

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-1746/12.11.2019 Decision on appeal with reg. No. PPN-01-1746/12.11.2019 DECISION no. PPN-01-1746/2019 Sofia, 12/02/2021 The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Vencislav Karadjov and members - Tsanko Tsolov and Maria Mateva, at a regular meeting held on 09.12.2020, based on 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 Reg. No. PPN-01-1746/12.11.2019, filed by V.S. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). Mrs. V.S. requests that the complaint filed by her against the Contact Center for Police and Customs Cooperation - Promakhon be considered. She believes that he violated her rights by illegally providing her personal data and identifying her as a person against whom criminal prosecution was subsequently instituted. The complainant states that on 24.02.2018, the Greek police was contacted by the Greek citizen K.S., who testified about a crime committed through the social network - Facebook. Someone has used the name of her profile and, posing as her, states that she is in the territory of Bulgaria and has a personal problem, due to which she needs a transfer of 250 euros to an account through WESTERN UNION with depositor details \*\*\*\*\* and contact telephone number \*\*\*\*\*. The police service requested information from the Contact Center for Police Cooperation at the Passport Department "Promahon", to which a response was returned with document No. \*\*\*, according to which a probable result was obtained for a citizen of the Republic of Bulgaria with data \*\*\*\*\*. With absolutely no argument regarding the way to identify the person, and even more so that there are more than 100 results for this name and surname, the Greek authorities charge Mrs. V.S. The first violation found by the complainant is that this office does not have the authority to give personal data to natural persons, except on the grounds expressly stated in Art. 4 of the "Agreement between the Government of the Republic of Bulgaria and the Republic of Greece on the establishment and operation of a contact center for cooperation" (Appendix No. 2 of the Agreement). For the investigation that was conducted in this case - attempted fraud, there is no order for providing information and giving personal data through the Contact Center - Promahon. Apart from the above, there are more than 100 results for individuals with the two names of the complainant, and this number, which is listed, has never been associated with her and when dialed, it turns out that such a number does not exist. These two grounds - that the service exceeded its authority to provide personal data and the second violation, that they were determined on the basis of two names and a non-existent telephone number or in the absence of justification as to how and why this number is linked to the specific name and personal data provided, the applicant considers sufficient grounds to

carry out an inspection by the CPLD and to ascertain the violation by the relevant official. In the conditions of the official beginning laid down in the administrative process and in fulfillment of Art. 26 of the APC, the interested authority - the Minister of Internal Affairs, who according to the Ministry of the Interior is the administrator of personal data, is 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 Commission received a reply that the complaint was groundless. A representative of the minister states that the Contact Center - Promahon was created by the Government of the Republic of Bulgaria and the Government of the Republic of Greece for cooperation between the border guard, the police, customs and the offices for administrative control of foreigners. Its activities are organized in an agreement approved by Decision No. 380 of June 17, 2008 of the Council of Ministers, in force since October 10, 2009. It was promulgated in the Official Gazette, no. 83 of October 20, 2009. Seen from Art. 2, para. 1 of the Agreement, the Contact Center is located on the territory of the Republic of Greece, Promahon. Section Five of this Agreement sets forth detailed provisions regarding the protection of mutually provided personal data and information. It is stipulated that the provided data should not be used without the approval of the sending authority for purposes other than the purposes for which they were provided (Article 13, Item 1). As stated in the letter from the General Prosecutor's Office to Ms. V.S., the information provided was not intended to be used by the law enforcement authorities of another country in the course of a judicial investigation. The internal administrative order in the Republic of Bulgaria is that the official information in such cases be provided by the Directorate for International Operational Cooperation - Ministry of the Interior or through a legal aid procedure. When providing the information, it is explicitly stated that "more data may be requested exceptionally and only by the competent authorities according to the law". The Contact Center - Promakhon has not received any information about clarifications on the operational information submitted in this way, as well as that the submitted data will be used by other authorities other than the competent ones, specifying each of the authorities. The provided information was used inaccurately outside the context of its submission by the Bulgarian side. In relation to it, subsequent processing was carried out by the Greek authorities, and the same was used by a body that is not competent according to the agreement, namely a judicial body of the Republic of Greece. The information was subsequently used for purposes other than those for which the data were provided, namely with evidentiary value, when these data should not be used as such. In view of the signal, Mrs. V.S. was informed by GDNP that a request has been prepared to destroy the data received from the Greek side regarding \*\*\*\*\*. 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. 38, 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 21.10.2020, the complaint was declared admissible and the following were constituted as parties to the proceedings: complainant V.S. and the Minister of the Interior, in his capacity as a personal data administrator, is a respondent. The parties have been notified of the open meeting scheduled for 09.12.2020 to consider the merits of the dispute. The following are requested from the Minister of the Interior: 1. The request from the Greek authorities for the provision of information and a response from the authorities of the Ministry of the Interior; 2. Information on how 2 names and an incomplete telephone number reached (identified) the complainant; 3. On what basis were the personal data provided to the Greek authorities; 4. The request sent to the Greek authorities for the destruction of personal data and the response thereto. The information and the requested evidence came on the file. At the held open meeting, the parties did not appear and did not send representatives. With this established, the Commission considered the complaint on its merits, accepting it as unfounded based on the following: Regulation 2016/679 and the Personal Data Protection Act (PDPA) define 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. The subject of the complaint is an allegation of unlawful transmission of the complainant's personal data by the Contact Center for Customs and Police Cooperation - Promahon (hereinafter referred to as the "Contact Center") to Greek investigative authorities. On the factual side, it was established that Greek investigative authorities requested the Contact Center to provide information on person \*\*\*\*\* with phone number \*\*\*\*\*. After a check in the "Bulgarian Identity Documents" system, more than a hundred persons corresponding to the given name and surname were

found. Since the indicated telephone number has the telephone code of the city B., a check was made regarding persons with these names living in the area. In this way, the applicant was reached and the following data about her were handed over to the Greek authorities: three names, permanent and current address, identity document data, photographic material, forensic registration data and criminal record. Information about the person was requested and transmitted in connection with an investigation into criminal proceedings initiated in the Republic of Greece. As can be seen from the submitted request for handover and the response to it, the handover was carried out on 07.03.2018. Therefore, the provisions of the LLDP as amended by SG No. 7 of 2018 are applicable, since Directive (EU) 2016/680 of the European Parliament and the Council should have been transposed by 06.05.2018. As of the date of the grant, the transposition of the directive with Chapter Eight of the Labor Code (amended SG No. 19 of 2019) was not a fact, but a reference to the provisions of the directive (as far as possible) before the expiration of the transposition period, is not admissible. Pursuant to Art. 1, para. 6 of the Labor Code (app. ed.), when within the framework of police or judicial cooperation, data under para. 5, item 4 (criminal proceedings) are received from or provided to an EU member state, they are processed under the conditions and according to the procedure of this law. Art. 4, para. 1 of the Personal Data Protection Act (app. ed.) prescribes that the processing of personal data is permissible only in cases where at least one of the conditions specified in items 1-7 or under para. 2.

Given the status of the administrator who carried out the processing of the personal data - an authority, the basis under Art. 4, para. 1, item 6 of the GDPR (app. ed.) – processing necessary for the exercise of powers granted by law to the administrator or to a third party to whom the data is disclosed.

Relevant to the case are the provisions of Chapter 3, Section II of the Ministry of Internal Affairs, entitled "Simplified exchange of information or data with competent authorities of member states of the European Union, for the purpose of prevention, detection and investigation of crimes" - art. 108 et seq. of the Ministry of Interior. These provisions are intended as measures to implement the Framework Decision 2006/960/JHA of the Council of 18 December 2006 on simplifying the exchange of information and data between the law enforcement authorities of the Member States of the European Union (in short hereinafter "the Framework Decision") .

According to Art. 108, para. 1 of the Ministry of Internal Affairs (app. line SG, No. 27 of 2014): "According to this section, the Ministry of Internal Affairs, through a competent specialized structure, carries out a simplified exchange of information or data with the competent law enforcement authorities of the member states of the European Union, and the states , applying the

Schengen legislation, with the aim of preventing, detecting and investigating crimes." In para. 2, item 1, it is stated that "The Ministry of the Interior, through a competent specialized structure, may provide information or data from the information funds of the Ministry."

In Art. 2 letter "a" of the Framework Decision defines "competent law enforcement authority" as a national police, customs or other authority empowered under national law to detect, prevent and investigate crimes or criminal activity, as well as to exercise power and to take coercive measures in the context of such activities.

In view of the above, the status of the Contact Center for Police and Customs Cooperation – Promahon should be considered. According to Art. 7 and Art. 8, para. 1 of the Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Greece for the construction and operation of a contact center for cooperation between the border guard authorities, the police, customs and services for the administrative control of foreigners, approved by Decision No. 380 of June 17, 2008. of the Council of Ministers, effective from October 10, 2009 (hereinafter referred to as the "Agreement"), the Contact Center does not have the status of an independent structural unit of the services of the two parties and does not have management functions. The employees of the Contact Center are directly subordinated to the relevant regional and central structures of their office in accordance with their current national legislation. In Art. 3 of the Agreement also specifies the National Police Service (now the General Directorate of the National Police - for short GDNP) as the competent authority for the implementation of the agreement.

In Art. 39, para. 1 of the Ministry of Internal Affairs and Communications GDNP is a national specialized structure for carrying out the activities under Art. 6, para. 1, item 1 (operational investigation) and item 3 (criminal investigation).

The above leads to the conclusion that although the Contact Center handed over the complainant's personal data to the Greek investigative authorities, they were also processed on behalf of the National Security Agency, which is a competent law enforcement agency within the meaning of Art. 2, letter "a" of the Framework Decision. Therefore, the personal data were transferred by a Bulgarian law enforcement authority to a law enforcement authority of an EU member state, based on Art. 108 et seq. of the Ministry of Interior. Processing of personal data, which is necessary for the exercise of powers granted by law to the administrator or to a third party to whom the data is disclosed, is a condition for their lawful processing under Art. 4, para. 1, item 6 of the Labor Code (app. ed.).

In addition to the above, Art. 6 of the Framework Decision states that the exchange of information and information under the

Framework Decision can be carried out through any of the existing channels for international cooperation in the field of law enforcement, such as the Contact Center.

Regarding the fact that the personal data was provided on the basis of only two names and a telephone number provided by the Greek side, it should be noted that the response clearly states that it is not possible to provide secure information about the person. The competent structure of the Ministry of Internal Affairs does not have the possibility to refuse the provision of information, except in the cases under Art. 110 of the Ministry of Interior. It is the duty of the Greek investigative authorities to conduct a comprehensive and complete investigation into the case and to collect the necessary evidence that will undoubtedly establish the perpetrator of the crime, before handing him over to the court.

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

RESOLVE:

Announces complaint reg. No. PPN-01-1746/12.11.2019 filed by V.S. against the Minister of the Interior, for being unfounded.

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/

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