

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-460/15.06.2021 Decision on appeal with reg. No. PPN-01-460/15.06.2021 DECISION no. PPN-01-460/2021 Sofia, 03/08/2022 The Commission for the Protection of Personal Data (PCPD) composed of: Chairman: Ventsislav Karadjov and members: Tsanko Tsolov and Veselin Tselkov at a meeting held on 07/06/2022. , 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-01-460/15.06.2021. The administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The Commission for the Protection of Personal Data has been referred to a request submitted by A.P. complaint No. PPN-01-460/15.06.2021, with allegations of illegal processing of personal data, in the case of video surveillance in a condominium building located in the city of Sofia, *****, in which he owns an independent object - apartment **, floor 5. He claims that on 07.06.2021 on floor 4 in the building, above the entrance door of apartment ***, owned by P.P. and P.P.D., a video surveillance camera has been installed, which covers common areas of the condominium - a staircase that she and her family members use daily. She is asking the commission to investigate the case and stop the video surveillance, which she claims is carried out without a decision of the condominium and against her will and in violation of her personal privacy and that of her family members - including her young child, with whom she lives at the address. Camera location evidence images are attached to the complaint. According to the principles of equality of the parties in the proceedings and truthfulness, the passively legitimized parties P.P. and P.P.D. are notified of the filed complaint, and are given the opportunity to submit a written statement and relevant evidence. In response, an opinion PPN-01-460#4/27.08.2022 was expressed about the groundlessness of the complaint with attached relevant evidence. They claim the camera was installed to "intimidate" and "do not record", citing daily vandalism and trespassing against their home, including scratching at the door, dousing the door and surrounding walls with bleach, pouring of hot chocolate, placing a dead mouse on the doormat outside their front door. He said that the acts of vandalism were provoked by a complaint filed by them against A.P. to SRP and Metropolitan Municipality concerning installed by Mrs. A.P. solar panel and an unregulated plumbing installation that flooded their home. 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 act PPN-02-588/22.11.2021, with annexes to it, including the Constitutive protocol of 11.11.2021 ., graphic images of the camera location and a completed questionnaire. The on-site

inspection was opened on 16.11.2021 at the above address. A copy of the inspection order was handed over to the P.P.D. in the presence of her father P.P. P.P.D. filled out and personally signed the questionnaire provided to her for inspection with the subject of video surveillance - Appendix No. 2 to the Instruction for the practical implementation of the supervisory activity of the CPLD. The inspection found the following: The object being inspected is a family home in a 6-story residential building in EU mode with a total of 18 units. apartments. 1 pc. is installed. IP stationary video camera (KASSABA, model TRX-20WiFi-SC, fixed lens 3.6 mm with a viewing angle of 95°, backlight 4 pcs. High Power IR Array diode for night surveillance up to 40 m, built-in microphone and speaker for two-way audio connection), which at the time of the inspection is connected to the electrical network. Allegations have been made that the camera was installed personally by P.P.D. with a preventive security purpose in the month of July 2021. No supporting documentation has been provided as to exactly when it was installed, as well as a decision of the EU General Assembly. 2 pcs are provided. lists (to Appendix No. 3) with the written consent of the other residents of the building for the installation of the video camera (the date of the preparation of the lists is not specified). Spatial placement of the video camera and alleged range of filming: Camera 1: it is located in the upper left corner above the entrance door of the apartment of P.P.D. of the apartment of P.P.D. and the landing. The appellant's apartment is located above the apartment of P.P.D. (5th floor). At the time of inspection, the video camera is connected to the power supply by means of a cable. The presence of a video recorder, recording device and/or other data carrier on which to store recordings of footage from the video camera was not detected. An attempt was made to open the Micro SD memory card slot of the camcorder using a screwdriver to determine the presence of a memory card, but was unsuccessful. As can be seen from the technical characteristics, the built-in Micro SD memory card slot has a capacity of 64 GB. P.P.D. declares that it has never monitored, captured, transmitted and recorded video footage with the installed video camera, including remote access by using a software application on a mobile device. The collected documentation lacks data on security of the site by another natural/legal person in accordance with the Law on Private Security Activities, who would have access rights to the video camera. There is an information sign warning about video surveillance, placed on the front door of P.P.D.'s apartment. directly below the video camera. On the part of P.P.D. no documents (rules, procedure, instruction, or others) have been provided describing the technical and organizational measures taken to protect personal data and regulating their processing through video surveillance. The Commission for the Protection of Personal Data is an independent state body that provides protection of individuals in the processing of their personal data and access to this data, as well as control of compliance with the GDPR

and GDPR. In order to exercise its powers, the commission must be validly referred. Complaint PPN-01-460/15.06.2021 contains the required details, namely: there are data on the complainant, the nature of the request, date and passively legitimized parties, in view of which it is regular. The subject of the complaint are allegations of unlawful video surveillance in a condominium building located in the city of Sofia, *****. According to the legal concept "Video surveillance" is a technical form of processing and storage of personal data within the period provided for in 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 received data. The information contained in video recordings from surveillance devices about the natural person as a whole - image, daily habits, behavioral reactions and social contacts - fall within the scope of the concept of personal data, since the person 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. The same applies to "monitoring control" - a limited form of video surveillance - monitoring with technical means, without the possibility of recording the received data, in the sense of § 1, item 6 of the DR of ZCHOH. It is a constant case law and the practice of the CPLD that the video surveillance is continuous and not a one-time act of personal data processing. The complaint is procedurally admissible, submitted within the period under Art. 38 of the Labor Code by a natural person with a legal interest against passively legitimized parties - natural persons P.P.D. and P.P., which are claimed to have the status of administrator of personal data within the meaning of Art. 4, para. 7 Regulation EU 2016/679, insofar as it determines the purposes and means of processing personal data through video surveillance. Referred body competent to make a decision - 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. 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 11.05.2022, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: complainant - A.P. and responding passively legitimized parties - P.P.D. and P.P. An open hearing has been scheduled to consider the merits of the appeal on 07/06/2022 at 1:00 p.m. The parties are

regularly notified of the meeting, they are instructed on the distribution of the burden of proof in the process, they are informed of the official inspection carried out in the case, and a certified copy of the report of the inspection has been sent to them for review and opinion. There were no objections to the statement of findings. At the meeting of the commission held on 06.07.2022, the complaint was examined on its merits. The parties - regularly notified, do not appear or represent themselves at the hearing before the commission. In their capacity as an administrative body and in connection with the need to establish the truth of the case, as a basic principle in the 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 reviewed complaint No. PPN-01-460/15.06.2021 is unfounded. The subject of the complaint are allegations of unlawful video surveillance in a condominium building located in the city of Sofia, *****.

From the evidence collected in the file, it was established, and it is not disputed between the parties in the proceedings, that the parties are neighbors in a condominium building located in the city of Sofia, ***** , with a total of 18 apartments. The complainant and the defendants live in separate properties, namely app. ** and app. *** and are in conflict with each other, caused by a dispute not related to video surveillance.

Undisputedly established by a CPLD team is that above the front door of the defendants, 1 pc. IP stationary video camera (KASSABA, model TRX-20WiFi-SC, fixed lens 3.6 mm with a viewing angle of 95°, backlight 4 pcs. High Power IR Array diode for night surveillance up to 40 m, built-in microphone and speaker for two-way audio connection), which at the time of the inspection is connected to the electrical network. As of the date of the inspection, no video surveillance was found. The presence of a video recorder, recording device and/or other data carrier on which to store recordings of footage from the video camera was not detected.

The file lacks evidence of video surveillance of the address at the date of referral to the CPLD, and after that, as the complainant's claims in this regard are not supported by evidence. The same are disputed by the defendants, who point out that video surveillance and/or monitor control is not carried out by means of the process camera. In this regard, and with a view to distributing the burden of proof in the process and the results of the inspection carried out by the CPLD, insofar as there is no evidence of video surveillance, the complaint should be dismissed as unfounded and unproven.

However, to the extent that the installed camera is not a dummy and given the fact that the video surveillance system could be put into operation at any moment, the commission considers it expedient to exercise corrective authority under Art. 58, § 2,

letter "a" of the GDPR. The latter is imposed for the purpose of prevention, since given the scope and location of the camera, it follows that when the video surveillance system is put into operation, common parts of the condominium will fall within its scope, namely the stairwell on floor 4. Video surveillance with a similar scope would be unlawfully, in violation of Art. 6, § 1 of the GDPR insofar as in this case there is no decision of the general assembly of the condominium for its implementation. The lists of residents of the address who agree to the video surveillance presented in the file, although they satisfy the majority requirement, 15 out of a total of 18 apartments voted for the video surveillance, do not comply with the format and order of EU decision-making. In this regard, in order to justify the consent of a larger part of the residents and owners of objects in the building as a condition for the legality of the processing of personal data by means of the installed camera, the consent should be objectified in a decision of the EU in the relevant procedure under the EUES, which decision there is no evidence and even claims that it is available as of 07/01/2022. When making the decision, the person who will carry out video surveillance, the number and location of video surveillance cameras, the storage period and access to personal data collected through video surveillance should be specified.

For completeness and since the conditions for legality of the processing are alternatively listed in Art. 6, § 1 of the GDPR, it should be noted that video surveillance is possible and lawful in the hypothesis of Art. 6, § 1, letter "f" of the GDPR, the existence of a legitimate interest of the administrator or a third party, which prevails over the interest of the subject of the data subject subject to video surveillance. However, no evidence was presented in the proceedings to substantiate the applicability of the cited provision.

The GDPR and the GDPR do not prevent the protection of the property and the property of the persons by means of video surveillance, but the same should correspond to the alternatively specified in Art. 6, § 1 of the GDPR, the conditions for the legality of the processing of personal data, as well as the principles listed in Art. 5 of the GDPR. In connection with the latter, it should be noted that, given the technical characteristics of the camera, the implementation of a sound recording of what is happening on the floor area through the technical device in order to protect the property of the defendants would be in violation of the principle of "reducing the data to a minimum" - art. . 5, § 1, letter "c" of the GDPR, and the same would not be overcome by an EU decision in this direction.

In this regard, the implementation of video surveillance and sound recording would violate the provisions of the GDPR and, in particular, Art. 6, § 1 and Art. 5, § 1, letter "c" of the GDPR, to the extent that there is no condition for their lawful

implementation and proportionality of the processing, the last prerequisite for engaging the administrative-criminal responsibility of the administrator and imposing a fine on the person, when putting the video surveillance system into operation in the same factual situation.

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. Complaint No. PPN-01-460/15.06.2021 is dismissed as unfounded.
2. Based on Art. 58, § 2, letter "a" of the GDPR refers to the P.P.D. and P.P. warning that there is a possibility that data processing operations that they intend to carry out may violate the provisions of Art. 6, § 1 of the GDPR and Art. 5, § 1, letter "c" of the GDPR, to the extent that, given the characteristics of the camera and directionality established by the CPLD, common parts of the condominium would fall within the scope of the built video surveillance system.

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/

Download files

Decision on appeal with reg. No. PPN-01-460/15.06.2021

print