

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-266/23.03.2021 Decision on appeal with reg. No. PPN-01-266/23.03.2021 DECISION no. PPN-01-266/2021 Sofia, 20.06.2022 The Commission for the Protection of Personal Data (PCPD) in composition: Chairman: Ventsislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 20.04. 2022, based on 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-01-266/23.03.2021 filed by V.Y. 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 complaint filed by V.Y., in which allegations of misuse of her personal data in the election process and their use without her knowledge and consent for her appointment as a member of the sectional election commission No. \* \*\*, \*\*\* RIC in connection with the elections for people's representatives held on 04.04.2021. The complainant informed that in the local elections held in October 2019, she participated as a committee member from the quota of the Ataka political party. She adds that in the elections for people's representatives on 04.04.2021 she preferred to participate as an EXIT-POLL pollster, but her registration was refused on the grounds that she was registered to participate in the elections in another capacity - as a member of sectional election commission no. \*\*, \*\*\* RIC from the quota of PP "Ataka". She says that on 11.03.2021 she notified the political party about the committed violation. Expresses his indignation at the irresponsible attitude of the political party officials. She claims that her personal data was processed by the political party without her knowledge and consent, and her attempts to stop the violation were unsuccessful. No evidence was attached to the complaint. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, the political party "Ataka" was informed about the administrative proceedings initiated in the case, and was given the opportunity to submit a written opinion on the allegations presented in the complaint. Evidence relevant to the case of the lawful processing of the personal data of the complainant V.Y., a certified copy of internal rules and/or the Personal Data Protection Policy regarding the processing of personal data by a political party in the electoral process, technical and organizational measures taken are required for the protection of personal data, an instruction, order or other act for training party representatives to collect personal data in the electoral process, as well as information and results of an internal audit carried out in the case, if one has been assigned. In response, a written opinion on the unfoundedness of the appeal was submitted by Adv. Ya., procedural representative of PP

"Ataka". Adv. Ya. contests the claims that the political entity submitted an application stating that V.Y. will participate as a member of a sectional election commission \*\*\*, \*\*\*, RIC and specifies that "if for some reason her name appeared on the list, it is because it was left over from the previous elections in 2019, in which she explicitly has given her consent to participate". It informs that PP "Ataka" has submitted an application for the deletion of the persons who were previously registered as participants in the sectional election commissions, therefore it considers that organizational measures have been implemented for their protection. Asks the complaint to be dismissed as unfounded, alternatively, asks the commission to align the corrective power exercised with the purpose of the punishment, which should have an educational, deterrent and warning function, and not create economic difficulties for the personal data administrator who committed the violation. Claims an award of costs incurred, including attorney's fees paid. Attached to the opinion is a copy of: Internal rules for personal data protection policy regarding the processing of personal data by PP "Ataka"; Instruction from 18.02.2020; Data privacy policy for employees of PP "Ataka"; Action plan in case of breach of personal data security; General terms and conditions for the use of Internet sites of PP "Ataka"; Register of PP "Ataka" for processing personal data; Order for the training of the representatives of the "Ataka" PP; power of attorney. In view of the conflicting statements presented by the parties and in view of the ex officio principle advocated in the administrative process, screen prints were made of published on the RIK website \*\*\*, Decision No. 22-NS Sofia \*\*\*, IR, 28.02.2021 for the appointment of the composition of 79 the number of sectional election commissions and Decision No. 86-NS Sofia \*\*\*, MIR, 17.03.2021 on changes in the composition of sectional election commissions in the "Lozenets" district. In order to clarify the case from a factual point of view, the Regional Governor of the Sofia region has requested a certified photocopy of a proposal from the mayor of the "Lozenets" region with entry no. No. \*\*\*\*\* for the appointment of the members of the \*\* SEC, together with the documents attached to it in the part concerning the appointment of V.Y. for a member of the SIC No. \*\*\*\*\*, as well as a certified copy of a proposal from the mayor of the "Lozenets" region with entry no. No. \*\*\*\* with the documents attached to it regarding a request for a change in the composition of the SIC No. \*\*\*\*\* and the dismissal of the applicant from the composition of the SIC. 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 control of compliance with the GDPR and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016. In order to exercise its powers, the Commission should be validly referred. The complaint must contain the required details specified in the provision of Art. 28, para. 1 of the Regulations for the activities of the Commission for the protection of

personal data and its administration, namely: there are data on the applicant, the nature of the request, date and signature, in view of which it is regular. The subject of the complaint is the allegations of unlawful processing of the complainant's personal data by PP Ataka for her appointment as a member of the SIK \*\*\*, \*\*\* MIR in connection with the elections for national representatives held on 04.04.2021. The complaint submitted within the period under Art. 38, para. 1 of the LLDP by a natural person with a legal interest, against a proper party - political party "Ataka" - legal entity - administrator of personal data within the meaning of Art. 4, para. 7 of EU Regulation 2016/679 and the Electoral Code, insofar as the applicant's personal data were processed-provided by the latter for the registration of Mrs. V.Y. as a member of SIK No. \*\*\*\*\* in connection with the elections for national representatives held on 04.04.2021. Referred to is competent to rule - 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 the Regulation 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 the courts in the performance of their judicial functions. For the stated 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 02.03.2022, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: complainant - V.Y. and the responding party - Ataka political party. An open hearing has been scheduled to consider the merits of the appeal on 20.04.2022 at 1:00 p.m., of which the parties are regularly notified. A certified copy of an order or other act for training party representatives on the processing of personal data in the electoral process, information and results of an internal audit carried out in the case, if one was assigned, as well as evidence of the storage periods of the personal data of the persons who represented the PP "Ataka", as members of the SEC, in the elections held in October 2019, respectively protocols for their destruction. It is explicitly requested and cited in the defendant's statement to the CPLD "an application for the deletion of the persons who were previously registered as participants in the sectional election commissions", which the political entity allegedly filed, specifying where and when it was filed. In response, a certified copy of the Instruction dated 18.02.2020 of PP "Ataka" on the processing of personal data and its protection from illegal forms of processing, the Data Privacy Policy for the employees of PP "Ataka" and an Action Plan for breach of personal data security. Once again, the District Governor of Sofia city requested a certified photocopy of a proposal from the mayor of the "Lozenets" district with entry

no. No. \*\*\* for the appointment of the composition of the \*\* SEC, together with the documents attached to it in the part concerning the appointment of V.Y. for a member of the SIC No. \*\*\*\*\*, as well as a certified copy of a proposal from the mayor of the "Lozenets" region with entry no. No. \*\*\*\* with the documents attached to it regarding a request for a change in the composition of the SIC No. \*\*\*\*\* and the dismissal of the applicant from the composition of the SIC. The required documents have been provided. At the meeting of the commission held on 20.04.2022, the complaint was examined on its merits. The parties - regularly notified, do not appear, are not represented 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 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 examined complaint No.

PPN-01-266/24.03.2021 is well-founded. The subject of the complaint is the allegations of unlawful processing of personal data of the complainant by PP "Ataka" for her appointment as a member of the SIC \*\*\*, \*\* MIR in connection with the elections for people's representatives held on 04.04.2021. It is a well-known fact that on 04.04.2021, elections for people's representatives were held with the participation of the Ataka political party. From the evidence gathered in the file, it was established that by decision No. 22-NS Sofia \*\* IR, 28.02.2021, the composition of 79 sectional election commissions in the "Lozenets" region were appointed and the lists of reserve members were approved. As can be seen from the content of the decision, the applicant was appointed as a member of the SIC \*\*\*\*\* from the quota of PP "Attack". The appointment is in accordance with Section IV of the IC and after consultations with the mayor of the municipality. The appointment was initiated by PP Ataka with a proposal under Art. 91, para. 4, item 1 of the IC with entry No. RLC21-IZ04-1(29) submitted electronically on 25.02.2021 from email address \*\*\*\*\* to the Municipality of Stolichna, Lozenets district. The proposal contains the applicant's data in the amount of three names, social security number, education and telephone number, the same are personal data insofar as the person can be indisputably individualized. In the proposal according to the provision of Art. 91, para. 4, item 1 of the IC also indicate the position in the commission and the party from which the proposal originates. By decision No. 86-NS Sofia \*\*\* IR, 17.03.2021, changes were made in the composition of the sectional election commissions in the "Lozenets" district, evident from the content of which the applicant was released and in her place as a member of \*\*\* \*\*\* from the quota of PP "Ataka" is entered C.K. As can be seen from the written evidence presented by the Regional Governor of the City of Sofia, a more specific proposal with No. RLC21-UZ04-1(72) dated 15.03.2021 is that the change was initiated by

PP Ataka, through an express request submitted electronically from email \*\*\*\*\* to replace the complainant as a member of the SIC from the quota of PP Attack. The provision of personal data by a political entity to the mayor of the relevant municipality, in this case the municipality of Sofia, Lozenets district" for conducting consultations in the procedure for the appointment of the SEC is a form of processing of personal data and as such should be carried out in compliance with the provisions of EU Regulation 2016/679, in particular those of Art. 6, § 1 of the regulation, the same applicable in view of the reference norm of the IC and insofar as the data was processed-provided on 25.02.2021. The complainant's claims of unlawful processing of her personal data by PP "Ataka" for her registration as a member of the SEC, although and contested by PP "Attaka", are well-founded. In contradiction with the written evidence collected in the case file are the claims of the party that the applicant's personal data were not provided by the party for the appointment of Mrs. V.Y. as a member of the CEC \*\*\* in the specific elections. The written evidence attached by the Regional Governor of the city of Sofia testifies to the exact opposite, namely on 25.02.2021, the applicant's personal data in the volume required by the IC, namely three names, social security number and education, were provided by PP "Ataka" during consultations at the mayor of the Capital Municipality, Lozenets district, for the appointment of the composition of the SEC in connection with the elections on 04.04.2021. The fact is that on 15.03.2021, the PP "Attaka" submitted a request to replace the complainant as a member of SIC from the party's quota, but this circumstance does not remedy the committed violation and does not change the fact of providing the data at an earlier stage for the appointment of Mrs. V.Y. as a member of the SIC, without its consent and therefore in the absence of a suitable legal basis. Despite the legal opportunity granted to the defendant and the instructions related to the distribution of the burden of proof in the process, the administrator - PP "Ataka" did not provide evidence of the existence of a condition for the legality of the processing of the applicant's personal data for the specific purpose, and the statement that the applicant is consented to participate as a party representative in elections held in 2019 is irrelevant. The applicant's lack of consent to the processing of her personal data in the procedural elections held on 04/04/2021 and her appointment as a member of the SEC from the party's quota are also evidenced by subsequent actions initiated at the party's request for the release of Mr. Mrs. V.Y. from the composition of the SIC \*\*\* and the replacement with another representative of the political entity. The processing of the complainant's personal data for her appointment as a member of the SIC from the quota of the PP "Ataka" in the elections on 04.04.2021 was carried out without her consent - a specific and informed declaration of will in the sense of para. 4, § 11 of the Regulation. In the specific case, none of the other conditions specified in Art. 6, § 1 of the Regulation, as evidence to the

contrary has not been committed, nor has it been claimed by the defendant. The hypothesis of Art. 6, § 1, letter "f" of the Regulation - the interests of the administrator do not take priority over the interest of the affected natural person, whose data, without his consent, is included in the proposal for the composition of the SEC presented to the mayor of the municipality. It is indisputable that the interest of the natural person, subject of the data, takes precedence over the interest of a political subject in participating in the elections. There is also no legal obligation for processing on the part of the administrator, insofar as participation in the electoral process is a legal possibility, in the implementation of which the legally established rules, in particular those in the field of personal data protection, should be complied with. There is a lack of evidence to substantiate the applicability of Art. 6, § 1, letter "b" of the GDPR - existence of a contract concluded between the parties for the execution of any necessary processing of the complainant's personal data by the defendant or for taking steps at the request of the data subject before concluding the contract. Grounds under Art. 6, § 1, letters "d" and "e" of the GDPR are irrelevant - they are applicable in other, different and incompatible with the present hypotheses regarding the processing of personal data for the protection of vital interests related to the life and health of the data subject, execution on a task of public interest, as well as in the exercise of official powers, such as are not delegated to political parties. The processing of personal data in the electoral process is permissible and strictly regulated. The Electoral Code contains specific rules regarding the processing of personal data in the electoral process regarding the purposes of processing, categories of personal data, etc., and regarding the members of the SEC, they are regulated in the provisions of Section IV of the code. According to the latter, the regional or municipal election commissions appoint the sectional election commissions in the country, consisting of a chairman, vice-chairman, secretary and members, not later than 25 days before the election day. The appointment of the SEC is preceded by consultations with the mayor of the respective municipality, in which the parties and coalitions represented in the parliament participate, allowing the possibility of participation of other parties and coalitions as well. According to Art. 91, para. 4, item 1 of the IC during the consultations, the parties and coalitions submit a written proposal for the composition of the SIK, which contains the names of the proposed persons, uniform civil number, position in the commission, education, specialty and the party or coalition that proposes it. If an agreement on the composition of the SEC is reached during the consultations, the mayor submits to the regional or municipal election commission a written proposal for the composition of the SEC, together with a list of reserve members, which contains the names of the proposed persons, uniform civil number, position in the commission, education, specialty and party or coalition that offers it. In cases of agreement, the regional or municipal election

commission appoints the composition of the SEC on the proposal of the mayor. In this regard, and although the applicant's data were processed in a statutory procedure, the fulfillment of the legally established obligation, respectively realization of the legal interests of the personal data controller, in this case the political party, arise only if the person whose personal data appears in the proposal made from the party in the consultations with the mayor of the municipality, has actually given his consent to participate in the specific elections and in the specific capacity. However, when the latter prerequisites are not present, the relevant political entity cannot use the person's personal data to realize its legitimate interests in participating in the electoral process. In this direction, the CEC and CPLD adopted joint instructions regarding the processing and protection of personal data in the electoral process. In the document published on 12.02.2021, also available on the CPLD website at <https://www.cdpd.bg/?p=element&aid=1199> detailed explanations are provided regarding the legal framework for the protection of personal data, as well as the rights and obligations of all participants in the electoral process - political parties, coalitions of parties, initiative committees, candidates, representatives, advocates, observers, representatives of mass media and electoral commissions in the various types of elections. The guidelines are intended to facilitate the participants in the electoral process and to prevent violations. Based on the stated considerations and the evidence collected in the case file, it is necessary to conclude that the personal data of the complainant were processed by PP "Ataka" in violation of Art. 6, § 1 of the Regulation, without any of the conditions specified in the regulation for the admissibility of the processing, being a violation of the rights of the person who appealed to the CPLD. In view of the nature of the detected violation, the commission considers that the corrective measures under Art. 58, § 2, letters "a", "c", "d", "e", "f", "g", "h" and "j" of the Regulation are inapplicable and inappropriate in this case, and the imposition of a sanction for the admitted violation, finds it excessive given the fact that the administrator took action to stop the violation even before it was referred to the CPLD and the initiation of the proceedings. In view of the established factual situation, the commission considers the exercise of corrective authority under Art. 58, § 2, letter "b" of the GDPR - an official warning, considering that the corrective power exercised undoubtedly meets the effectiveness and deterrent effect sought by the GDPR and Regulation 2016/679, while at the same time not violating 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. Declares complaint No. PPN-01-266/24.03.2021 as well-founded.

2. Based on Art. 58, § 2, letter "a" of Regulation EU 2016/679 issues an official warning to the political party "Attack", in its capacity as the administrator of personal data, for an admitted violation of Art. 6, § 1 of the GDPR regarding the processing - the provision of the applicant's personal data for her appointment as a member of the SIK \*\*\*, \*\* MIR in connection with the elections for national representatives held on 04.04.2021.

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/

Maria Mateva /p/

Veselin Tselkov /p/

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