

Home » Practice » Decisions of the CPLD for 2023 » Decision on appeals with reg. No. PPN-01-223/12.03.2021, PPN-01-307/09.04.2021 and PPN-01-296/05.04.2021 Decision on appeals with reg. No. PPN-01-223/12.03.2021, PPN-01-307/09.04.2021 and PPN-01-296/04.05.2021 DECISION No. PPN- 01-223/2021 Sofia, 26/01/2023 The Commission for the Protection of Personal Data (CPDP) in composition: Chairman: Ventsislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 09/11/2022 ., pursuant to 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 complaints No. PPN-01-223/12.03.2021, PPN-01-307/09.04.2021 and PPN-01-296/04.05.2021, filed respectively by D. An., D.AI. and R.M. 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 complaint No. PPN-01-223/12.03.2021, submitted by D.An. against a political party ***** with allegations of unlawful processing of his personal data by including them in a list of persons supporting the registration of the political entity for participation in the elections for national representatives held on 04.04.2021. The complainant claims that he discovered the violation after conducting an electronic inquiry at the Central Electoral Commission, the result of which is attached. He declares that he did not sign in support of the registration of the political entity and did not give his consent to the processing of his personal data for the specific purpose. Complaint with identical content Mr. D.An. has also submitted to the Central Election Commission. The appeal was forwarded to the CPLD for examination by jurisdiction, together with relevant evidence - a copy of Decision No. *** of the CEC and a copy of page *** of the list of voters supporting the registration of the political entity to participate in the elections for people's representatives of 04.04.2021. It was filed under No. PPN-01-242/18.03.2021 according to the inventory of the CPLD. CPLD was referred with a complaint PPN-01-307/09.04.2021 submitted by D.AI. and complaint PPN-01-296/05.04.2021 filed by R.M. against the same legal entity - PP ***** , with identical claims - illegal processing of their personal data by including them in a list of persons supporting the registration of the political entity for participation in the elections for national representatives held on 04.04.2021 . Attached to the complaints is a photocopy of references up-to-date as of 04/07/2021 and 04/04/2021 on the website <https://www.cik.bg/bg/ns2021/podpiski>, based on lists submitted by 38 political parties, coalitions and initiative committees, evident from the content of which personal data of the applicants are available on page ***, line *** and page ***, line *** of the list of persons supporting the registration of

PP *** for participation in the elections for people's representatives held on 04.04.2021. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, political party ***** has been informed about the submitted complaints, it has been given the opportunity to engage in a written opinion on the statements presented in the complaints. Evidence relevant to the case of the lawful processing of the applicants' personal data, a certified copy of internal rules and/or the Personal Data Protection Policy regarding the processing of personal data by a political party in the electoral process, technical and organizational measures taken to protect the personal data are required. data, instruction, order or other act for training the party representatives to collect personal data in the electoral process, as well as information and results of the internal checks carried out in the case, if such have been assigned. There is a lack of active participation of the political entity in the proceedings, the required evidence has not been presented. The claims of the complainants are not disputed, an opinion on the subject of the complaints is not engaged. In order to clarify the case from a factual point of view, the CEC requested and submitted a copy of pages: ***, line ***, ***, line *** and page ***, line *** from the CEC provided list of persons supporting the registration of a political party ***** for participation in the elections held on 04.04.2021 members of parliament. The Commission for the Protection of Personal Data is an independent state body that protects individuals in the processing of their personal data, in the implementation of access to this data and control of compliance with the GDPR and GDPR. In order to exercise its powers, the Commission must be properly referred. Complaints contain the required details specified in the provision of Art. 28, para. 1 of the Rules of Procedure of the Commission for the Protection of Personal Data and its Administration - there are data on the complainants, the nature of the request, date, signatures, the passively legitimized party is indicated and the date of knowledge of the violation, in view of which they are regular. The subject of the appeals are the allegations of unlawful processing of personal data of the appellants - names and uniform civil number, by political party ***** by including them in a list provided to the CEC of the persons supporting the registration of the political entity for participation in the 04/04/2021 elections for people's representatives. Complaints are filed by natural persons with a legal interest, against the proper party - the controller of personal data. According to data from the file, including the result of an inquiry at the CEC, the applicant Mr. D.An. learned about the alleged violation on 05.03.2021, Mrs. D.AI. – on 04/07/2021 and Mr. R.M. - on 04.04.2021. In this regard, and considering the statutory deadlines for registration of participants in the electoral process in the IC and insofar as the CPLD was referred to the complaints on 03.12.2021, 04.09.2021 and 04.05.2021, respectively, a few days after establishing the alleged violations, the conclusion follows that the complaints were

submitted within the time limit under Art. 38, para. 1 of the Labor Code. 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 the controllers of personal data, 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. The prerequisites of Art. 32 of the APC on the unification and consideration of complaints in one general administrative proceeding, in view of the fact that the rights and obligations of the parties derive from the same factual situation, were filed against the same person and are under the competence of the same administrative body - CPLD . For the stated reasons and given the absence of the negative prerequisites specified in Art. 27, para. 2 of the APC, at a meeting of the commission held on 08.09.2021, the complaints were accepted as admissible and on the basis of Art. 32 of the APC are combined for consideration in one administrative proceeding. The following are constituted as parties to the proceedings: applicants: D.An., D.Al. and R.M. and respondent – political party *****. In order to clarify the case from a legal and factual point of view, handwriting examinations of the signatures placed on ***, line *** have been allowed; ***, line *** and page ***, line *** from the list submitted to the CEC of voters supporting the registration of a political party ***** for participation in the elections held on 04.04.2021 for members of parliament. In the course of the proceedings, the appellants were informed of the possibility of providing comparative material for carrying out the expertise in order to establish the veracity, respectively the falsity of the signatures in the list submitted to the CEC of the persons supporting the registration of the political party for participation in the elections held on 11.07.2021. elections. Comparative material was provided by all three applicants and sent to the National Institute of Forensic Science (NIK). Graphic examinations reflected in Protocol No. *** of 13.06.2022, Protocol No. *** of 13.06.2022 and Protocol No. *** of 11.08.2022 have been prepared according to the inventory of the NIK, sent to the CPLD with cover letters PPN-01-296#12/20.06.2022, PPN-01-223#19/20.06.2022 and PPN-01-307#13/15.08.2022, with conclusions that the signatory is the object of the examinations were not submitted by the applicants D.An., D.Al. and R.M. An open hearing is scheduled for consideration of the appeals on the merits on 09.11.2022 at 1:00 p.m., of which the parties are regularly notified. A copy of the expert reports has been sent to the parties for perusal and opinion, with instructions on the allocation of the burden of proof in the process. There were no objections to the expertises, no additional evidence was

committed, no demands were made on the evidence. In order to clarify the case from a factual point of view, evidence of lawful processing of the complainant's personal data, a certified copy of internal rules and/or the Personal Data Protection Policy regarding the processing of personal data by a political party in the electoral process, technical measures taken and organizational measures for the protection of personal data, an instruction, order or other act for training party representatives to collect personal data in the electoral process, as well as information and results of an internal audit carried out in the case, if one has been assigned. The requested evidence was not provided. With a concise opinion dated 08.11.2022, without attached evidence, which exhausts the activity of the defendant in the process, it is stated that the lists of persons supporting the registration of the party in the electoral process are collected and processed by members of the party without their deliberate authorization for the purpose. They specify that after the data is submitted to the CEC, "they are destroyed on a shredder and a computer". It is claimed that the party has trained all its members in processing personal data and they are familiar with the GDPR. At a meeting of the commission held on 09.11.2022, the appeals were examined on their merits. The parties - regularly notified, do not appear, do not represent themselves. 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 presence of established actual facts and considering the collected evidence and the allegations, the commission accepts that complaints No. PPN-01-223/12.03.2021, PPN-01-307/09.04.2021 and PPN- 01-296/05.04.2021, are well founded. The subject of the appeals are the allegations of unlawful processing of personal data of the appellants D.An., D.AI. and R.M. – names and uniform civil number, from a political party ***** by including them in a list of persons supporting the registration of the political entity for participation in the elections for national representatives held on 04.04.2021. It is notorious that on 04.04.2021, elections for the National Assembly were held. By Decision No. 2084-NS/17.02.2021 of the CEC, a political party ***** was registered to participate in the elections for people's representatives based on an application submitted on 15.02.2021, registered under No. ** in the register of the parties for participation in the elections for people's representatives. A list containing the three names, the uniform civil number and handwritten signature of 2,951 voters supporting the registration of the party is submitted to the registration application, the same personal data, as they are sufficient for indisputable individualization of persons. The evidence collected in the file, in particular the materials presented by the CEC, testify that the personal data of the applicants D.An., D.AI. and R.M., in a volume of three names and a single civil number, are present respectively on page ***, line ***, page ***, line *** and page ***, line ** * from the list of voters supporting

the registration of a political party ***** for participation in the procedural elections submitted to the CEC. The provision of personal data by a political entity to the CEC for the registration of the party for participation in the elections is a form of personal data processing and as such should be carried out in compliance with the provisions of EU Regulation 2016/679, in particular those of Art. 6, § 1 of the regulation, the same applicable insofar as the data was provided on 15.02.2021. The claims of the complainants for illegal processing of their data by PP ***** for the registration of the political entity for participation in the held on 04.04.2021, choices are valid. In support of this conclusion are the conclusions of graphic examinations, reflected in Protocol No. *** of 13.06.2022, Protocol No. *** of 13.06.2022 and Protocol No. *** of 11.08.2022 according to the inventory of NIK, sent to the CPLD with accompanying letters PPN-01-296#12/20.06.2022, PPN-01-223#19/20.06.2022 and PPN-01-307#13/15.08.2022, with conclusions that the signatures subject to the examinations were not signed by the applicants D.An., D.Al. and R.M. The latter testifies that the processing of the personal data of the applicants was carried out without their consent - a specific and informed statement of will in the sense of Article 4, § 11 of the Regulation. In the specific case, none of the other conditions specified in Art. 6, § 1 of the Regulation, as evidence to the contrary has not been committed, nor has it been claimed by the defendant. Despite the legal opportunity granted to the respondent and the instructions related to the distribution of the burden of proof in the process, the administrator - PP *****, did not provide evidence of the existence of a condition for the legality of the processing of personal data of the applicants for the specific purpose. 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 implementation of any necessary processing of personal data of the applicants by the political party or for taking steps at the request of the data subject before concluding the contract. The 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 concerning the processing of personal data for the protection of vital interests related to the life and health of the data subject, performance of a task of public interest, as well as in the exercise of official powers, such as are not delegated to political parties. The hypothesis of Art. is inapplicable. 6, § 1, letter "f" of the Regulation - the interests of the controller do not take precedence over the interests of the affected natural person, whose data are included in the list submitted to the CEC without his consent, and it is indisputable that the latter has priority over the interest of the political subject to participate in the elections. There is also no legal obligation for processing by the administrator, insofar as the participation of political parties in the electoral process is a legal possibility, in the implementation of which the legally

established rules should be complied with, in particular those in the field of personal data protection according to the norm of Art. . 133, para. 4 of IC. The processing of personal data in the electoral process is permissible and strictly regulated. The Electoral Code contains specific rules regarding the processing of personal data in the electoral process regarding the purposes of processing, categories of personal data, etc. In this regard, and although the data of the applicant were processed in a statutory procedure, the fulfillment of the legally established obligation, respectively realization of the legal interests of the controller of personal data, in this case the political party, arise only if the person whose personal data appears in the list of voters supporting the registration of the party to participate in the elections, has given its consent to this support. However, when the last prerequisite is not present, the relevant political entity cannot use the person's personal data to realize its legitimate interests in participating in the electoral process. In this direction, the CEC and CPLD adopted joint instructions regarding the processing and protection of personal data in the electoral process. In the document published on 12.02.2021, also available on the CPLD website at <https://www.cdpd.bg/?p=element&aid=1199>, detailed explanations are given regarding the legal framework for the protection of personal data, as and about the rights and obligations of all participants in the electoral process – political parties, coalitions of parties, initiative committees, candidates, representatives, advocates, observers, representatives of mass media and election commissions in the various types of elections. The guidelines are intended to facilitate the participants in the electoral process and to prevent violations. Based on the stated considerations and the evidence collected in the case file, it is necessary to conclude that the personal data of the complainants were processed, by including them in the CEC's list of persons supporting the registration of the political entity for participation in the elections for national representatives held in the Republic of Bulgaria on 04.04. 2021, in violation of Art. 6, § 1 of the GDPR, without any of the conditions specified in the provision being present, as the rights of the person who appealed to the CPLD were violated. The General Data Protection Regulation and the GDPR imposes an obligation on the administrator to process personal data in a lawful manner, not allowing, at the risk of administrative and criminal liability, the misuse of personal data, even less allowing the possibility in the lists filled out in front of persons from the party and used by the party to participate in the election process, to enter other people's personal data. Conversely, a wrong interpretation, contradicts both the letter and the spirit of the law and creates uncertainty in the processing of personal data and prerequisites for their abuse in a field that affects not only the persons who appealed to the CPLD, but society as a whole, as it concerns the state management and the possibility for citizens to participate in it at their will, without the latter being manipulated through the use of their personal data, without their

knowledge and consent. In the context of complaints and the electoral process, this responsibility includes the undisputed identification of the person who enters the data, and the person before whom the same is submitted certifies with his signature, placed below the list, that the data was entered in front of him and by the person to whom it relates. There is no legal basis and mechanism for checking the accuracy of the data entered and the identity of the person. Permissible and not prohibited by law are, for example, identification with an identity document or other document with a photo of the person and three names to be provided, for reference only, to the person in front of whom the signatures are placed, with a view to verifying the identity of the voter. Undoubtedly, the means of verifying the identity of the persons should be expressed in the specific instructions, order or other act of the administrator, in expression of his obligation to introduce organizational measures within the meaning of Art. 24 of the GDPR, taking into account the nature, scope, context and purposes of the processing, as well as the risks of varying probability and severity for the rights and freedoms of natural persons, in order to ensure and be able to prove that the processing is carried out in accordance with GDPR. In the specific case, it should be assumed that such measures, rules and control regarding the collection of personal data and their use in the electoral process are absent insofar as, despite a specific request addressed to the administrator, the latter does not provide internal rules and/or a Policy for the protection of personal data regarding the processing of personal data by a political party in the electoral process, technical and organizational measures taken to protect personal data, an instruction, order or other act for training the party's representatives to collect personal data in the electoral process. The evidence collected in the file also testifies to committed by the administrator in violation of Art. 24 of the GDPR, as well as a violation of the "principle of accountability" under Art. 5, § 2 of the GDPR, insofar as the administrator is unable to prove processing of personal data in accordance with the principles specified in the GDPR, in the conditions of measures taken by him - trainings, briefings, written internal rules, orders, etc. About control, preliminary and subsequent, on the part of the administrator, there is also a lack of evidence, insofar as the political party expressly requested, but no information and results of an internal inspection carried out in the case were provided, nor information that such was assigned in order to establish the reasons, the omissions that led to the violation under Art. 6, § 1 of the GDPR. In view of the nature of the ascertained violation of Art. 6, § 1 of the GDPR, the commission considers that the corrective measures under Art. 58, § 2, letters "a", "b", "c", "d", "e", "f", "g", "h" and "j" of the Regulation are inapplicable and inexpedient in this case, considering the gravity of the violation and the fact that the same has been completed. Given the severity of the violation and the fact that the same has been completed and it is next for the administrator to whom the order was issued, the commission

considers it expedient, effective and dissuasive to exercise corrective authority under Art. 58, § 2, letter "i" of the GDPR - imposition of a pecuniary sanction. 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.

There are no mitigating circumstances when determining the amount of the sanction. The circumstances under Art. 83, § 2, letters "b" and "i" of the Regulation are irrelevant insofar as it concerns an administrator - a legal entity that does not constitute guilt, and at the time of the violation approved codes of conduct, respectively approved certification mechanisms are not introduced.

Circumstances should be qualified as aggravating: the rights of three individuals were violated; the violations are completed; the administrator does not assist the CPDP to clarify the case; data on the unique civil number of the persons were processed, and as a result of the registration, the rights of the applicants related to the electoral legislation and their participation in the electoral process were limited; the violations became known to the CPLD as a result of a referral by the affected persons.

The fact that the violation is not the first for the administrator is also relevant. The political party was sanctioned for an identical violation - processing of personal data in the electoral process without a legal basis, with the following entered into force: Decision No. Ж-420#6/21.11.2016, with an imposed sanction in the amount of BGN 15,300, Decision No. Ж-60#8/19.10.2018, with an imposed sanction in the amount of BGN 10,000 and Decision PPN-01-1672/07.10.2020, with an imposed sanction in the amount of BGN 2,500.

It should be noted, as an aggravating circumstance, that the personal data of the applicant D.AI. were once again processed illegally by the political party in connection with its participation in the electoral process. In 2017, Mrs. D.AI. appealed to the CPLD with a complaint (Ж-85/20.02.2017) about the misuse of her personal data by a political party ***** for the registration of the political party for participation in the 2017 National Assembly elections. The expertise assigned to the case established that the signature in the list of voters was not signed by Mrs. D.AI. and its frog was accepted by the CPLD as well-founded, and the party sanctioned it with the effective Decision No. Ж-60#8/19.10.2018, with an imposed sanction in the amount of BGN 10,000. The violation is also related to the complainant D.An., who appealed to the CPLD with a complaint (Ж-624/17.10.2016) against the political entity for an identical violation, misuse of his personal data for party registration for participation in the elections for president and vice president of the Republic of Bulgaria held on 06.11.2016. After an expert examination, the complaint of Mr.

D.An. was accepted as justified, and the political subject was imposed a property sanction in the amount of BGN 15,300, objectified in the effective Decision No. Ж-420#6/21.11.2016 of the CPLD.

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 property sanction imposed on the political party ***** should be in the amount of BGN 25,000 - an amount well below the average minimum provided for in The regulation for this violation.

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 type and amount of the power exercised undoubtedly meets the requirements of the LLPD and Regulation 2016/ 679 efficiency and deterrent effect, while at the same time not violating the principle of proportionality and the requirement of proportionality.

Regarding the found violations of Art. 24 and Art. 5, § 2 of the GDPR, the commission finds it appropriate to issue an order under Art. 58, § 2, letter "d" of the GDPR of the administrator, namely to take technical and organizational measures to protect personal data, including training, including immediately before the specific elections, of the party representatives participating in the collection process of personal data in the electoral process, introducing a mechanism for ongoing and subsequent control and accountability when processing personal data in the electoral process, and to present a Personal Data Protection Policy consistent with the regulation, in which the rules for collection and processing of personal data, including in signatures in support of the political entity for registration in the electoral process and in the collection of personal data of persons supporting the registration of the party for participation in referendums.

However, it should be noted that failure to comply with the order given by the commission, within the specified period, is accompanied by a sanction for non-compliance 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 attached to the corresponding sanctions in case of non-fulfilment, as the legislator foresees that in case of non-compliance with an effective order of the supervisory authority, an administrative penalty of "fine" or "property penalty" of up to 20,000,000 EUR will be imposed.

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 complaints PPN-01-223/12.03.2021, PPN-01-307/09.04.2021 and PPN-01-296/05.04.2021, filed respectively by D.An., D. Al. and R.M., for merits.
2. Based on Art. 83, § 5, letter "a", in connection with Art. 58, § 2, letter "i" of EU Regulation 679/2016 imposes on political party ***** a pecuniary sanction in the amount of BGN 25,000 (twenty-five thousand BGN) for processing the personal data of the applicants in violation of Art. 6, § 1 of EU Regulation 2016/679.
3. Based on Art. 58, § 2, letter "d" of GDPR and for violation of Art. 24 of GDPR and Art. 5, § 2 of the GDPR orders political party ***** to take technical and organizational measures to protect personal data, including training, including immediately before each election, of party representatives participating in the process for collection of personal data in the electoral process; to submit a Personal Data Protection Policy consistent with the regulation, in which the rules for the collection and processing of personal data should be clearly spelled out, including in signatures to support the political entity for registration in the electoral process, as well as in the collection of personal data of persons supporting the registration of the party for participation in referendums and to introduce a mechanism for ongoing and subsequent control and accountability in the processing of personal data.
4. Deadline for implementation of the issued order - three months from the entry into force of the decision, after which to notify the commission of the implementation by presenting the relevant 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.

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

BNB Bank - Central Bank, IBAN: BG18BNBG96613000158601, BIC BNBBGGSD

Commission for Personal Data Protection, BULSTAT 130961721.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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Decision on appeals with reg. No. PPN-01-223/12.03.2021, PPN-01-307/09.04.2021 and PPN-01-296/05.04.2021.

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