

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-414/15.06.2020 Decision on appeal with reg. No. PPN-01-414/15.06.2020 DECISION no. PPN-01-414/2020 Sofia, 19/09/2022 The Commission for the Protection of Personal Data (PCPD) composed of: Chairman: Ventsislav Karadjov and members: Maria Mateva and Veselin Tselkov at a meeting held on 20/07/2022. , 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-01-414/15.06.2020, filed by C.V. 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 C.V. against "National Lottery" JSC with allegations of misuse of her personal data - names and uniform civil number, for income declared to the NRA from participation in gambling games received in 2019. The complainant informed that on 15.04.2020, when submitting of a tax return under Art. 50 of the Income Tax Act and a reference was made for income paid under employment and non-employment legal relationships, found that in addition to the income correctly specified by her employers under the main and additional employment contract and income under a civil contract, there are also incomes from money and property declared in her name winnings received from participation in gambling games organized by the "National Lottery" AD in the amount of BGN 245,217.40 (two hundred and forty-five thousand, two hundred and seventeen BGN and forty cents). She claims that she did not earn such income in the form of monetary or tangible profits and was not paid to her by the "National Lottery" JSC in the calendar year 2019. She adds that in 2017 and 2018 she won cash prizes from competitions organized by the company games, which are correctly reflected in the statements of income received in the specified years and claims that the company used her personal data to declare "false profit in 2019." She asks the commission to verify the case and attaches a copy of a statement from the National Revenue Agency for paid incomes/employment and non-employment/ to natural persons for the period from 2019 to 2019 as of 08.05.2020. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, the company is informed of the administrative proceedings instituted in the case proceedings, he was given the opportunity to submit a written statement on the allegations presented in the complaint. The letter was returned in its entirety to the CPDP with the note "the recipient refuses to receive the shipment", however, the same should be considered as regularly received as far as the argument of Art. 44 of the Civil Procedure Code refused to obtain the regularity of service for the time being. The company has been notified of

the proceedings and in accordance with Art. 18a, para. 9 of the APC, by means of a notice affixed to the address indicated in the Commercial Register, as the seat and address of the company's management. At a meeting of the CPLD held on 28.04.2021, the complaint was accepted as regular and admissible - it contains mandatory required details, it was submitted within the deadline under Art. 38, para. 1 of the Personal Data Protection Act by a natural person with a legal interest against a proper party - personal data controller within the meaning of Art. 4, § 7 of the GDPR, what quality does the "National Lottery" JSC have regarding data processed for the applicant and provided to the NRA, and processed in connection with the registration of the applicant for participation in lottery games organized by the company through the website *****. 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. The negative prerequisites specified in Art. 27, para. 2 of the APC. In view of the above, as parties to the proceedings are constituted: as parties to the proceedings are constituted: applicant - C.V. and defendant - "National Lottery" JSC. An open hearing has been scheduled to consider the merits of the appeal on 07/07/2021 at 1:00 p.m., of which the parties have been regularly notified and they have been instructed to allocate the burden of proof in the trial. In order to clarify the case from a factual point of view, the defendant specifically requested evidence of the type and volume of personal data processed for the complainant in connection with income declared by the company in the National Revenue Agency in the amount of BGN 245,217.40 and information on the legal basis for processing her personal data from the company; internal rules for participation in the lottery games organized by the company, information about the bets made by the applicant and the amounts won; rules, policy or other act governing the processing of personal data of the participants in the games organized by the company. At a meeting of the CPLD held on 07.07.2021, the complaint was submitted for consideration on the merits. The parties - regularly notified, do not appear, do not represent themselves. The evidence requested by the defendant has not been provided, which is an obstacle to ruling on the merits of the appeal, insofar as the case has not been clarified from a factual point of view, which is why the review of the appeal on the merits has been postponed to 29.09.2021. The defendant "National Lottery EAD is repeated instructions for providing information and evidence

on the type and volume of personal data processed for the applicant in connection with income declared by the company in the National Revenue Agency in the amount of BGN 245,217.40, information on the legal basis for processing her personal data by the company, as well as information about the bets made by the applicant and the amounts won for 2019. Rules, policy or other act governing the processing of personal data of the participants in the games organized by the company are requested. The letter with instructions was received by the company on 09.08.2021, but within the specified 7-day period from receipt of the letter, and by 29.09.2021, the evidence requested by the commission was not presented. There is no active participation of the company in the proceedings, a written opinion on the case has not been filed, the claims of the complainant have not been disputed, the specifically requested evidence has not been provided. The National Revenue Agency has been informed about the submitted complaint and the agency has requested information on the progress and results of an inspection carried out on the case. In response, the NRA informs that the agency has not been referred to the case. Insofar as the case has not been clarified from a factual point of view, by a decision of the CPLD held on 29.09.2021, consideration of the complaint in substance has been postponed to the next meeting of the commission. Given the official nature of the administrative process, it was decided to carry out an on-site inspection of the company in order to establish the type and volume of personal data processed for the applicant in connection with the income declared by the company in the National Revenue Agency in the amount of BGN 245,217.40; the bets made by the applicant and the amounts won in 2019; to demand a certified copy of the internal rules for participation in the lottery games organized by the company, in which the applicant participated in 2019, and also a certified copy of the rules, policy or other act governing the processing of personal data of the participants in the lottery games organized by the company games from which the income declared in the NRA was generated. Pursuant to the decision of the CPLD, an inspection was carried out based on the review of the complaint objectified in the finding document KA PPN-02-616/03.12.2021 with relevant evidence attached to it. The on-site inspection was opened on 23.11.2021 at the address: Sofia, Tsar Boris III Blvd. No. 126, and a copy of the inspection order was handed over to M.I. - executive director, in the presence of V.S. The inspection team explains the tasks and objectives of the inspection by the CPLD in relation to the complaint received by C.V. A bilaterally signed protocol of findings was prepared for the findings during the inspection, with an attached statement from "National Lottery" AD and relevant documents (on a USB flash drive), as follows: · Gaming conditions and rules for organizing online betting in a gaming casino; · Mandatory gaming conditions and betting rules for the "National Lottery - Online Games" game; · Personal data protection policy; · Opinion of the National Revenue Agency with ex. No.

24-39-53#1/20.07.2018 regarding the implementation of Art. 73, para. 1, item 4 of the Income Tax Act; · Order dated 19.02.2018 of the executive director of "National Lottery" JSC; · Instructions regarding the application of Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016; · Gaming history of C.R. for 2019 (The Excel table contains the following columns: date, game ID, bet number, type of WIN/BET operation, amount, bet ip); · Withdrawal and deposit history of C.R. for 2019 (the Excel table contains the following columns: request date and time, payment method, deposit amount, user, execution date and time); · Submitted to NRA files (2 pcs.). A copy of the investigative report is provided to the inspected person. From the opinion of the NRA provided during the inspection with ex. No. 24-39-53#1/20.07.2018 regarding the implementation of Art. 73, para. 1, item 4 of the Income Tax Act, it is clear that "National Lottery" AD is a licensed organizer of gambling games under the Gambling Act (GA). As an income payer under Art. 13, para. 1, item 20 of the Income Tax Act, the company has an obligation to provide information pursuant to Art. 73, para. 1 of the same law on the income paid to natural persons. Reports are drawn up on the basis of the winnings paid out to the gaming accounts of the participants in the gambling games according to Art. 6, para. 1, item 4 of the XX, in connection with the issuance of a license for organizing online betting, one of the requirements is that the central computer system (CSC) of the organizer must have a system for registration and identification of the participants in the games, as well as a system for storing and real-time submission to the server of the State Gambling Commission (DKH) and the NRA of information about the simultaneous gaming sessions, the bet made by each participant and the profit paid to each participant. Participation in online gambling games from the player's point of view, namely placing bets and receiving winnings, is carried out through his gaming account in the organizer's CCS. The gaming account is debited with every bet placed and credited with every deposited amount and every win, resulting in the participant's current net balance. CCS funds the participant's gaming account with all of his winnings and allows him to withdraw all funds from his gaming account. The moment a participant's gaming account is loaded with winnings, they can "cash out" it or make a new bet with it. The winnings paid to the game account may not correspond to the amount paid to the participant through the organizer's payment account. In the event that the participant has decided to bet part or all of the paid winnings in his game account and the bet is not profitable, the paid through the payment account organizer's account amount (game account balance) will be less than or equal to zero, respectively. The opinion states that in the sense of Art. 6, para. 1, item 3 of the 3X, again in connection with the issuance of a license to organize online betting, it is necessary to open an account for depositing bets and paying out profits in a bank licensed in the Republic of Bulgaria or in a bank licensed in another member

state of the European Union, in another state - a party to the Agreement on the European Economic Area, or in the Swiss Confederation, which carries out activities on the territory of the Republic of Bulgaria in accordance with the Law on Credit Institutions. This account concerns the cases in which the participant decides to withdraw money from his gaming account. However, not only winnings are stored/reflected there, but also deposited funds for placing bets. In this hypothesis, when the participant "cashes out" from his gaming account, the withdrawn funds can hardly be qualified in terms of their genesis - whether they are won from a bet or from the deposited funds. Pursuant to Art. 73, para. 1 of the Personal Income Tax Act, enterprises and self-insured persons within the meaning of the Social Security Code - payers of income, prepare a report according to a template for the incomes paid during the year to natural persons, specified in the cited provision. In Art. 73, para. 1, item 4 of the Income Tax Act also explicitly states the income exempted from taxation pursuant to Art. 13, para. 1, item 20 of the same law, when their annual amount, paid to an individual, exceeds BGN 5,000. In this sense, monetary and tangible profits received by individuals from participation in gambling games organized with a license issued pursuant to XX, must be described in the form when the annual amount paid to the individual by the relevant organizer exceeds BGN 5,000. According to the general rule of Art. 11, para. 1 of the Personal Income Tax Act, unless otherwise provided for in this law, the income is considered to be acquired on the date of: payment – in case of payment in cash; the verification of the account of the recipient of the income or receipt of the check - in case of non-cash payment; receiving the benefit - for non-monetary income. The NRA states that, given the tax rate quoted, in this particular case the monetary profit will be considered received by the individual (respectively paid by the organizer of the gambling game) on the date of its entry to the credit of his gaming account. The sum of these profits should be indicated in the report under Art. 73, para. 1 of the Personal Income Tax, if its amount exceeds BGN 5,000 for the specific individual. The fact that the person can use his earnings or part of them. in order to make new bets, does not change this tax treatment - in practice, the person disposes of his acquired income, which is exempt from taxation on the basis of Art. 13, para. 1, item 20 of the Income Tax Act. In the opinion provided during the inspection by "National Lottery" AD regarding the announced amount of winnings received from participation in gambling games organized online on the site ***** by "National Lottery" AD, they state the following: Pursuant to Art. 73, para. 1 in connection with Art. 13, para. 1, item 20 of the Income Tax Act, the enterprises - payers of income, are obliged to prepare a report according to a template for the income paid during the year from the monetary and tangible profits received from participation in gambling games, organized with a license issued according to the order of XX, in the cases , when the annual amount of the relevant income paid to an individual

exceeds BGN 5,000. Pursuant to Art. 73, para. 4 of the same law, the report shall be submitted by February 28 of the following year to the territorial directorate of the National Revenue Agency at the place of registration of the payer of the income. In the norm of Art. 13, para. 1, item 20 of the Income Tax Act, to which Art. 73, para. 1 of the same law refers, the term winnings received from participation in gambling games organized with a license issued under the order of XX is used, and not amounts paid out. Also, the provision of Art. 10, para. 3 of the General Technical and Functional Requirements for Gaming Software and Communication Equipment for Remote Gambling Games, adopted by the then State Gambling Commission, states that in gambling games organized online, winnings are immediately reflected in the participant's gaming account, immediately after winning them. Given the imperative nature of the cited regulations, "National Lottery" JSC is obliged to announce to the National Revenue Agency the exact amount of the winnings from gambling games organized online, as they have been done on the participant's gaming account. The fact that the participant may have spent the accrued profit on his gaming account for other bets, and/or withdrew money from the same account in a smaller amount is of no legal significance. According to Art. 13, para. 1, item 20 of the Personal Income Tax Act, income from monetary and tangible profits received from participation in gambling games, organized with a license issued in accordance with the provisions of the Tax Code, are non-taxable income, accordingly no tax is due on them. For the above reasons, "National Lottery" JSC announces the amount of profits earned during the year, and not the amount of funds withdrawn by the participant from his gaming account in the same year. With regard to the complaint, the company's statement states that in this particular case there is a misunderstanding on the part of the complainant regarding the manner of declaring gambling winnings. During the on-site inspection, a 2-day deadline was specified for the provision of an additional statement regarding the complaint and C.V.'s game file, with the application of relevant documents, from which it is evident that the one created by C.V. profile on the online betting site corresponds to the withdrawal/deposit tables provided by her and her playing history. In the specified period, on 26.11.2021, an electronic letter was received from M.I., in which statements are made that he is objectively unable to provide the information requested by the team, due to the fact that it was not given to him and he does not have the company's database of players and their game history. He indicates that he has repeatedly demanded that the data be handed over to him by the previous representative of the company, D.G., with no result for the time being. To the letter M.I. attached a screenshot of the information submitted to the National Revenue Agency and an Excel table "Summary report" for the applicant's bets, claiming that they were sent to him by G.C., who was the accountant of "National Lottery" JSC, and currently, according to his information, works at D.G. Provides

contact details for D.G.: e-mail and phone. In this regard, on 29.11.2021, the examining team sends an email to the above email address, in which a 3-day deadline is specified for contacting the team to clarify the facts and circumstances of the submitted complaint. On the same day, a person who introduced himself as D.G. called the official landline phone provided by the liaison team from the number **** (the last two digits of the number provided by M.I. were changed), for which a protocol was drawn up. After the person is familiar with the subject of the complaint, clarifies the activity of data processing of persons who participated in games organized by "National Lottery" JSC and the opinion of the NRA regarding the application of Art. 73, para. 1, item 4 of the Income Tax Act. The person claims that the company's servers and information system are located at a company that provided technical support (he refuses to name its name), and that "National Lottery" AD had a contract with the company (during the inspection, M.I. . claims to have no such contract). The person who introduced himself as D.G. confirms that, as instructed by the examining team, within a 3-day period, he will provide written information (via electronic means) regarding the above statements, attaching relevant documents, including the cited contract, but the same have not been received in the CPLD. By decision of 06/08/2022, the CPLD scheduled a new open meeting to consider the merits of the appeal on 07/20/2022 at 1:00 p.m., of which the parties are regularly notified. The parties have been informed about the inspection carried out by the CPLD on the case, and a certified copy of the report of the inspection has been sent to them for their perusal and opinion. In view of the evidence gathered in the case file, a specific answer to the following questions is requested from the applicant: 1. Did you place bets in 2019 in the gambling games organized by the "National Lottery" JSC through the website ***** or in some other way? 2. What is the amount of income received by you in 2019 from participating in the gambling games organized by the "National Lottery" AD? 2.1. What amount of income did you gain by paying cash? 2.2. What part of the winnings received in 2019 did you use for new bets? The complainant did not file an answer to the questions raised, there is also no objection to the statement of findings. For the completeness of the file, the NRA requested counter-information about the bets and winnings made by the applicant in 2019, as well as the serial number and code of the game in which she participated, the number of bets in each game, as well as the total bets and winnings made for each game, submitted by "National Lottery" JSC in its capacity as the organizer of remote gambling games via an automated route to the information system of the NRA. In response, the NRA informs that during an inspection, from an attached sample from the database of the NRA, in its capacity as legal successor of the State Commission on Gambling, it was found that information submitted by "National Lottery" JSC - the organizer of gambling games, was submitted by the complainant, the period

01.01.2019 - 31.12.2019, 138 participations with a total amount of bets placed BGN 258,044.06 and a total profit of BGN 245,227.15. They specify that the specified amounts for bets and winnings are reflected in the participant's gaming account, without necessarily implying that each time new amounts are deposited for the purpose of betting, and that the amounts specified as winnings are actually withdrawn. At the meeting of the commission held on 20.07.2022, the complaint was examined on its merits. The parties - regularly notified, do not appear, do not represent themselves. 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 existence of established actual facts, and given the collected evidence and the allegations, the commission accepts that the substantively examined complaint No. PPN-01-414/15.06.2020 is unfounded. The subject of the complaint are allegations of unlawful processing of the complainant's personal data in connection with information submitted to the National Revenue Agency about income received in 2019 in the amount of BGN 245,217.40 (two hundred and forty-five thousand, two hundred and seventeen BGN and forty cents) from "National Lottery" JSC.

It is not in dispute that at the date of processing of the applicant's personal data, the company is a licensed organizer of gambling games organized online on the website *****, including the game "National Lottery - Online Games" organized online with a license issued pursuant to Decision No. 00030-10086/20.10.2015 of the State Commission on Gambling, Games in a gambling casino, online with a license pursuant to Decision No. 00030-1389/12.02.2016 and Betting on the results of sports competitions, horse and dog racing, organized online in accordance with a license pursuant to Decision No. 00030-2644/16.04.2014 of the DKH. The games are voluntary and the participation in them, respectively the registration, depends on the personal judgment of each person. By registering in the game, it is assumed and follows that the participant is familiar with and agrees with the rules of the game, including the processing of his personal data for its purposes, from the moment of registration.

From the evidence gathered in the file, it was established, and it is not in dispute between the parties, that the complainant is a registered user of the website ***** and, in this regard, a participant in lottery games organized by "National Lottery" JSC, in which capacity the company processes her personal data, the same voluntarily provided when registering on the site. It was established, from the inspection carried out by the CPLD and attached evidence, including information from the National Revenue Agency, undisputed by the complainant, that in 2019 Mrs. C.V. made 138 participations with a total stake of BGN

258,044.06 and a total profit of BGN 245,227.15, the same non-taxable income in the sense of Art. 13, para. 1, item 20 of the Income Tax Act, realized profit pursuant to Art. 73, para. 1 of the VAT Act. According to data from the file, undisputed by the applicant, only BGN 4,750 (four thousand seven hundred and fifty BGN) of the winnings was received by the applicant in cash, while the rest was used for new bets.

It was undisputedly established that the company provided the NRA with information about the income received by the applicant in 2019, respectively processed her personal data for declaring it to the revenue agency. The actions of the defendant are lawful and in the hypothesis of Art. 6, § 1, letter "c" of the GDPR, namely, the processing is necessary to comply with a legal obligation that applies to the controller of personal data, in his capacity as an obligated person within the meaning of the Personal Data Protection Act. For the company, as payer of the income within the meaning of Art. 13, para. 1, item 20 of the Income Tax Act, there is a legally established obligation to declare income paid to natural persons in the National Revenue Service within the meaning of Art. 73 of the Income Tax Act, and in fulfillment of this obligation "National Lottery" JSC submitted to the National Revenue Agency a report on the income of the participant C.V., as a registered user and winning participant in online organized gambling games. For the latter and insofar as the conditions for legality of the processing under Art. 6, § 1 of the GDPR are not given cumulatively, the person's consent is not necessary - the same is irrelevant in this case. For the sake of completeness and considering the claims of the complainant that she did not receive the winnings declared by the organizer of the gambling game, it should be noted that according to the instructions of the NRA regarding the application of Art. 73, para. 1 of the Income Tax Act "the monetary profit is considered to have been received by the individual (respectively paid by the organizer of the gambling game) on the date of its entry to the credit of his gaming account. The fact that the person can use the winnings or a part of them to make new bets does not change this tax treatment.", nor does it change the obligation of the payer of the income to provide the information to the National Revenue Agency. Winnings in gambling games organized online are reflected in the participant's gaming account, according to the provision of Art. 10, para. 3 of the General technical and functional requirements for gaming software and communication equipment of remote gambling games, adopted by the State Gambling Commission on the basis of the Gambling Act. Given the imperative nature of the cited regulations, the obligated person – the organizer of the gambling games announces to the National Revenue Agency the exact amount of the winnings, as reflected in the participant's gaming account. The winnings paid to the game account may not correspond to the amount paid to the participant through the payment account of the game organizer, in the event that the

participant has decided to bet part or all of the paid winnings on his game account and the bet is not profitable. It is the duty of the payer of the income, the organizer of the gambling game, to prepare, or submit to the National Revenue Agency, a report on the total amount of profits earned during the year (i.e. the sum of the sums resulting from all winning bets of the participant reflected in his gaming account), and not the amount of funds withdrawn by the participant from his gaming account. It was in fulfillment of the above that the defendant in the present proceedings provided the NRA with the personal data of Mrs. C.V. and declared the winnings of Mrs. C.V. amounts from gambling games, and not only the funds actually withdrawn by the participant in the amount of BGN 4,750.

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:

Complaint No. PPN-01-414/15.06.2020, filed by C.V., is dismissed as unfounded.

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/

Maria Mateva /p/

Veselin Tselkov /p/

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