 Decision on appeal with reg. No. PPN-01-80/27.01.2021 DECISION no. PPN-01-80/2021 Sofia, 26.10.2021 The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Vencislav Karadjov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, on a regular basis meeting held on 29.09.2021, on the basis of 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 appeal No. PPN-01-80/27.01.2021, submitted by I.Z. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The complaint was submitted to the CPLD under the competence of the Varna District Prosecutor's Office. In the complaint to the prosecutor's office, it is stated that on 26.08.2020, the complainant was served with a request for an opinion by R.D., deposited under ID 1 on the inventory of the Public Registry Office 1, according to which he has the status of his debtor. In his application, R.D. has indicated that the applicant is a debtor under ID 2, which according to Mr. I.Z. does not correspond to the truth. The appellant states that he was not in debt to R.D. in the said enforcement case, since the obligation for which the case was initiated was extinguished even before it was initiated. Based on the submitted evidence, the enforcement case was terminated on the basis of Art. 433, para. 1, item 1 of the Civil Code as early as 2018. In his application, R.D. indicated that on 24.04.2020, PSI 2 prepared and provided him with a report from the register of bank accounts and safes for the applicant's accounts. The complainant considers that, as is evident from this report, it was made on 24.04.2020 at 10:29:24 a.m. on grounds already terminated in 2018. ID 2. Mr. I.Z. indicates that the reference prepared from the register of bank accounts and safes is information that represents personal data protected by Regulation 2016/679, which cannot be provided and used by R.D. Considers that a crime has been committed (as far as his complaint was submitted to the Varna District Prosecutor's Office). In the conditions of the official beginning laid down in the administrative process and in fulfillment of Art. 26 of the APC, the interested party has been notified of the initiation of the proceedings - PSI 2, registered with reg. No. *** in the register of the Chamber of Private Bailiffs (hereinafter referred to as "PSI 2"). 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. PSI 2 considers that it should not be accepted by CPLD that the bank account constitutes "personal data" when it refers to the same parties in civil and commercial cases. The identification data of the parties are contained in these files (ID). They can be used to obtain information about the existence of their bank accounts in any bank, as bank secrecy is only the amount of the account holder's assets. In Art. 127, para. 4 of the Code of

Criminal Procedure, it is expressly accepted that in a criminal claim for a monetary claim, the claimant indicates a bank account or another method of payment as a mandatory requisite of the content of the claim. In Art. 489, para. 1 of the Code of Civil Procedure, the bailiff indicates his bank account, on which, in order to participate in a public sale, bidders are required to pay a deposit of 10% of the starting price. In the Commercial Law, art. 13, when registering companies, they should indicate their bank account. It is the same in Germany, bank accounts are publicly announced. In order to draw correct conclusions from the CPLD, PSI 2 considers that the specifics of the enforcement case should be taken into account, namely: Claimant lawyer R.D. initiated on 06.06.2018 case No. *** on the basis of a 2018 report issued by the Supreme Administrative Court – 13th panel under the Criminal Code **/2016, against lawyer I.D., pursuant to to which I.Z. was sentenced to pay R.D. the sum of BGN 1,000 representing attorney's fees. With Invitation for voluntary fulfillment ex. No. *****, received from the debtor I.Z. in person on 13.06.2018 by the summoner of the office, it is stated that if he does not voluntarily pay his debt within a two-week period, the PSI will proceed with compulsory enforcement in accordance with the Code of Criminal Procedure, through deductions from bank accounts, labor remuneration, etc. On 20.06 In 2018, a request was received from the debtor I.Z., through lawyer D.P., requesting to terminate the execution. No. *** on the basis of Art. 433, item 1 and to award him costs in the amount of BGN 300. Attached is a bank draft dated 08.02.2018 for the amount paid in the amount of BGN 1,000, with the specified reason for payment - НЧЧД No. **/2016 y., with importer - V.B. A resolution was placed on the request: "to take an opinion from the claimant". On 19.07.2018, a statement was received from the claimant R.D., in which he expressed his opinion that after making an inquiry at "DSK BANK" he found that on his account, which he did not give to anyone, not even to his lawyer, including of the debtor I.Z., an amount of BGN 1,000 was received on 08.02.2018, paid by the person V.B., that he has no relationship with such a person and therefore on 20.02.2018 he requested and was issued an ex. sheet, because he did not know and was not notified by I.Z. for the payment and that he uses this account only to pay BULSTRAD-LIFE insurance. He accepts that since the debtor claims that this amount is for repayment of the debt, he agrees that the case should be terminated, and the costs incurred by him remain at his expense. Regarding the costs for the representative of I.Z. the claimant expresses disagreement. This was followed by a complaint from I.Z., with which he appeals the actions of the PSI for refusing to award costs in the amount of BGN 300 in his favor. With a decision of the Supreme Administrative Court, the refusal of the PSI to award BGN 300 in favor of I.Z. was confirmed. under case No. *** and the termination of the case, which entered into legal force on 21.01.2019. On 24.04.2020, lawyer R.D. verbally asked the clerk in the office for a reference to the

bank accounts of the debtor I.Z. in the discontinued case, citing the payment of a fee by him for such reference in the discontinued case. The employee thought there was nothing wrong and provided the reference. Only at the end of 2020, after being interrogated by an official from the economic police, did they find out that the present complaint had been received by I.Z. and that the report on the discontinued enforcement case served R.D. for voluntary payment of his obligation to I.Z. for an awarded sum in the amount of BGN 383. Given the above, according to PSI 2, if the CPLD considers a violation to have occurred, it should be taken into account that the principles related to the processing of the applicant's personal data have been respected. He considers that the personal data were lawfully processed in good faith and transparently for legitimate purposes, even a legitimate interest, that there is no risk of harm to the complainant, since it concerns the voluntary realization of his claim through payment, albeit in an insignificant amount. On the other hand, the appellant acted in the same way by voluntarily paying his obligation to the claimant R.D. in the discontinued case, but did not state how he got hold of his bank account. Regarding the regularity and admissibility of the complaint, the CPLD finds the following: In order to exercise its powers, the Commission should be validly referred. The complaint submitted to the Varna District Prosecutor's Office complies with the regularity requirements under Art. 29 of the APC, Art. 38a, 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 claiming that his rights have been violated under Regulation 2016/679 or the GDPR. 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 30.06.2021, the complaint was declared admissible and the following were constituted as parties to the proceedings: complainant I.Z. and respondent PSI 2, in the capacity of administrator of personal data. The parties have been notified of the open meeting scheduled for 29.09.2021 to consider the dispute on its merits. At the hearing, the applicant is represented by a lawyer. The procedural representative considers the complaint to be well-founded. Claims costs. The defendant party - does not appear, does not send a representative. With this established, the Commission considered the complaint on its merits, accepting it as well-founded

based on the following: Regulation 2016/679 and the Personal Data Protection Act (PDPA) set out 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 processing of the complainant's personal data, which is expressed in a report made by a private bailiff to the Bulgarian National Bank about the bank accounts he owns, which report was made in a closed enforcement case. From the evidence presented in the case file, it is established that in 2018, at PSI 2, ID 2 (or ***) was formed with claimant R.D. and defendant I.Z. - applicant in the present proceedings. The specified executive case was terminated as of 22.01.2019, evident from Resolution No. *** under the Civil Code. No. *** of the Varna District Court, General Court, Chamber V. As can be seen from the submitted reference for bank accounts and safes of an individual or legal entity from the Register of bank accounts and safes at the BNB, the same was made on 24.04.2020 in connection with ID 2. for the person I.Z. From the information given in the present proceedings, as well as before the District Prosecutor's Office - Varna, it is established that the inquiry was made by an employee in the office of the PSI 2 at the verbal request of R.D. (claimant under ID 2) and after payment of the relevant fee. The processing of personal data by personal data administrators is lawful and permissible, if any of the grounds exhaustively listed in Art. 6, paragraph 1 of Regulation (EU) 2016/679. According to Art. 2, para. 1 of the Law on Private Bailiffs (PBA), a private bailiff is a person to whom the state assigns enforcement of private claims. According to Art. 16, paragraph 1 of the Civil Code, the private bailiff has the right to access the personal data of the debtor when this is necessary for the purposes of execution. According to Art. 18, para. 1 of the PSI, upon assignment by the claimant, the PSI may, in connection with the enforcement proceedings, examine the property status of the debtor, make inquiries, procure documents, papers, etc., determine the method of execution, as well as be the custodian of the described property. Given the above, the PSI has the right to process the debtor's personal data, including making inquiries, for the exercise of the official powers granted to it by the PSI and the Civil Procedure Code (CPC) - grounds for processing under Art. 6, paragraph 1, letter "e", proposal second of Regulation 2016/679. According to Art. 16, paragraph 1 and Art. 18, para. 1 of the ZPSI, however, the legislator has granted official powers to the PSI to make inquiries about the debtor solely for the purposes of enforcement and in connection with enforcement proceedings. As stated, the reference to the BNB for the applicant's bank accounts was made on 24.04.2020 under ID 2 (or ***) according to the inventory of ČSI 2, which was terminated on 22.01.2019. It follows that the reference was made in an already terminated enforcement

case, i.e. the processing is not necessary for the purposes of execution and executive proceedings. Given the above, although initially PSI 2 processed personal data of the complainant on the basis of Art. 6, paragraph 1, letter "e", proposal second of Regulation 2016/679 for the purposes of establishing and conducting the enforcement case, making a reference to the applicant's bank accounts after the termination of the enforcement case (after the purpose of the processing has been fulfilled) constitutes processing in a way that is incompatible with these purposes. With this, the administrator has committed a violation of the principle of limitation of purposes under Art. 5, paragraph 1, letter "b" of Regulation 2016/679, according to which personal data are collected for specific, explicitly stated and legitimate purposes and are not further processed in a manner incompatible with these purposes. The objection of PSI 2 that the bank account should not be considered as personal data when it refers to the same parties in civil and commercial cases is unfounded, since their identification data are contained in these cases (EGN) and can be to obtain data on the availability of bank accounts in each bank. According to Art. 4, item 1 of Regulation 2016/679 "personal data" means any information related to an identified natural person or an identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as a name, an identification number, location data, an online identifier or by one or more characteristics specific to the physical, the physiological, genetic, psychic, mental, economic, cultural or social identity of that natural person. In the specific case, the bank account represents personal data of the first category - any information related to an identified natural person, since the reference to the BNB was made by names and personal identification number of the applicant, by which he was identified. Through the reference, additional information is available about the person so identified - data on all his bank accounts, which are 3 in number, and as the complainant himself states - one of the accounts was not provided to anyone, except to an insurer for receiving payment. It is for this reason that the person has the right to protect his data from being disclosed to third parties when the processing is not necessary for the purposes of enforcement proceedings and enforcement. In the event of such a violation, the complaint should be upheld. The Commission has operational autonomy, and in accordance with the functions granted to it, it assesses which of the corrective powers under Art. 58, par. 2 of Regulation 2016/679 to exercise. The assessment is based on considerations of expediency and effectiveness of the decision, taking into account the specifics of each specific case and the degree of impact on the interests of the specific natural person - data subject, as well as the public interest. The powers under Art. 58, par. 2, without the one under letter "i", have the nature of coercive administrative measures, the purpose of which is to prevent or stop the commission of a violation, thus achieving the

due behavior in the field of personal data protection. The administrative penalty "fine" or "property penalty" under Art. 58 pairs. 2, letter "i" has a punitive nature. When applying the appropriate corrective measure under Article 58, par. 2 of the Regulation takes into account the nature, severity and consequences of the violation, as well as all mitigating and aggravating circumstances. The assessment of what measures are effective, proportionate and dissuasive in each individual case also reflects the goal pursued by the selected corrective measure – prevention or termination of the violation, sanctioning of illegal behavior or both, which possibility is provided for in Art. 58, par. 2, letter "i" of Regulation 2016/679. The administrator of personal data does not fall under the concept of "enterprise" in the sense of § 1, item 1 of the DR of the Law on small and medium-sized enterprises, since it does not carry out economic activity, but exercises authority, which is why Art. 10 years of the Labor Code is inapplicable. Given the stated powers of the CPLD and their purpose, as well as after assessing the specific mitigating and aggravating circumstances, discussed in accordance with the requirements of Art. 83, paragraph 2 of Regulation 2016/679, CPLD finds that the violation is of high public danger and an administrative penalty "fine" should be imposed on the PSI 2. The specific circumstances in accordance with Art. 83, paragraph 2 of the Regulation are the following: Letter "a" - nature, severity and duration of the violation: The administrator of personal data is a person to whom the state has assigned to exercise authoritative powers, in view of which his responsibility is increased. The violation was committed through a reference in a register of a state body, which is not public and generally accessible. The access of the PSI is granted only for the execution of official powers. The powers and duties of the PSI are detailed in the ZPSI and the Code of Civil Procedure, and in this case a violation was committed precisely of the provisions of the ZPSI, which also led to the illegal processing. It should be noted here that in addition to access to the BNB register, private bailiffs are granted access to a number of other registers that are not public and generally accessible (NBD "Population", etc.), which should only be accessed at business necessity, not in all cases. It is precisely because of these aggravating circumstances that the administrator should be subject to an administrative penalty of "fine", which will sanction misconduct and act as a warning in the future. As mitigating circumstances, it is assumed that the violation is a one-time violation and the rights of only one person are affected by it, and there is no evidence of harm to the person as a result of the processing. Letter "b" - whether the violation was intentional or negligent: the violation was intentional - the claimant paid a fee, requested the report and the private bailiff's officer made the report and provided it to the claimant. Letter "c" - actions to mitigate the consequences of the damages: no damages have been found that are subject to removal, which is a mitigating circumstance. Letter "d" - degree of responsibility given the

introduced technical and organizational measures: in this case, the obligation in which way to process the data derives directly from the law (ZChSI and GPC), therefore the violation does not refer to failure to take technical and organizational measures. This is precisely what makes it inappropriate to instruct the controller to draw up rules and take measures, as rights and obligations in relation to processing are regulated by law. This is an extenuating circumstance. Letter "e" - related previous violations: no related violations have been established - a mitigating circumstance. Letter "f" - degree of cooperation with the supervisory authority to eliminate the violation and mitigate the adverse consequences: the violation has been completed (the inquiry has been made and provided to the claimant), therefore it cannot be remedied. The consequences of the violation (knowing the bank accounts by a third party) cannot be removed. Letter "g" - affected categories of personal data: bank accounts of the complainant were unlawfully accessed (the rest of the personal data - names and social security number of the complainant are known to the defendant in the case). However, the purpose of bank accounts is to provide them to third parties, if necessary, for carrying out the relevant banking operations. Special categories of personal data are not processed within the meaning of Art. 9 of Regulation 2016/679. These are extenuating circumstances. Letter "h" - knowledge of the violation by the supervisory authority: after referral to the CPLD by the data subject through the prosecutor's office. Letter "i" - previous corrective measures imposed and whether they have been observed: the violation is the first for the administrator and no measures have been imposed on him under Art. 58, par. 2 of Regulation 2016/679, which mitigates liability. Letter "j" - adherence to approved codes of conduct or certification: at the time of the violation, there were no approved codes of conduct. Letter "k" - other circumstances: not established.After discussing all of the stated mitigating and aggravating circumstances, the CPLD finds that the administrative penalty "fine" should be in an amount close to the minimum.

Regarding the request for costs made by the applicant's lawyer, it should be borne in mind that according to Art. 12, para. 3 of the APC in the proceedings under this Code, no costs shall be paid, unless this is provided for in it or in another law, as well as in the cases of appeals of administrative acts by court order and when bringing a claim under this Code. The possibility of awarding costs when examining appeals under Art. 38 of the Labor Code. In the proceedings for the issuance of individual administrative acts under Chapter Five, Section I of the APC, the provisions of which apply to the cases not settled in the LLDP and Regulation 2016/679, the possibility of awarding costs, except for travel and other costs under Art. 47, para. 2 of the APC, which are not claimed in the present case.

In view of the foregoing, the motion for attorney's fees must be denied. In this sense, Decision No. 9833/17.07.2020 under the

administrative No. 13339/2019 according to the inventory of the Supreme Administrative Court of the Republic of Bulgaria, Fifth Department.

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

RESOLVE:

1. Announces complaint No. PPN-01-80/27.01.2021 filed by I.Z. against PSI 2, to be declared justified for violation of Art. 5, paragraph 1, letter "b" of Regulation 2016/679;

2. Based on Art. 58, paragraph 2, letter "i" of Regulation 2016/679 in connection with Art. 83, paragraph 5, letter "a" imposes on the administrator of personal data PSI 2, BULSTAT ***, an administrative penalty "fine" in the amount of BGN 750 (seven hundred and fifty);

3. Rejects the request of I.Z. to award costs in the proceedings.

This decision can be appealed within 14 days from its delivery through the Commission for the Protection of Personal Data, before the Varna Administrative Court.

After the entry into force of the decision, the amount of the imposed penalty should be transferred by bank transfer:

BNB Bank - CU

IBAN: BG18BNBG96613000158601 BIC BNBBGGSD

Commission for Personal Data Protection, BULSTAT 130961721

In case the sanction is not paid within 14 days from the entry into force of the decision, actions will be taken to collect it forcibly.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

Download files

Decision on appeal with reg. No. PPN-01-80/27.01.2021

print