the applicant is undoubtedly individualized with three names

and a social security number. The complaint is groundless against the PSI. The private bailiff as a controller of personal data, since the PSI can process personal data of natural persons for the purposes of the official enforcement powers granted to it, regulated by the Civil Procedure Code and the Law on private bailiffs - basis under Art. 6, paragraph 1, letter "e" of Regulation 2016/679. Indeed, in the case under consideration, the applicant is not a debtor and her personal data should not be processed for the purposes of an enforcement case. In this case, however, the specific evidence in the file should be considered. The enforcement case was initiated according to the requirements of Art. 426, para. 1 of the Code of Civil Procedure - based on a request from the claimant (Heating) and a writ of execution. In the executive order, three names, the EGN of the debtors, including Y.R., as a co-debtor, are indicated. The specified data has the character of personal data and the parties can be individualized in an indisputable way. Toplofikatsia Sofia provided the wrong EGN of UR, on the basis of which the writ of execution was issued, which also led to the processing of personal data by the private bailiff, who according to Art. 19, para. 3 of the Law on Private Bailiffs cannot refuse to perform enforcement actions. In view of the above, the personal data in this case were processed by the PSI lawfully and in good faith, but illegally by Toplofikatsia Sofia EAD. The attachment imposed on the complainant was lifted by the private bailiff immediately after learning about the error on 06.08.2020, by notification both by "Toplofikatsia Sofia" EAD, by letter, and by the complainant herself, and the enforcement proceedings were terminated by a decree of the Federal Security Service th. The appellant was notified of the termination of the enforcement proceedings by a letter which was received, as evidenced by the notice of delivery. In the event of such a violation, the complaint should be upheld against "Toplofikatsia Sofia" EAD. 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 assessment is based on considerations of expediency and effectiveness of the decision, taking into account the specifics of each specific case and the degree of impact on the interests of the specific 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 pairs. 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 goal pursued by the selected corrective measure – prevention or termination of the violation, sanctioning of illegal behavior or both, which possibility is provided for in Art. 58, par. 2, letter "i" of Regulation 2016/679. When assessing the circumstances of the file, the Commission finds that for the committed violation both an administrative penalty "property penalty" should be imposed, and an order should be issued to "Toplofikatsia Sofia" EAD. Finds that an administrative penalty of a "property penalty" of a small amount should be imposed, which is intended to sanction the misconduct and to discipline the respondent. The Commission, having assessed the fact that the violation of the rules for the processing of personal data has been completed and its consequences have occurred for the data subject, and in order to remedy the adverse consequences, considered that a pecuniary sanction, as a measure of administrative coercion, appears expedient and effective measure. When assessing the circumstances of the file, in accordance with Art. 83, paragraph 2, letter "i", the reasons are as follows: Letter "a" - the provision of the personal data of the applicant from Toplofikatsia Sofia EAD to the private bailiff led to the processing of her personal data for the purposes of conducting an enforcement case . Specific adverse consequences have arisen from this - a seizure was imposed on the bank account of Mrs. Y.R. In addition, with his application, the claimant commissioned a study of the debtor's property status, making inquiries and procuring documents. Only one data subject is affected in this case. There are no data on material damages occurring as a result of the processing. Letter "b" - the violation was committed by a legal entity that is not at fault. The actions of those representing the administrator point to negligence. Letter "c" - there are no data on material damages for which remedial actions should be taken. Non-property damages cannot be repaired. It should be noted here that the lien on the labor remuneration was lifted ex officio by the private bailiff, and not at the claimant's request; Letter "d" - the violation is not for failure to take technical and organizational measures; Letter "e" - there is no violation of data security within the meaning of Article 33 of the Regulation or other related violations; Letter "f" - the removal of the violation is not possible; Letter "g" - processed personal data consists of three names and social security number. Special categories of personal data are not processed within the meaning of Art. 9 of the Regulation, which are subject to increased protection. Letter "h" - CPLD became aware of the committed violation after referral by the data subject; Letter "i" - for a similar violation, Toplofikatsiya Sofia was imposed an administrative penalty "property penalty" in the amount of BGN 10,000 by Decision No. PPN-01-108/17 of 01.06.2018. The decision of the CPLD was confirmed by the court of first instance with Decision No. 692/06.02.2019, issued under the adm. case. No. 7178/2018 according to the inventory of the Administrative Court Sofia-city, II department 58 chamber. The first-instance decision was

confirmed by decision No. 1063 of the Supreme Administrative Court dated 22.01.2020, issued under adm. case No. 5379/2019; With decision No. PPN-01-137/2019 of 06.01.2020, "Toplofikatsia Sofia" EAD was imposed an administrative penalty "property penalty" in the amount of BGN 10,000. The decision has entered into force and the imposed penalty has been paid. Letter "y" - at the time of processing, there are no approved codes of conduct; Letter "k" - The Commission considers as mitigating the responsibility of the administrator "Toplofikatsia Sofia" EAD the fact that the latter behaved responsibly and acted quickly after discovering the error, notified the PSI, requesting the termination of the proceedings against Y.R. with a letter first submitted by e-mail on 08/17/2020 and in paper form, and the enforcement proceedings were terminated already on 08/17/2020. The administrative body considers that the pecuniary sanction will have an educational impact and will contribute to compliance by the administrator of the established legal order, and when determining the amount of the imposed sanction, he took into account that the violation was not the first for the administrator "Toplofikatsia Sofia" EAD. In addition to a purely punitive measure, the state's reaction to the committed violation of the legally established rules, the property sanction also has a disciplinary effect, with a view to not committing the same violation in the future. In order to minimize the possibility of similar violations, the Commission finds it expedient to issue an order under Art. 58, §2, b. "d" of the Regulation regarding "Toplofikatsia Sofia" EAD. The administrator is obliged to know the law and comply with its requirements, even more so because he owes the necessary care provided for in the law and arising from his subject of activity, personnel and economic resources. In view of the fact that for violations with a subject identical to the subject of the present complaint, the Commission was referred by different persons in different periods from 2017 to 2020 and several proceedings were initiated, which ended with a decision on the merits of the allegations presented by the complainants, and regardless of the fact that "Toplofikatsia Sofia" EAD contested these decisions, they were confirmed by an effective court act. Given this reason, the authority considers that fulfilling the obligations for responsible, conscientious and accurate processing of personal data, as an administrator under the regulation, the administrator should change its rules and policies for processing personal data and provide in its internal rules an additional procedure for re-verification and additional identification of natural persons before initiation of enforcement proceedings. A request for an award of costs was made by the representative of the PSI, but such costs are not awarded in the present administrative proceedings, arg. Art. 12, para. 3 in conjunction with Art. 47, para. 2 of the APC and the practice of the ASSG and the Supreme Administrative Court, decisions No. 4407/27.06.2019, according to Adm. case No. 3060/2019 of the Administrative Court - Sofia-city and Decision No. 9833/17.07.2020 under adm. case No.

13339/2019 of the Supreme Court. In view of the above and on the basis of Art. 57, § 1, b. "f" of the Regulation, respectively Art. 10, para. 1, in connection with Art. 38, para. 3 of the Law on the Protection of Personal Data, the Commission DECIDES:

1. Declares complaint reg. No. PPN-01-566/06.08.2020, filed by Y.R., as unfounded in relation to a private bailiff;
2. Declares complaint reg. No. PPN-01-566/06.08.2020, filed by Yu.R., as well-founded in relation to "Toplofikatsia Sofia" EAD;
3. Based on Art. 58, § 2, b. "and", in conjunction with Art. 83, §5, letter "a" of Regulation 679/2016 for violation of Art. 6, § 1 of the Regulation imposes on the administrator "Toplofikatsia Sofia" EAD, EIK 831609046, with registered office and management address: Sofia region (capital), Stolichna municipality, Sofia 1680, Krasno Selo district, Yastrebets street No. 23 B, represented by A.A. a property sanction in the amount of BGN 2,000 (two thousand BGN);
4. Based on Art. 58, § 2, b. "d" of the GDPR issues an order to the administrator of personal data - "Toplofikatsia Sofia" EAD to introduce additional rules for internal identification;
5. Deadline for implementation of the order - one month from the entry into force of the decision, after which to notify the commission of the implementation by presenting the relevant evidence.

After the entry into force of the decision, the amount of the imposed penalties should be paid in cash to the cash desk of the Commission for the Protection of Personal Data, located in the city of Sofia, Prof. Blvd. Tsvetan Lazarov" No. 2 or transferred by bank transfer:

BNB Bank - Central Bank

IBAN: BG18BNBG96613000158601

BIC BNBBGGSD

Commission for Personal Data Protection, BULSTAT 130961721

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 - Sofia-city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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