

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-389/12.05.2021 Decision on appeal with reg. No. PPN-01-389/12.05.2021 DECISION no. PPN-01-389/2021 Sofia, 05/05/2022 The Commission for the Protection of Personal Data (PCPD) composed of: Chairman: Ventsislav Karadjov and members: Tsanko Tsolov and Veselin Tselkov at a meeting held on 02/02/2022. , 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-01-389/12.05.2021, filed by R.Z. against S.P. 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 request submitted by R.Z. complaint No. PPN-01-389/12.05.2021, with alleged allegations of unlawful processing of personal data, in the hypothesis of an act carried out by her neighbor S.P. video surveillance in a condominium building, by means of a camera mounted above the front door of his apartment with the address Sofia, \*\*\*\*\*. Mrs. R.Z. claims that the video surveillance is carried out without a decision of the general assembly of the condominium, as well as without the consent of the residents of the building, and the camera covers her apartment, apartment 25, as well as neighboring apartments 23 and 24. She asks the commission to investigate the case and stopping the video surveillance, which she claims is being carried out against her will and in violation of her privacy. No evidence was attached to the complaint, it was submitted electronically without being signed with a qualified electronic signature. A complaint with identical content was also submitted by mail and filed with PPN-01-419/02.06.2021. According to the principles of equality of the parties in the proceedings and truthfulness, S.P. was notified of the filed complaint, and was given the opportunity to submit a written statement and relevant evidence, but such evidence was not filed. In order to clarify the case from a factual point of view, an inspection was carried out on the subject of the complaint, the results of which are objectified in Constitutive act PPN-02-562/15.11.2021, with annexes to it, including Constitutive minutes of 11.11.2021 d., graphical representations of camera location and range, and a completed questionnaire. The on-site inspection was opened on 11/11/2021. A copy of the inspection order was handed over to S.P., in the presence of his son D.P. From the performed inspection, the following was established: The object being inspected is a family home in a 16-story residential building in EU mode with a total of 105 units. apartments. The video surveillance system consists of 1 pc. IP stationary video camera (HIKVISION, missing sticker and no documentation about the camera model) and recording device (DVR HIKVISION model DS7104HQHI-K1) with a capacity of

931.52 GB. At the time of inspection, the recording device and video camera are functional. The real-time footage is monitored on a television, which, together with the recording device, is located in a room in S.P.'s apartment. (children's room).

Allegations have been made that the video surveillance system was built personally by S.P. with a preventive security purpose at the beginning of 2021 in his capacity as a natural person. No documentation was provided as to exactly when it was installed, as well as a decision of the EU General Assembly or written consent from the other residents of the building. Access (local and remote) to the built video surveillance system, incl. maintenance and settings, the output image from the video camera in real time and recordings with video frames, have only S.P. and his son, including through a software application (Hik-Connect) installed on their mobile phones. It has been established that the video surveillance system records the video footage during movement within the range of the video camera. Recordings with video frames are stored on the recording device until the disk capacity is full. The oldest recordings found are from 15/02/2021. Camera 1 is located in the upper right corner above the front door of S.P.'s apartment, it is aimed and captures the space immediately in front of the front door of his apartment and at an acute angle the approach to the floor landing. From the stored records, it is established that in the period from 15.02.2021 to 25.08.2021 incl. the scope of the video surveillance/video recording covers a larger part of the floor area, incl. the approach to the applicant's apartment. As of 26.08.2021 S.P. has changed the scope (same till the time of this inspection) and the floor area, the flat of the complainant as well as other neighboring flats are not video monitored/video recorded. By means of the built-in video surveillance system, personal data of the following categories of natural persons are processed: residents and visitors of S.P.'s apartment. The video surveillance system allows identification of individuals. Does not allow facial recognition of individuals (by accessing a database). During the on-site inspection, no transmission or recording of snapshots and video frames from the image to a remote device (FTP/Cloud server, e-mail or other data storage location) is performed. The collected documentation lacks data on security of the object by another natural/legal person in accordance with the Law on private security activities, who has access rights to the video surveillance system. The administrator has taken the following technical and organizational measures to protect data: access to the video surveillance system takes place after entering a username and password. There are no information signs warning about video surveillance. On behalf of S.P. no documents (rules, procedure, instruction, or others) have been provided describing the technical and organizational measures taken to protect personal data and regulating their processing through the established video surveillance system. 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 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data. In order to exercise its powers, the commission must be validly referred. Complaint PPN-01-389/12.05.2021 contains the required details, namely: there are data about the complainant, the nature of the request, date and passively legitimized party. The complaint was filed electronically without the complainant's signature. This defect in the request was rectified with a mailed complaint PPN-01-419/02.06.2021, with identical content, signed by the sender Mrs. R.Z., considering that the complaint is regular. The complaint is procedurally admissible, submitted within the period under Art. 38 of the Labor Code by an individual with a legal interest against passively legitimized parties - an individual S.P., who is claimed to be, and the commission, upon inspection, found that he has the capacity of a personal data administrator within the meaning of Art. 4, para. 7 Regulation EU 2016/679, insofar as it determines the purposes and means of processing personal data through video surveillance. In the course of the inspection, it was established that, in addition to the passively legitimized party, S.P. had access to the video surveillance. and his son D.P., in view of which he should participate in the proceedings as a respondent, ex officio constituted party. Referred body competent to make a decision - CPLD, which according to its powers under Art. 10, para. 1 of the Labor Code in connection with Art. 57, § 1, letter "f" of Regulation (EU) 2016/679, considers complaints against acts and actions of personal data controllers, which violate the rights of data subjects related to the processing of personal data, being not available the exceptions under Art. 2, § 2, letter "c" and Art. 55, § 3 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities carried out by an individual in the course of purely personal or domestic activities and/or activities carried out by courts in the performance of their judicial functions. For the above reasons and given the absence of the negative prerequisites specified in Art. 27, para. 2 of the APC, at a meeting of the commission held on 24.11.2021, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: complainant - R.Z. and defendant parties – S.P., a passively legitimized party and D.P., an ex officio constituted party. An open hearing has been scheduled to consider the merits of the complaint on 02.02.2022 at 1:00 p.m. The parties have been notified of an official inspection carried out in the case, a certified copy of the findings of the inspection has been sent to them for review and opinion. At the meeting of the commission held on 02.02.2022, the complaint was examined on its merits. The parties - regularly notified, do not appear or represent themselves at the meeting before the commission. 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 in view of the evidence collected and the allegations made, the commission accepts that the complaint PPN-01-389/12.05.2021 considered in substance is well-founded. The subject of the complaint are allegations of unlawfully carried out by S.P. video surveillance in suffering in condominium mode, by means of a camera installed above the front door of his apartment with the address Sofia, \*\*\*\*\*. According to the legal concept, video surveillance is a technical form of processing and storage of personal data within the period stipulated by the law, carried out in compliance with the requirements for the protection of personal data, including filming of persons in a guarded object and recording of the data obtained. The information contained in video recordings from surveillance devices about the natural person as a whole - image, daily habits, behavioral reactions and social contacts, fall within the scope of the concept of personal data, since the person can be identified in an indisputable way. The collection and storage of personal data is a form of their processing within the meaning of Art. 4, § 1, item 2 of Regulation (EU) 2016/679 and, as such, should be carried out in compliance with the provisions of the GDPR and the Regulation. From the evidence gathered in the file, it was established, and it is not disputed between the parties, that the address is a residential building in condominium mode, in which the complainant and the defendant are neighbors - they own their own apartments, located on the 4th floor of the building.

The presence of a video surveillance system built in the defendant's property consisting of a recording device (DVR HIKVISION model DS7104HQHI-K1) with a capacity of 931.52 GB and 1 pc. IP stationary video camera installed in the upper right corner above the entrance door of S.P.'s apartment. It was found that as of the date of the inspection (11/11/2021), the camera was directed and captured the space immediately in front of the front door of the defendant's apartment and at an acute angle the approach to the landing. However, it was established that in the period from 15.02.2021 to 25.08.2021 incl. a larger part of the floor area was covered by video surveillance, incl. the approach to the applicant's apartment. As of 26.08.2021 S.P. has changed the scope of the camera, such that from 26/08/2021 to 11/11/2021 (the floor area, the apartment of the complainant, as well as other neighboring apartments are not video monitored/video recorded. It is evident from the evidence in the file that the change was made several days after notifying the defendant of the proceedings opened before the CPLD, and it is indisputable that the change concerns the proceedings in particular, without the CPLD having been informed by Mr. S.P. about the initial scope of video surveillance and the subsequent change, circumstances which, however, were

ascertained by the examiner CPLD team.

Given the location and range of the camera and the behavior of the defendant S.P. a conclusion is imposed for video surveillance carried out in violation of the principle of "lawfulness, good faith and transparency" under Art. 5, § 1, letter "a" of the GDPR, insofar as common parts of the condominium fall within the scope of video surveillance.

Evidence of a decision taken by the General Assembly of the condominium to implement the video surveillance is not committed, despite the given explicit instructions in this direction, in view of which it should be assumed that such is missing, accordingly, it cannot be assumed that the video surveillance is in fulfillment of the resulting from the Condominium Management Act, a legally established obligation applicable to the administrator. In this regard, it should be emphasized that for the processing of personal data through video surveillance for the purpose of security in condominium buildings, the legislator has provided for a special order, which was not observed in this case. Video surveillance is illegal, insofar as none of the other conditions mentioned in Art. 6, § 1 of the Regulation, as evidence to the contrary is not committed. 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 personal data by means of the process camera 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, the performance of a task of public interest, as well as in the exercise of official powers, such as are not delegated to the defendant Mr. S.P. It cannot be assumed that there is also a preferential interest of Mr. S.P. for video surveillance carried out outside the boundaries of his property, as evidence and even statements to the contrary are missing, therefore it should be assumed that the interest of the natural persons to whom the data refer takes precedence over that of the person who installed the relevant camera. There is no evidence presented in the file about illegal actions by third parties, threatening the personal integrity of the person or his family, which would justify an overriding interest of the administrator.

Regarding the respondent's argument for installing the camera, namely for the purpose of protecting property, it should be noted that the processing of personal data by means of video surveillance is lawful and permissible when it is necessary for the purposes of the controller's legitimate interest in protecting property and protection of his property and to the extent that the same is carried out within the property. However, to the extent that common parts of the condominium - stairwells - are

covered by the camera, without a decision of the General Assembly of the condominium, and given the purpose of the video surveillance, the scope and technical characteristics of the camera, a conclusion is made that the video surveillance was carried out in violation of the principles of legality, in view of the fact that it captures areas outside the property of the administrator. Apart from that, the commission accepts that the processing does not comply with the principle of transparency, insofar as there is no information sign about the video surveillance being carried out and data about the administrator. There are also no rules regarding access to footage from video surveillance, and it was established that access was also carried out by a third party - S.P.'s son, without it being clear whether the persons are joint administrators or have the status of administrator - processor. The administrator's behavior also testifies to data processing in violation of the principle of good faith, insofar as a change in the scope of video surveillance is found in the course of an already initiated proceeding, without informing the CPLD about the parameters of the video surveillance at the date of referral to the authority and subsequent actions taken on the change as a result.

Given the nature and type of the detected violation and the fact that the same has not been suspended, and also that the affected personal data are not sensitive within the meaning of the law and there is no evidence of damage caused by the processing, the commission considers it expedient, proportionate and effective to impose a corrective measure under Art. 58, § 2, letter "d" of Regulation EU 2016/679, finding that the same will achieve the purpose of the law - it will stop the violation and restore the established legal order regarding the processing of personal data. The remaining measures under Art. 58, § 1, letters "a", "b", "c", "e", "f", "g", "h" and "j" of the GDPR are inapplicable and inexpedient due to the nature of the violation and the circumstance, that at the time of pronouncement the same has not been suspended. The Commission finds that insofar as the violation is the first, the imposition of a fine on the administrator would be excessive and in violation of the principle of proportionality under Art. 6 of the APC, according to which "when the administrative act affects rights or creates obligations for citizens, those measures are applied that are more favorable to them, if the goal of the law is achieved in this way." However, it should be noted, that the non-fulfilment of the commission's order, within the specified period, is accompanied by a sanction for non-fulfilment in view of its effectiveness and the possibility of an additional sanctioning mechanism for verification and control of the implementation. The goal is to achieve general prevention and proportionate and lawful processing of personal data. Thus, the orders are effective, as they are accompanied by the corresponding sanctions in case of non-fulfilment, as the legislator provides that in case of non-compliance with an effective order of the supervisory body, an administrative penalty

"fine" or "property penalty" will be imposed under Art. 83, paragraph 6 of Regulation 2016/679 in amounts up to EUR 20,000,000.

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. Announces complaint No. PPN-01-389/12.05.2021 filed by R.Z. against S.P. for a reasonable one.
2. Based on Art. 58, § 2, letter "d" and for violation of Art. 5, § 1, letter "a" of Regulation (EU) 2016/679 issues an order to the administrator S.P. to cease filming common areas of the condominium by removing the camera.
3. Deadline for execution of the order - one month from the entry into force of the decision, after which to notify the commission of the execution by presenting the relevant evidence.

The decision is subject to appeal within 14 days of its delivery, through the Commission for the Protection of Personal Data before the Administrative Court of Sofia - city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Veselin Tselkov /p/

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