

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-1011#36/07.10.2019 Decision on appeal with reg. No. PPN-01-1011#36/07.10.2019 DECISION No. PPN-01-1011#36/2019 Sofia, 07.04.2022 The Commission for the Protection of Personal Data (PCPD) composed of: Chairman: Vencislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov on meeting held on 15.12.2021, on the basis of Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1, letter "a" 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 collected evidence regarding the implementation of the Commission's Decision PPN-01-1011#36/2019 of 01.03.2021. The Commission for Personal Data Protection was referred with a complaint PPN-01-1011#36/07.10.2019 y., filed by R.B., E.S. and G.A., with the subject of illegal processing of personal data by means of video surveillance carried out by P.D. in jointly owned property with address ****. The complainants inform that in connection with a complaint filed by them in 2018 against M.D., with an identical subject, the commission issued a decision PPN-01-1011/18.07.2019 on the merits of the complaint and issued the administrator of personal data M.D. an order to cease video surveillance of public places, the appellants' properties and their adjoining communal yard by removing the cameras. They claim that the order was executed fictitiously, since the cameras were dismantled and installed on property owned by P.D., M.D.'s mother, and as of the date of referral to the CPLD, the video surveillance was carried out by P.D. They claim that the video surveillance is carried out without their consent, and the co-owned yard is included in its scope. In order to clarify the case from the factual side, an inspection was carried out on the subject of the complaint, the results of which are objectified in Constitutive act PPN-02-428/16.10.2020 with attached Constitutive minutes of 27.08.2020, graphic images from the object and the video surveillance system and a completed questionnaire. It has been established that at the address indicated in the complaint: **** there is a regulated land property (UPI) in which 5 (five) buildings have been built in co-ownership mode. P.D. is the owner of a one-story residential building - a house that he rents out for nights. The appellants are the owners of buildings as well as part of the yard in the same landed property. One of the buildings on the property is owned by the Association of the Jewish community "Obe Shalom" - Ruse. After an inspection, it was found that the video cameras have a spatial location and shooting range as follows: The first video camera is mounted on a metal door separating 1/3 of an ideal part of the plot owned by D., it is directed and films a path in the common yard space between the property of D. and a building in the UPI, owned by the Association "Obe Shalom", which path P.D. and the appellants use to reach their properties. The camera also captures the

entrance to the land used by all the owners, the adjacent part of Vidin Street and the sidewalk. The second and third video cameras are mounted on the facade of D.'s house, are aimed at and capture part of the yard on her property and part of the common path described above. The fourth video camera is mounted on the facade of the house, it is aimed at and captures a part of P.D.'s yard, a part of the path in the common yard, as well as a part of the house inhabited by the applicant RB. The video cameras have a resolution that allows the identification of individuals. In a prominent place on a window of D.'s house, on the side of the path in the common yard, there is an information sign about the video surveillance. No documents (rules, procedures) regulating the processing of personal data through the established video surveillance system have been submitted. It is undisputedly established that the defendants carry out video surveillance by means of a camera built on the property of P.D. video surveillance system, consisting of 4 (four) dome cameras for video surveillance, a video recorder - equipped with a hard disk, as well as other embedded components (cables, chargers, electrical boxes, connectors, etc. Recording with video frames on the hard disk is performed disk in the recorder, and the recordings are stored for a period of about 1 (one) month, after which they are automatically deleted in the order they come in. Local access to the system is provided by P.D. and her daughter M.D. Remote access to the output image from the video cameras in real time and the recordings with video frames on the hard disk in the recorder is carried out by M.D. using specialized software installed on her mobile phone. Access is carried out after entering identification attributes - username and password, known only of the daughter of P.D. - M.D. The file lacks evidence of assignment, and also allegations, of assignment of the processing of personal data through the video surveillance system by an administrator of a processor, which is why, and taking into account the ascertained factual situation, P.D. and M.D. has accepted that they have the status of personal data administrators, insofar as they themselves determine the purposes and means of processing personal data through the video surveillance system and have access to the same. Regarding the defendant P.D. and given the purpose of video surveillance, the scope and technical characteristics of the cameras, the commission has accepted that it is about video surveillance carried out in violation of the principles of legality and "reducing data to a minimum" listed in Art. 5, § 1, letters "a" and "c" of Regulation EU 2016/679, in view of the fact that properties that are not owned by the administrator P.D. and public places - part of an adjacent street and sidewalk. Regarding the defendant M.D. and given the purpose of video surveillance and its scope, the commission has adopted the conclusion that video surveillance was carried out in violation of the principles of legality listed in Art. 5, § 1, letter "a" of the GDPR, in view of the fact that properties that are not owned by the administrator M.D. are being photographed. and

public places - part of an adjacent street and sidewalk, given that for M.D. there are no conditions for the legality of the processing within the meaning of Art. 6, § 1 of the GDPR for arguments identical to those presented regarding P.D. The conclusion is motivated by an analysis of the evidence presented in the file and the statements of the parties, from which it was established that the defendant M.D. there is no property in the UPI, there is no evidence of the existence of real rights on the property, due to which the video surveillance carried out by it is without a legal basis, a circumstance that was also established by decision PPN-01-1011/18.07.2019 of the CPLD, the same known to M.D. Given the nature and type of the detected violations and the fact that they have 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 has considered it expedient, proportionate and effective to impose corrective measure under Art. 58, § 2, letter "d" of EU Regulation 2016/679 to both administrators P.D. and M.D., having accepted 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. However, insofar as the detected violation is the second for MD, in addition to the corrective measure under Art. 58, § 2, letter "d" of the GDPR, the commission also imposed a fine on M.D. in the amount of BGN 1,000 (one thousand BGN). Motivated by the above, the commission issued a decision PPN-01-1011#36/2019 dated 01.03.2021 with the following dispositive: 1. Declares complaint No. PPN-01-1011#36/07.10.2019 as well-founded. 2. For violation of Art. 5, § 1, letters "a" and "c" of EU Regulation 2016/679 and on the basis of Art. 58, § 2, letter "d" of the Regulation issues an order of P.D. to conform personal data processing operations to the provisions of the Regulation by suspending video surveillance and dismantling the cameras within one month of the entry into force of the decision, then to notify the commission of the implementation by presenting the relevant evidence. 3. For violation of Art. 5, § 1, letter "a" of EU Regulation 2016/679 and on the basis of Art. 58, § 2, letter "d" of the Regulation issues an order of M.D. to comply with the personal data processing operations with the provisions of the Regulation by suspending video surveillance within one month of the entry into force of the decision, and then to notify the commission of the implementation by presenting the relevant evidence. 4. Based on Art. 83, § 5, letter "a" and Art. 58, § 2, letter "i" of the GDPR imposes on M.D. fine in the amount of BGN 1,000 (one thousand BGN) for violation of Art. 5, § 1, letter "a" of the Regulation. The decision was communicated to the parties in the administrative proceedings, was not appealed and entered into legal force on 16.06.2021. Regarding M.D. actions were taken to forcibly collect the imposed fine in the amount of BGN 1,000 through the authorities of the NRA - an enforcement case was initiated, there is no evidence that the fine has been paid.

Evidence for the implementation of the order issued by the CPLD to dismantle the cameras and stop the video surveillance was not presented in the instructions in the decision term. By letter PPN-01-1011#55/24.06.2021, the CPLD received an application from the applicant R.B., with attached evidence - photos of the location of the cameras, which contain allegations of non-fulfillment of the issued order. In view of the above, by decision held on 15.09.2021, the CPLD commissioned an inspection regarding the implementation of the orders, the results of which are objectified in a statement of findings PPN-02-610/30.11.2021. The on-site inspection was opened on 19.11.2021 at address: ****, in the presence of P.D. and her daughter M.D. During the inspection, K.T. was also present. - employee of KZLD.P.D. and M.D. are informed of their obligation to assist the inspection team in exercising the control powers of the CPLD and to provide access to the constructed video surveillance system - the subject of the complaint with a view to gathering evidence in connection with the performance of the inspection task assigned by the order of the Chairman of the CPLD.P.D. and M.D. refuse to receive the inspection order and state that they will not provide access to the video surveillance system and assistance to the inspection team, as well as that there is no change in the facts and circumstances found during the inspection carried out by the CPLD on 27.08.2020, objectified in the Constitutive Act Reg. No. PPN-02-428/16.10.2020, adopted by Decision of the CPLD from Protocol No. 45/21.10.2020 and attached to the file. P.D. and M.D. also state that they will not stop video surveillance and dismantle the cameras, resp. will not comply with the Order of the CPLD issued to them, objectified in Decision No. PPN-01-1011#36/2019 of 01.03.2021, they no longer wish to be bothered by the CPLD in connection with the complaint, otherwise they will file harassment case.

In the course of the inspection, an external inspection of the object and the video surveillance cameras was carried out. From the external inspection, it was found that there are 4 (four) dome cameras for video surveillance available on the site, which have the same spatial arrangement as during the inspection carried out on 27.08.2020, objectified in Constitutive act reg. No. PPN-02 -428/16.10.2020, namely:

Camera 1 is mounted on a metal door to P.D.'s property, it is directed to a path in the common yard space between D.'s property and a building in the UPI, owned by the "Obe Shalom" Association, the entrance to the land, the adjacent part from "Vidin" street and the sidewalk.

Cameras 2 and 3 are mounted on the facade of D.'s house, facing part of the yard on her property and part of the common path described above.

Camera 4 is mounted on the facade of the house, it is aimed at part of D.'s yard, part of the path in the common yard, as well as part of the house inhabited by the applicant R.B.

In a prominent place on the metal door and window of D.'s house on the side of the path in the common yard, there are information signs warning about video surveillance of the site.

The evidence collected in the course of the proceedings, the evidence of non-fulfillment of the order issued by the commission and continued video surveillance in violation of the GDPR, despite an individual administrative act that came into force and the explicit and specific instructions given by it regarding the scope of application of the GDPR and the obligations arising from it for the administrators of personal data. The purpose of the exercised corrective authority is to stop the violation and restore the established legal order in the processing of personal data, as precisely in connection with the achievement of the latter, non-fulfillment of orders issued by the supervisory authorities are accompanied by a sanction, a circumstance of which the persons are expressly and preventively notified, stating that according to Art. 83, § 6 of the GDPR, failure to comply with an order of the supervisory authority is subject to an administrative penalty of a "fine" or "property penalty" in the amount of up to EUR 20,000,000.

Despite the above, the evidence collected in the case file testifies to the lack of implementation, which is why the commission considers that the prerequisites of Art. 83, § 6 of the GDPR for engaging the administrative-criminal liability of P.D. and M.D. for non-fulfilment of orders issued by the CPLD to each of them objectified respectively in item 2 and item 3 Decision No. PPN-01-1011#36/2018 of 01.03.2021 of the CPLD.

In the specific case, when determining the amount of the fine, common to both persons, the mitigating circumstances should be taken into account that the debtors are natural persons and it concerns the processing of personal data through video surveillance - image, possible contacts and habits of the observed persons and there is no that data from the processing had harmful consequences for the applicants. As annoying should be qualified the circumstances that it is a matter of intent in failure to comply with the orders, as well as the duration of the act - illegal video surveillance carried out for two years, in particular failure to comply with the order for more than three months from the entry into force of the decision of the CPLD . As aggravating circumstances in determining not a higher amount of the fine imposed on M.D. the commission assumes that the violation is subsequent to the sanctioned person. By Decision PPN-01-1011/18.07.2019 of the CPLD with an identical subject, video surveillance carried out at the address *****, of M.D. an order was issued under Art. 58, § 2, letter "d" of the

GDPR "to comply with the operations of processing personal data with the provisions of the Regulation, by suspending the video surveillance of public places, the property of the complainants and their adjoining within 14 days from the entry into force of the decision shared courtyard by dismantling the cameras". The decision was communicated to Mrs. D., it was not appealed and entered into force, and the CPLD was presented with evidence of the dismantling of the cameras according to an allegation made on 22.07.2019. However, it can be seen from the evidence collected under this file, "at the end in the month of July 2019." , i.e. a week later, a new video surveillance system was built, in which, although the cameras are positioned in other places, they have an identical scope, as that established by the decision of the CPLD. With a subsequent Decision PPN-01-1011#36/2019 dated 01.03.2021, the administrative and criminal liability of M.D. for conducting video surveillance of the address with the imposition of a fine in the amount of BGN 1,000, in addition to an order to suspend the same. The chronology testifies to intent in the actions of M.D. and clear disregard for the rules in the field of personal data, insofar as the same is aware of the consequences of video surveillance, namely its implementation in violation of GDPR.

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, imposed on P.D. fine should be in the amount of BGN 1,000 (one thousand BGN), and the fine imposed on M.D. in an increased amount - BGN 2,000 (two thousand BGN).

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 powers exercised in terms of type and amount undoubtedly correspond to those sought by the LLDP and Regulation 2016/679 efficiency 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. Based on Art. 83, § 6 of the GDPR to impose on P.D. a fine in the amount of BGN 1,000 (one thousand BGN) for failure to comply with an effective order of the CPLD, objectified in item 2 of Decision No. PPN-01-1011#36/01.03.2021.
2. Based on Art. 83, § 6 of the GDPR imposes on M.D. a fine in the amount of BGN 2,000 (two thousand BGN) for failure to comply with an effective order of the CPLD objectified in item 3 of Decision No. ППН-01-1011#36 /01.03.2021

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

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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Decision on appeal with reg. No. PPN-01-1011#36/07.10.2019

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