

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-525/24.07.2020 Decision on appeal with reg. No. PPN-01-525/24.07.2020 DECISION no. PPN-01-525/2020 Sofia, 05/05/2022 The Commission for the Protection of Personal Data (PCPD) in composition: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 09.02. 2022, on the basis of 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-01-525/24.07.2020, filed by T.K. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The Commission for the Protection of Personal Data was referred to a complaint filed by T.K., through Adv. B., with allegations of illegal processing of his personal data by "RTK" EOOD, in connection with the issued certificate with license No. \*\*\*\*\* under Regulation No. RD-02-2025/03.12.2012 on the conditions and the procedure for issuing a certificate for entry in the register of consultants for assessing the compliance of investment projects and/or exercising construction supervision (the Ordinance) and a certified list of legally competent natural persons appointed to an employment or civil contract, which contains his personal data, published on the DNSK website in the register under Art. 10, para. 9 of the Ordinance. It is stated that "the certificate for carrying out activities under Art. 166, para. 1 of the ZUT is issued to a person who meets certain requirements, among which "he has a team of legal persons with proven professional experience and technical competence hired under an employment or other contract, necessary to carry out the activities for assessing the conformity of the investment projects with the essential requirements for construction and/or exercise of construction supervision". It is claimed that the personal data were processed in violation of the principle of legality, good faith and transparency insofar as the applicant did not enter into an employment and/or civil contract with the company, and his data were processed without his knowledge and consent in order to obtain the process certificate, circumstance which was established after a check in the public register, according to which Mr. T.K. appears under No. \*\* in the list of the team of legal persons employed by the company. A certified copy of a power of attorney is attached to the complaint. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, "RTK" EOOD has been informed about the initiated administrative proceedings, it has been given the opportunity to engage in a written opinion and to present evidence relevant to the case. In order to clarify the case from a factual point of view and in accordance with the requirements for regularity of the request with which the CPLD was referred, information on

the date of knowledge of the alleged violation was requested from the complainant. In response and with accompanying letter PPN-01-525#6/24.09.2020, the complainant informed that the violation was established in July 2020 and specified that he could not specify a specific date. He claims that he has also informed DNSK about the detected violation with a letter \*\*\*\*\* and attached a certified copy of documents received by the Directorate - civil contract and declarations under Art. 8, para. 2, item 7 and item 8 of the Ordinance on the terms and conditions for issuing licenses to consultants for assessing the compliance of investment projects or exercising construction supervision, containing his personal data, submitted by "RTK" EOOD to the National Security Agency in connection with the issued certificate of the company. In view of the allegations presented by the complainant and the attached evidence, an official reference was made in the Register of persons performing the activity of consultant published on the website of DNSK according to Art. 167, para. 2 of the ZUT, regarding "RTK" EOOD, the results of which are objectified in protocol PPN-01-525#7/05.11.2020. During the proceedings, "RTK" EOOD expressed an opinion that the complaint was unfounded, with arguments that the complaint is blanket, and the "claims of the complainant are empty", since "no evidence has been attached regarding the stated facts". The manager of the company R.M. points out that Ordinance No. RD-02-2025/03.12.2012 on the conditions and procedure for issuing a certificate for entry in the register of consultants for assessing the compliance of investment projects and/or exercising construction supervision regulates the entry of the relevant acts in the register, respectively the data contained in it. He adds that "the cited legal act is in full compliance with Bulgarian legislation (the Personal Data Protection Act) and EU legislation (Regulation EU/2016/679 of the European Parliament and the Council), as "as soon as the authority has ordered an entry in the process register , the documents submitted by the applicant were in full accordance with the legally regulated procedure", therefore "This, in turn, excludes any illegal actions on the part of the company". He commented that "Otherwise, one would come to the conclusion that the legislation (Ordinance No. RD-02-2025/03.12.2012 on the terms and conditions for issuing a certificate for entry in the register of consultants for assessing the compliance of investment projects and/or exercise of construction supervision) regulates a procedure, the observance of which violates other normative acts. Mrs. R.M. finds that "to the extent that the registration authority has ordered the data to be entered, it can only be concluded that the data to be entered are lawfully presented. He commented that neither the date of the alleged violation nor the date on which the complainant became aware of the alleged violation was specified in the complaint. He finds that "the factual situation is presented abstractly, without going into specifics, which in turn gives an indication of the groundlessness of a complaint" and asserts that "what is stated in the complaint is in

complete contradiction to the objective truth." A certified copy of the opinion expressed by the company was sent to the complainant for perusal, and given the conflicting statements presented in the proceedings and the written evidence available in the file, Mr. T.K. is informed about the possibility to provide comparative material for carrying out the expertise in order to establish the truth, respectively the falsity of the signature under the civil contract and declarations presented in the administrative file under Art. 8, para. 2, item 7 and item 8 of the Ordinance on the terms and conditions for issuing licenses to consultants for assessing the compliance of investment projects or exercising construction supervision. Comparative material was provided on 25/08/2021 – a protocol for taking samples for comparative research reg. No. \*\*\*\*\* was completed. 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 monitoring compliance with the GDPR and the GDPR. In order to exercise its powers, the Commission must be properly referred. Complaint PPN-01-525/24.07.2020 contains 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, a power of attorney for representative authority is attached, a passively legitimized party is indicated, and after given the CPLD instructions also indicate the date of knowledge of the violation, in view of which the complaint is regular. The complaint is procedurally admissible, submitted within the period under Art. 44, § 2 of the DR of the WPLD by a natural person with a legal interest, insofar as the data collected on the file testify that the violation alleged by the complainant was established in June 2020, days before the referral to the WPLD. The subject of the complaint is the allegations of unlawful processing of the complainant's personal data - names, uniform civil number, identity card number, education and place of residence by "RTK" EOOD through their unlawful processing, collection, storage and provision by the DNSK company in connection with the issued certificate \*\*\*\*\* of the company for the exercise of the activities of assessment of the compliance of investment projects and/or the exercise of construction supervision and their publication in the public register of DNSK under Art. 167, para. 2 of the Labor Code of the persons carrying out the activity of consultant concluded a civil and/or employment contract with "RTK". Referred to is a body competent to rule - CPLD, which, according to its powers, examines complaints against acts and actions of personal data controllers that violate the rights of natural persons in the field of personal data. 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 CPLD held on 08.09.2021, the complaint was accepted as admissible and the following were constituted as parties to the

proceedings: complainant T.K. and defendant "RTK" EOOD. A scheduled open hearing to consider the merits of the complaint on 10.11.2021, of which the parties are regularly notified. Information and evidence of remuneration paid under the civil contract, as well as acceptance and handover protocols for work performed for each site, pursuant to Art. 3 of the contract. In order to clarify the case from a factual point of view, the DNSK requested information on the date on which the process documents containing the applicant's personal data were provided by "RTK" EOOD to the DNSK, as well as data on the progress and results of an investigation initiated by request of Mr. T.K. In response, DNSK informs that the manager of "RTK" EOOD has expanded his team of specialists by submitting an application \*\*\*\*\* to DNSK for the inclusion of 28 new legal entities, including the applicant, Eng. T.K. "with a CCC major". They indicate that the required documents under Art. 8, para. 2 of the Ordinance, namely: a copy of a diploma for completed higher education, an original curriculum vitae, a copy of certification documents for the minimum required professional experience, two original declarations and a copy of the contract between the company and the specialist. They add that the Head of DNSK has issued a list of the team of legally competent natural persons from various specialties, appointed under an employment or civil contract in "RTK" EOOD, certified as of 26.01.2017, in which under # \*\* appears Mr. T.K., the same published on the DNSK website. They inform that Mr. T.K. is part of the company's team until 11.02.2021, when at the request of the manager of the company, objected in an application submitted to DNSK, \*\*\*\*\* was excluded from the list. In view of the conflicting statements presented by the parties in the proceedings, the National Institute of Forensic Science has been commissioned to prepare an expertise of the signatures placed in the "For executor" column and the "Declarant" column of the civil contract and declarations attached to the file under Art. 8, para. 2, item 7 and item 8 of the Ordinance on the terms and conditions for issuing licenses to consultants for assessing the compliance of investment projects or exercising construction supervision, the same from 03.01.2017. The subject of the expertise is to establish whether the signatures were signed by T.K. In the course of the proceedings, the appellant and the respondent filed requests to postpone the open hearing. As a reason for postponement, the applicant cites the absence, as of 09.11.2021, of an expert report prepared and filed on the case file. The defendant's arguments relate to the objective impossibility of the company's representative attending the meeting and the official engagement of its legal representative - a case scheduled for the same date in the District Court - Plovdiv. As proof of the latter, a copy of the summons for the case - \*\*\*\*\* according to the inventory of the District Court - Plovdiv is attached. By decision of an open meeting of the CPDP held on 10.11.2021, the requests of the parties to postpone the meeting were respected, consideration of the complaint was

essentially postponed, after the assigned expertise was received by the CPDP. In the course of the proceedings, with letter PPN-01-527#27/10.11.2021, a protocol for handwriting examination No. \*\*\*\*\* according to the NIK inventory was deposited in the CPLD, the same with the conclusion that the signatures under the examined documents were not submitted by T.K. In this regard, and to the extent that the case has been clarified from a factual point of view, an open hearing has been scheduled to consider the merits of the complaint on 02/09/2022, of which the parties are regularly notified. They were informed about the handwriting examination No. \*\*\*\*\* according to the NIK inventory, a certified copy of which was provided to them for perusal and opinion. In addition, and for the completeness, information and evidence of remunerations paid under the civil contract, as well as handover protocols for work performed for each object, were again requested from the defendant, according to Art. 3 of the contract, but these have not been deposited. At the committee meeting held on 09.02.2022, the complaint was examined on its merits. The complainant - regularly notified, does not appear, does not represent himself. The defendant - regularly notified, is represented by Adv. D. with a power of attorney on the file. Adv. D. contests the complaint, declares that he is familiar with the evidence collected in the file, has no objections to the evidence, does not point to new evidence. Requests the commission to call on the applicant to answer the question of whether he provided the company with a document containing his personal data, namely a criminal record certificate. Argues the evidentiary request with claims that "upon voluntary surrender" of the certificate, the person gives his consent to the processing of the personal data contained in the document. Requests that the complaint be left without movement until the complainant specifies the period in which he claims that his data were unlawfully processed by the company, specifying the start date of their processing and indicating the purposes for which they were processed by the company, stating that the lack of this information impedes the right of defense of "RTK" EOOD. Without disputing the conclusion of the expertise submitted on the file, asks the commission to commission an expertise of the original documents, as well as to commission an additional expertise of the signature placed in the column "Appointer" in order to establish whether it was placed by R .M. - the manager of the Contracting company, without making a dispute, but only assumptions, in this direction. Apart from the above, Adv. D. makes a request to suspend the proceedings, claiming that "there is a false document that should be the subject of another investigation", requesting that the documents be sent to the competent authorities. The Commission disregards the evidentiary requests made and proceeds on the merits. Adv. D. upholds the opinion that the complaint is groundless, finds the complaint "abstract", and the violations alleged by the complainant - unproven. He states that the right of defense of the company, as a party in the present proceedings, is

hampered, as he was not given the opportunity to prove the factual situation claimed by the company. The Commission finds the defendant's allegations of obstructing his right to defense to be groundless. The distribution of the burden of proof in the trial is indicated. The party was given the opportunity to get acquainted with the evidence collected in the case file, and the defendant was expressly told that he should commit evidence in support of his claims, making the impression that apart from a written opinion dated 30.12.2020 and a request from 08.11.2021 for the postponement of an open session, which exhausts the defendant's activity in the proceedings, no other procedural actions have been taken, no evidence has been committed by the company at all. There are no grounds for stopping the proceedings, and it should be noted that the company only has the legal option to refer the competent authorities in its opinion to establish the documented crime and its perpetrator. The latter is irrelevant to the proceedings instituted before the CPLD, an opinion that is also shared in judicial practice, given the fact that it is relevant to the search for criminal liability within the framework of a possible criminal process, which is not within the competence of the CPLD. The same is irrelevant to the proceedings instituted pursuant to Art. 38, para. 1 of the Labor Code, against a legal entity - a personal data administrator, whose administrative and criminal liability for compliance with the norms in the field of personal data is objective and innocent. Given the categorical results of the examination, undisputed by the parties, the commission considers that there are no grounds for assigning a re-examination of the signature placed in the column "for the Contractor" in the civil contract, even less so regarding the signature placed by the Contracting Authority, insofar as it is indisputable that the document originates from "RTK" EOOD and its authorship is not disputed by the company. Summoning the complainant with instructions for personal appearance at the hearing, the commission finds inadmissible on the grounds that the manner of exercising the right of defense is at the discretion of the party, and personal appearance is not mandatory. The commission also finds the request for the collection of oral evidence, through questioning of the complainant, to be inadmissible, especially since the question posed by the defendant's legal representative is not controversial, as it is categorically stated in the complaint to the CPLD that the complainant did not provide his personal data of the company. It is alleged that "the company unlawfully obtained access to the subject's personal data without his knowledge and consent and without an employment or civil contract having been concluded." The allegations are categorical and clear, and it is not necessary for the complainant to reproduce them personally in front of the CPLD, within the framework of an open meeting. The subject of the dispute with which the commission was referred is also clear, as the date of the alleged violation has undoubtedly been established, given the evidence and information presented by DNSK, and whether the violations have been

correctly qualified by the complainant is a question on which the commission will rule on the merits, as follows to note that the authority is not bound by the legal qualification given by the parties. In its 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 existence of established actual facts, and given the evidence collected and the allegations made, the commission accepts that the substantively examined complaint No. PPN-01-525/24.07.2020 is well-founded. The subject of the complaint is the allegations of unlawful processing of the complainant's personal data - names, uniform civil number, identity card number, education and place of residence by "RTK" EOOD through their unlawful collection, storage and provision by the company to DNSK in connection with issued certificate \*\*\*\*\* to the company for carrying out the activities of assessing the compliance of investment projects and/or carrying out construction supervision and publishing them in the public register of the National Register of Civil Engineers under Art. 167, para. 2 of the Labor Code of the persons carrying out the activity of consultant concluded a civil and/or employment contract with "RTK" EOOD. It is not disputed, and it is evident from a reference in the public register of DNSK, that "RTK" EOOD is entered in the Register of DNSK, as a legal entity carrying out the activities of a consultant according to Art. 167, para. 2 of the ZUT, and the same was issued license No. \*\*\*\*\* from 04.08.2016 with a period of validity until 04.08.2021. In this regard, the company was issued a Certificate for carrying out the activities of assessing the compliance of investment projects and/or carrying out construction supervision, as per the list of the team of legally competent natural persons as of 22.05.2019 from various specialties, appointed in the Register of DNSK under an employment or civil contract in "RTK" EOOD, an integral part of Certificate \*\*\*\*\* and Order RD-27-53/04.04.2017 of the head of DNSK for the exercise of the activities assessment of compliance of investment projects and /or exercise of construction supervision the applicant is registered. The issuance of a certificate to a legal entity pursuant to Art. 162, para. 2 of the ZUT is bound by the requirements of Art. 6, para. 1, item 3 of the Ordinance, to have a team of legally competent natural persons hired under an employment or other contract with proven professional experience and technical competences, necessary to carry out the activities for assessing the compliance of investment projects with the essential requirements for construction and/or exercise of construction supervision. Legal entities that have received a certificate can expand their team with new specialists by submitting an application to the DNSK for a change in the list of legally competent natural persons, with legally established documents specified in art. 8 of the Ordinance. In accordance with the cited provision, the following shall be attached to the application: - a list of the legally competent natural persons through whom the activities for assessing the

conformity of the projects and/or construction supervision of the constructions are carried out, with evidence of their professional experience and five years of experience, as well as other individual documents; - documents certifying the legal capacity, professional qualification and at least 5 years of experience in the specialty of the employed natural persons, as follows: a copy of the diploma for completed higher education with the educational-qualification degree "master"; a copy of documents certifying the internship in the specialty after completing higher education with the educational-qualification degree "master"; a detailed professional curriculum vitae containing data on years of experience, place of work and position held and information on the specific activity and professional experience in accordance with the specialty acquired; - declaration of each specialist, who will evaluate the compliance of investment projects and/or exercise construction supervision, for his express consent to be included in the relevant list of the consultant; - a copy of a document regarding the type of legal relationship (employment or civil contract) between the consultant and natural persons through which he will carry out the activity of assessing the compliance of investment projects and/or exercising construction supervision. In this particular case, according to the information of DNSK, it has been established that with applications ent. \*\*\*\*\* and \*\*\*\*\*, the manager of "RTK" EOOD has requested the inclusion of new specialists in the team. There are 28 specialists who have been proposed, and among them is Eng. T.K. with a specialization in CCS. The required documents for new specialists according to Art. 8, para. 2 of the Ordinance. In the specific case, these are: Copy of the diploma for completed higher education with the educational and qualification degree "Master", original curriculum vitae, original list of objects, copy of documents certifying the minimum required professional experience, two original declarations and a copy of contract between the company and the specialist. On the basis of the fulfilled normative requirements according to the ZUT and the Ordinance, a list was issued, certified as of 01.26.2017, by the head of DNSK, which includes Mr. T.K. According to data from DNSK, Mr. T.K. is part of the company's team until 11.02.2021, when at the request of the manager, stated with application reg. No. \*\*\*\*\*, Mr. T.K. is excluded from the list. It is indisputable that the documents presented by the DNSK company contain the applicant's personal data, as specifically, the copy of a civil contract and two declarations presented in the file contain data on three names, social security number, education, specialty "civil engineer", diploma number of the appellant. In this regard, it is indisputable that the applicant's personal data were processed by the company, in the event that they were provided to DNSK in 2017, and it is indisputable that as of January 2017, the same were stored in the company, in view of which they are subject to processing of personal data are the provisions of the Federal Data Protection Act (repealed), insofar as the processing - storage and



provision of data took place in 2017, i.e. before entry into force and application of the GDPR, and it should be noted its proportionality also according to the Regulation. The processing is illegal, in violation of Art. 4, para. 1 of the Labor Code (repealed), and the arguments presented by the applicant in this regard are well-founded. The same are supported by the evidence collected in the case file, in particular by a graphic examination prepared for the case objectified in protocol No. \*\*\*\*\* according to the inventory of the NIK, the same with the conclusion that the signatures under the examined documents - a contract and two declarations submitted by the company to DNSK were not submitted by T.K. The latter necessitates the conclusion that the personal data of the complainant were processed by "RTK" EOOD, in the hypothesis of their provision to the National Security Agency in a procedure under Art. 167 of the ZUT and the Ordinance, for a change in the list of legally competent persons, without the knowledge and consent of the applicant and without the existence of valid contractual relations between the parties. The processing is not carried out in fulfillment of a legally established obligation of the controller of personal data, is not necessary for the protection of the life and health of the natural person, nor for the performance of a task in the public interest or for the exercise of powers granted to the controller by law, as and for the realization of the administrator's legitimate interests, which take precedence over the interests of the natural person. Contrary to the defendant's claims, although the data was provided to DNSK within the framework of a statutory procedure, its processing by the company is illegal given the lack of valid contractual relations between the company and Mr. T.K., a circumstance for which he should monitor the company in its capacity as a personal data administrator. In this regard, it is necessary to conclude that the data were processed - provided to DNSK without the presence of a condition for the legality of the processing and the rights of the person who referred the CPLD were violated. The file lacks data and information about the date on which the data was collected by the company and data about their source, and the fact that the company, according to the allocation of the burden of proof in the process, did not provide evidence that the same was provided by Mr. T.K., even less that the same were provided for the purpose for which they were processed by the administrator. In this connection, and for the sake of completeness, it should be noted that even if the assumption of Adv. D. that the applicant has provided a certificate of criminal record to the company, the same is in no case a reason for the company to process these personal data by providing them to the National Register of Civil Engineers for inclusion of the person in the list of legally competent persons within the meaning of the Ordinance, insofar as the legal element is missing - the existence of a contract between the parties to provide the data to DNSK. The Commission considers it expedient, dissuasive and proportionate, given the gravity of the

violation, the large volume of processed personal data and the fact that the same has been completed, to engage the administrative-criminal liability of the company with the imposition of a pecuniary sanction for violation of Art. 4, para. 1 of the Labor Code (repealed), as apart from a purely punitive measure, a reaction of the state to the committed violation of the legally established rules, the property sanction also has a disciplinary effect, with a view to not committing the same violation in the future. The administrator is obliged to know the law and to comply with its requirements, especially since he owes the necessary care provided for in the law and arising from his subject of activity, personnel and economic resources. When determining the amount of the sanction, the circumstances that a large volume of personal data were processed and the violation was completed should be indicated as aggravating circumstances. The circumstances that the violation is primarily for the administrator, which is a micro-enterprise within the meaning of Art. 3, para. 3, item 1 of the Law on Small and Medium Enterprises and actions have been taken to terminate the violation - an application for the exclusion of Mr. T.K. from the list of legal persons of the company. 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, the imposed sanction should be at the minimum provided for in Art. 42, para. 1 of the Labor Code (repealed), namely BGN 10,000. 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 corrective action taken authority in terms of type and size undoubtedly corresponds to the efficiency and deterrent effect sought by the WPLD, while at the same time it does not violate the principle of proportionality and the requirement of proportionality. Disagreeing with the type and size of the corrective authority exercised, Mr. Veselin Tselkov, a member of the commission, voted with a dissenting opinion. Based on the above and based on Art. 38, para. 3 of the Personal Data Protection Act, the Commission for the Protection of Personal Data, DECIDES: 1. Declares complaint No. PPN-01-525/24.07.2020 as well-founded. 2. Based on Art. 42, para. 1 of the Labor Code (repealed) imposes on "RTK" EOOD, with EIK \*\*\*\*\*, an administrative penalty - a property sanction in the amount of BGN 10,000 (ten thousand BGN) for violation of Art. 4, para. 1 of the Labor Code (repealed). 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. After the decision enters into force, the amount of the imposed penalty should be transferred by bank transfer: Bank BNB - Central Bank, IBAN: BG18BNBG96613000158601 BIC BNBGBGSD Commission for the Protection of Personal Data, BULSTAT 130961721. CHAIRMAN: MEMBERS: Vencislav Karadzhov /p/ Tsanko Tsolov /p/

Maria Mateva /p/ O.M. (under item 2) Veselin Tselkov /p/ Files for download Decision on appeal with reg. No.

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