

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-164/26.02.2020 Decision on appeal with reg. No. PPN-01-164/26.02.2020 DECISION no. PPN-01-164/2020 Sofia, 01/08/2021 The Committee for the Protection of Personal Data (KPLD, the Commission) in composition, Chairman - Vencislav Karadjov and members: Tsanko Tsolov and Maria Mateva at a regular meeting held on 09.12. 2020 and objectified in protocol No. 52/09.12.2020, 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-01-164/26.02.2020, filed by T.G. against an educational institution (U.Z.). With her complaint, Mrs. T.G. informs CPLD that on 09.01.2020 she was served with an order to terminate the employment relationship with U.Z., at her home, during her hospital stay. It is explained that on 10.01.2020, the acting "director", Ms. K., convened a Pedagogical Council, where she informed her colleagues about the dismissal order, and the information was made by "reading", and the objections against the order of the appellant were also read. Mrs. T.G. informs that at the time of reading the order, she is no longer an employee of the school and has no employment relationship with it. T.G. was informed of what happened at the Pedagogical Council by a colleague who is a senior Russian language teacher at the school. In this regard, Mrs. T.G. believes that her basic rights related to the disclosure of data regarding her identity, grounds entered in the dismissal order, findings and personal data have been violated. Further in her complaint, Mrs. T.G. claims that she did not sign a declaration or consent to her personal data being processed, "i.e. performed in front of more than 40 people," damaging her dignity. The complainant considers that the disclosure of her personal data to the Pedagogical Council, by Mrs. K., is a violation of her available data and damage to her authority. In addition, it was noted that Mrs. K. read to the Pedagogical Council not the Constitutive Protocol of Inspection, but the order to terminate the employment of Mrs. T.G. with the school. She adds that she made this clarification because there was an order from the head of RUO B., which imposes duties on the directors to inform the Pedagogical Council of the school with the results of each inspection of the experts of RUO B. and the Ministry of Education, i.e. "to read the findings in front of everyone", which is also considered a violation and asks to be clarified by the Commission. Pursuant to the provision of Art. 26, para. 1 of the APC, the Commission requested opinions to clarify the administrative file from a factual and legal point of view. From U.Z. an opinion with reg. No. PPN-01-164#4/08.05.2020 was filed, which considers the complaint unfounded and unproven. It is stated that the applicant held the position of "principal" of an educational institution. Her employment was terminated on the basis of Art. 328, para. 1, item 5 of the Labor Code (LT) by the authority above the employer, in the sense of art. 61, para. 2 of the CT - RUO B. It is

explained that the applicant's employer at that time was the educational institution, and the school staff wished to be informed of the reasons and motives for the dismissal of Mrs. T.G. from position. Mrs. K., representing the school, was motivated to introduce her colleagues to the Pedagogical Council, because the one created by Mrs. T.G. "tension" affected the creative, educational process, as well as the social life of the team. In addition, it is stated that at a meeting of the Pedagogical Council, as can be seen from protocol No. 6/10.01.2020, Ms. K. informed the team of the inspections carried out by the RUO B. In the opinion, it is stated that it does not correspond to the objective truth, that the personal data of Mrs. T.G. was misused, in the process of getting to know the reasons that led to her dismissal. Mrs. K. points out that the only thing she quoted were the findings of the punishing authority - RUO B. and the names of Mrs. T.G., claiming that she did not quote the social security number, address and other data from the order. Attached as evidence are: Order No. RD-06-18/08.01.2020, Minutes No. 6/10.01.2020 of the Pedagogical Council; Agenda for holding the Pedagogical Council, by Order No. 6/09.01.2020. To clarify the file from a factual point of view and on the basis of the provision of Art. 44, para. 1 of the APC, an opinion has also been requested from the Regional Department of Education. In response, an opinion was filed with evidence attached to it. The complaint under review fully complies with the requirements for regularity, according to Art. 28, 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 complainant, the nature of the request, date and signature. The norm of Art. 38, para. 1 of the LLDP provides for a deadline for referral to the Commission - within one year of learning of the violation, but no later than five years from its commission. The provisions provided for in Art. 38, para. 1 of the Labor Code, deadlines have been met. 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. The competence of the Commission when considering complaints is related to the protection of natural persons in connection with the processing of their personal data by persons having the status of "administrators of personal data" within the meaning of Art. 4, item 7 of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR). At a closed meeting of the Commission held on 21.10.2020, the complaint was accepted as procedurally admissible and the following were constituted as parties to the administrative proceedings: T.G. and the defendant, the school, represented by the director. The parties are regularly notified of the open meeting of the Commission scheduled for 09.12.2020 to examine the merits of the complaint. At the held open session, the parties do not appear or represent themselves. The concept of "personal data", which appears in Art. 2, § 1 of the GDPR, includes, according to the definition in Article 4, § 1 of the GDPR, "any information related

to an identified or identifiable person". An identifiable person is considered "a person who can be identified, directly or indirectly, in particular by an identifier such as a name, an identification number .. or by one or more specific signs relating to his physical, physiological .. identityor one or more signs'. The term "processing of personal data" is defined in Article 4, § 2 of the GDPR, as "any operation or set of operations carried out with personal data or a set of such data, by automatic or other means, such as collection, recording, storage . .disclosure through transmission, distribution or any other way in which the data becomes available.", therefore, the distribution of personal data will qualify as processing of personal data, since the specified actions are provided as one of the possible actions that, when carried out under regarding personal data, lead to their processing. The legal definition of the terms administrator and processor of personal data is contained in Art. 4, § 7 and § 8 of the GDPR. According to the given definitions, a personal data controller is a natural or legal person, public body, agency or other structure that alone or jointly with others determines the purposes and means of personal data processing; where the purposes and means of such processing are determined by Union law or the law of a Member State, the controller or the special criteria for its determination may be established in Union law or in the law of a Member State, and "processor of personal data" means a physical or legal entity, public body, agency or other structure that processes personal data on behalf of the controller. According to the administrative file, it is not in dispute that Mrs. K., temporarily acting as director of the educational institution, informed the Pedagogical Council of Order No. RD-06-18/08.01.2020. It can be seen from the provided copy of the order that the same contains three names, social security number and the findings of inspections carried out by the RUO – B., as well as the reasons that led to the dismissal of Mrs. T.G. In this sense, the disclosure of the information contained in Order No. RD-06-18/08.01.2020) to the Pedagogical Council is information that concerns Mrs. T.G. The defendant in the administrative file, however, denies that the uniform civil number of the applicant was cited when familiarizing himself with the mentioned order of the Pedagogical Council, held on 09.01.2020. Allegations have been made that the Pedagogical Council is aware of the findings of inspections carried out by the punishing authority - RUO - B., who directly and immediately correspond with the dismissal order of Mrs. T.G. RUO - B., as a third person not participating in the proceedings, provided evidence, part of which is Order No. RD-06-772/25.03.2017 of the head of RUO - B., according to which the school director should inform at a meeting of the Pedagogical Council, the teachers and other pedagogical specialists with the results of an inspection carried out by experts of the RUO thematic and current inspection. Given the fact that the applicant was the director of U.Z., the conclusion follows that her three names are not unknown to the teaching staff, some of whom also

participate in the pedagogical council. Regarding the allegations of the complainant that her personal identification number was publicly disclosed to a pedagogical council, it should be pointed out that despite the indicated distribution of the burden of proof in the administrative process, no evidence was received from which it could clearly and categorically be concluded that publicly one civil number of the applicant was disclosed, i.e. the same remain unproven. Regarding the allegations of damage to the reputation of Mrs. T.G., it should be stated that it is clear from the content of the order for disciplinary dismissal that it contains findings of inspections carried out by the RUO - B., which led to the preparation of the procedural order. Moreover, by order No. RD-06-772/25.03.2017 of the head of the RUO - B., the directors are obliged to inform the pedagogical council of the findings of the inspections carried out. The dismissal order, on the other hand, does not indicate any information regarding the criminal proceedings initiated against the applicant for the investigation of a crime committed for drawing up and using a false private document, a crime within the meaning of Art. 309 et seq. of the Criminal Code. In this sense, the complainant's allegations of violation of her dignity are not shared.

In view of the above and on the basis of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, § 1, b. "f" of the Regulation and Art. 38, para. 3 of the Personal Data Protection Act, the Commission ruled as follows

ANSWER:

1. Leave a complaint with reg. No. PPN-01-164/26.02.2020 filed by T.G. against an educational institution represented by the principal, without respect, as unfounded.

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 - B.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

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