

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-33/17.01.2022 Decision on appeal with reg. No. PPN-01-33/17.01.2022 DECISION no. PPN-01-33/2022 Sofia, 20/12/2022 The Commission for the Protection of Personal Data (PCPD) in composition: Chairman: Vencislav Karadjov and members: Tsanko Tsolov and Maria Mateva at a meeting held on 23/11/2022. , pursuant to Art. 10, para. 1 of the Personal Data Protection Act in connection with 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-01-33/17.01.2022. The 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 PPN-01-33/17.01.2022, filed by N.D. against media EAD (M. EAD) and M.C., in her capacity as a journalist in the media, with alleged allegations of unlawful access to a special category of personal data related to his state of health and, more specifically, his vaccination status and their dissemination through reporting in the television program "This Saturday and Sunday", broadcast on the air of the media on 09.01.2022 at 09:30, repeated the same evening on the central news program of the television, at 19:00, as the first leading news. The complainant claims that within the framework of the report, the journalist M.C. "announces on air personal health data" of four people's representatives from political party "B", including his own, including: date and specific type of preparation that was injected into the persons. He is categorical that the data was distributed without his knowledge and consent, as it is lacking in relation to the other three people's representatives. Mr. N.D. claims that Mrs. M.C. stated on air that she had access to "this type of personal health data of all MPs from the "B" party, also announcing the exact number of persons with medical manipulations. He believes that there is illegal access and distribution of his personal data and asks the CPLD to investigate the case and establish the original source of the information. Requests, at the discretion of the CPLD, that this information be addressed to the Prosecutor's Office and to the relevant regulatory authorities. Requests an injunction to "immediately stop" the alleged violation, insofar as the material is repeatedly repeated in the news broadcasts of the media on 01/09/2022 and on 01/10/2022, and its use by the media, in various television shows broadcast within its program, continues as of 13.01.2022. No evidence is attached to the complaint, a link to the material originally broadcast on the media is provided. Evidential requests were made: for admission with a view to giving explanations to each of the four people's representatives whose personal data were distributed and requiring explanations from M.C. about the source of information. The last request made in the complaint is inadmissible according to the provision of

Art. 25 h, para. 4 of the Labor Code according to which "The exercise of the powers of the commission under Art. 58, paragraph of Regulation (EU) 2016/679 cannot lead to disclosure of the secret of the source of information". In the conditions of the official opening, to clarify the actual facts relevant to the case, on 18.01.2022 a screen printout was made regarding the content of the address specified in the complaint: <https://btvnovinite.bg/predavania/tazi-sabota-i-nedelia/koi-sa-deputatite-koito-narichat-vaksinite-eksperimentalna-technost-a-vsashtnost-sa-immunizirani.html>, a text file, and the video file posted to the link, with a duration of 14:53 minutes, is downloaded to a CD medium. The actions are reflected in protocol PPN-01-33#3/18.01.2022, with a screenshot and CD attached to it. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, the passively legitimized parties M. EAD and Mrs. M. Ts, in her capacity as a journalist, were sent notification letters about the administrative proceedings initiated in the case, they were instructed the opportunity to engage in written opinions on the allegations presented in the complaint and to present evidence relevant to the case. In response, written opinions PPN-01-33#6/01.02.2022 and PPN-01-33#7/01.02.2022, expressed respectively by Mrs. M.C. and from the company, with identical arguments for the groundlessness of the complaint, insofar as the complainant is a public figure - a member of parliament whose personal data was processed for journalistic purposes on matters of public importance concerning the Covid-19 pandemic, the vaccination against Covid-19 and the "green certificate", in which the applicant has a clearly expressed and advertised position in the direction against vaccination and coercive measures to limit the Covid-19 pandemic. Relevant evidence is attached to support the statements made in the opinions. 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 should be validly referred. The complaint contains mandatory required details - there are data about the complainant - N.D., the nature of the request, date and signature, the passively legitimized parties are indicated, as well as the date of knowledge of the violation, in view of which it is regular. In this regard, it should be noted that, despite the information presented in the complaint about the violations of three more persons, as long as they are not individualized and the complaint does not bear their signature, and there is no evidence of authorization on their part in relation to Mr. N.D., they do not have the status of applicants. The subject of the complaint are allegations of unlawful access and dissemination of a special category of data related to the health status

and, more specifically, the vaccination status of the complainant. The same, together with data on the three names of the complainant and his capacity as a national representative, have the character of personal data within the meaning of the GDPR, insofar as the person can be indisputably individualized. The complaint was submitted by a natural person with a legal interest. There is no doubt that it concerns the processing of personal data according to the specified legal definition, as well as that the passively legitimized party M. EAD is a personal data administrator according to the definitions in Art. 4 item 7 of Regulation (EU) 2016/679, as it defines the purposes of the processing - presentation of information of public interest in a television broadcast, and the means of the processing - by broadcasting reports and broadcasts on the air of the media. By argument from Art. 58 of Regulation (EU) 2016/679, which determines the powers of the supervisory authority, the Regulation, respectively the GDPR are applicable only in relation to administrators and processors of personal data. The analysis of this provision, in accordance with the purpose of the GDPR, leads to the conclusion that in order for the commission to exercise its rights, the violations of the rights of the subject must have been committed by the administrator or the processor of personal data and the complaint must be directed against the latter, who in this quality have violated the rights of the natural person. In this regard, it should be noted that the journalist and host of the program M.C., as an employee of the media and in her capacity as host of the program broadcast on the air of the media, does not have the status of an administrator or processor of personal data, since he processes personal data data in the performance of official duties, i.e. is a person under Art. 29 of the Regulation and acts under the direction of the administrator and in practice "engages" him with his processing actions, insofar as he actually carries out, as the lead of the transfer, the processing actions that are alleged to have violated the rights of the complainant. The Commission was notified on 13.01.2022, just two days after the alleged violation was committed, which makes it necessary to conclude that the complaint was submitted within the period under Art. 38, para. 1 of the Labor Code. A competent authority was referred - 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 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. For the stated reasons and in the absence of the negative prerequisites under Art. 27, para. 2 of the APC, at a meeting of the commission held on 19.01.2022, the complaint was

accepted as admissible and the following were constituted as parties to the proceedings: complainant - N.D., respondent M. EAD, in its capacity as a personal data controller and interested party M.C., in its capacity as a journalist in the media and presenter of the trial broadcast. An open hearing has been scheduled to consider the merits of the appeal on 16.03.2022 at 1:00 p.m., of which the parties are regularly notified. In order to clarify the case from the factual side, the Ministry of Health and I.O. AD requested information and log files for access to the applicant's vaccination status from the date of his vaccination against COVID-19 to 09.01.2022, the date of the report, as well as specific information on whether he was vaccinated against COVID-19 and when the applicant, with to assess whether the information presented on the air by the media corresponds to reality. The requested information and evidence were not provided by the date of the scheduled open meeting, which is why the review of the complaint in substance has been postponed to 05/04/2022. In the course of the proceedings in the CPLD with a cover letter with entry No. PPN-01-33#19/21.03.2022 by I.O. AD inform that "N.D. was vaccinated against COVID-19 on 19.08.2021. In the period from the date of vaccination to 09.01.2022, the data on the vaccination status of N.D. were examined on 06.01.2022 and on 07.01.2022 by Dr. M.M." Certified copy of the deposited by I.O. JSC's answer was provided to the parties in the proceedings for familiarization, and information was expressly requested from the complainant to clarify whether he knows Dr. M.M. and specifying whether it is his personal and/or attending physician. In response and with letter No. ППН-01-33#23/01.04.2022, the complainant responds negatively to the inquiry by the CPLD - he does not know Dr. M.M., nor is he his personal and/or attending physician. Given the above and based on Art. 9, para. 2 (principle of service) and Art. 7 (principle of truth) of the APC, in view of the ex officio evidence collected in the case file and the subject of the complaint, which also contains allegations of unlawful access to the health status of the complainant, with a decision of the commission meeting held on 06-04/07/2022 constituted ex officio, as a defendant in the proceedings, Dr. M.M., in her capacity as a personal data administrator. An open meeting has been scheduled to consider the merits of the complaint on 04.05.2022 at 1:00 p.m. in the administrative building of the CPLD in the city of Sofia, Prof. Blvd. Tsvetan Lazarov" No. 2, Meeting Room, fl. 4. In order to clarify the case from the factual side by I.O. JSC requested information regarding the identifier by which Dr. M.M. has accessed the data on the vaccination status of the complainant, clarification of what data is visualized and available to the user of the service when "viewing" the vaccination status of the person, as well as what is the access channel used by Dr. M.M. for the review of data on the vaccination status of Mr. N.D. carried out on 06.01.2022 and 07.01.2022. In response and by letter PPN-01-33#33/26.04.2022, the requested information was provided. It is specifically indicated by I.O. AD that the data

that is visualized and is available to the user of the service, Dr. M.M. when "reviewing" the vaccination status of Mr. N.D. are: date of registration of immunization, national reference number of immunization, sequence of dose, date of next vaccine and availability of certificate. It has been clarified that the data access channel is [immune.his.bg](https://immune.his.bg), the entry into the system is carried out through a qualified electronic signature, after checking whether the relevant doctor has an active registration with the Bulgarian Medical Union. In the course of the proceedings, by electronic means, without an electronic signature, a written statement PPN-01-33#34/29.04.2022 was received on the essence of the dispute, in the part concerning the processing of data for journalistic purposes and disclosure of the source of information . It is stated that the opinion originates from the Association of European Journalists - Bulgaria, without the signature of a specific person. The association is not a party to the proceedings, therefore the Commission for the Protection of Personal Data considers the submitted opinion irrelevant and should not be commented on in the reasons for the decision, leaving unclear the circumstance from where the association was informed about the case, which commented in detail regarding the vaccination status and the quality of the applicant as a representative of the people. On 04.05.2022, the CPLD received a request from the complainant to postpone the open hearing on the complaint scheduled for the same date, due to work commitments and inability to attend the hearing. Based on the filed application and due to irregular notification of the defendant, Dr. M.M. for the proceedings, the open session scheduled for 04/05/2022, the examination of the complaint in substance has been postponed to 22/06/2022 at 1:00 p.m., of which the parties are regularly notified. Despite the provided to Dr. M.M. opportunity to express an opinion on the case and the express instructions that she should present information and evidence on the basis for her access to the applicant's health/vaccination status regarding Covid-19 on 06.01.2022 and 07.01.2022 to attach other evidence relevant to the case, such evidence has not been committed. Until 21.06.2022, the day before the scheduled open hearing for consideration of the complaint in substance, there is no procedural activity on the part of the defendant, the complaint has not been disputed, no evidence has been provided or even statements regarding the subject of the dispute with which the CPLD has been referred. In the course of the proceedings, by letter PPN-01-121/15.02.2022, the CEM informs that they have been referred to complaints filed by N.D. and V.M. regarding disclosure of personal data of deputies in a journalistic investigation, distributed in the media program of the media service provider M. EAD. They point out that the CEM considered at its meeting a report on compliance of the broadcast with the provisions of the Law on Radio and Television and more specifically: with the norms related to guaranteeing the right to information of citizens with the degree of protection of their private life of public figures with influence in society. They inform

that the CEM has accepted that there is no violation of the TRT, insofar as the journalistic audio-visual material contributes to the development of the public dialogue about the policy in the field of health care and the responsibility of democratically elected figures to their voters. On 22.06.2022, an open meeting of the commission was held to examine the merits of the complaint. The complainant N.D. - regularly notified, does not appear or represent himself at the meeting before the commission. The defendant M.C. - regularly notified, does not appear and is not represented. For M. EAD, legal counsel B.G. with a power of attorney on file. The respondent Dr. M.M. is represented by Adv. A., with a power of attorney presented at the meeting. The procedural representatives of M. EAD and Dr. M.M. dispute the appeal. No new evidence points to it. The procedural representative of the media supports the written opinion expressed in the course of the proceedings that the appeal is groundless. Lawyer A. claims that her client, Dr. M.M. did not access the applicant's personal data regarding his vaccination status on 06.01.2022 and 07.01.2022. He claims that by 31.05.2022 Dr. M.M. she does not personally use her electronic signature and clarifies that the electronic signatures of all doctors at the DKC, including the electronic signature of her confidant, are used by the center's employee, S.P. He adds that "five years ago, these electronic signatures of the doctors from the DCC were stored in the employee S.P., who filed "Human Resources". She stores them and she sends the information to all doctors from the DCC by the 4th to the NHIF - who was served, what expenses, what the NHIF needs to transfer to them. To make it easy for her, she put a PIN code on all electronic signatures - for all doctors, on all electronic cards. After sending this data to the NHIF, as Dr. M.M. is the only one who is a doctor in the DCC, and a doctor in the hospital where she leads the internal department, she herself is a specialist cardiologist, and since in the vaccination, which is organized by this internal department, all the certificates that are issued to the vaccinated persons, are issued with the electronic signature of M.M. Therefore, after S.P. finished with the reports, she gives the electronic signature to the senior nurse at MBAL hospital K.R., who puts the electronic signature on the computer, does not take it out at all and it stays on day and night, so that it is easy for her, so that she does not lose time...". In order to prove the latter, he requests that two witnesses be admitted to questioning - S.P. and K.R. It asks the commission to allow technical expertise from an IT specialist to establish "from which IP address, from which computer all this information was downloaded." Lawyer A. informs that in this case a case has been filed under the case No. \*\*\*/2022 according to the inventory of the District Prosecutor's Office - Pazardzhik. Given the statements made by the procedural representative of Dr. M.M. allegations, with a decision of an open meeting of the commission held on 22.06.2022, the DCC was also constituted as a respondent in the proceedings. A new

open session to consider the appeal on the merits is scheduled for 14.09.2022 at 1:00 p.m., of which the parties are regularly notified. DCC has been informed about the initiated proceedings, an opportunity has been provided to express an opinion on the case and engage relevant evidence. At the request of the legal representative of the defendant M.M. were admitted for questioning, under the regime of bringing to the open session scheduled for 14.09.2022, two witnesses - S.P. and K.R. Information is requested on the case filed under the case No. \*\*\*/2022 according to the inventory of the District Prosecutor's Office - Pazardzhik, namely on the subject of the file, the movement and the results thereof, and in the hypothesis of the evidence collected on the file regarding access of the applicant's personal data on 06-07.01.2022 and the use of the relevant electronic signature, respectively, information received on the file in this regard by Dr. M.M. (defendant in the proceedings before the CPLD) or other persons, including S.P. and K.R. (called as witnesses in the proceedings before the CPLD), a copy of the same. As of September 12, 2022, the requested information has not been provided. To clarify the case from the factual side, evidence and information are requested from a third person not participating in the proceedings - "Borika" JSC - publisher of the electronic signature of Dr. M.M. and more specifically: On how many and what carriers and when was the relevant electronic signature issued?, Who and when received the electronic signature and the respective carriers?, Are the carriers active on 06.01.2022 and 07.01.2022? From which IP address is the electronic signature usually used, and specifically from which IP address was it used on 06/01/2022 at 08:48 and on 07/01/2022 at 07:27? In response, "Borika" JSC informs that the company has issued to M.M. KUKEP as follows: 1. serial number \*\*\* with author and holder M.M., with identifier of the author and holder \*\*\*\*, valid from 01.10.2016 to 03.10.2017 and from 02.10.2017 until 02.10.2018; 2. serial number \*\*\* with author and holder M.M., with identifier of the author and holder\*\*\*\*, valid as follows from 25.09.2018 to 25.09.2019, from 25.09.2019 to 24/09/2020, from 23/09/2020 to 23/09/2021 and from 24/09/2021 to 24/09/2022 The company specifies that the KEP certificate was issued on a B-trust smart card and was received by the holder's proxy. They add that the renewal of the validity of the certificate on 24.09.2021 was carried out online - without the physical presence of the KEP holder in the office of the certification service provider. They point out that the company does not receive information about the IP addresses from which the KEP certificates are used. In support of their claims, they attach a certified copy of the contract for certification services No. \*\*\*\* dated 03.10.2016, with a copy of the identity card, acceptance-handover protocol and request No. \*\*\*\*/03.10.2016 attached to it for issuing an electronic signature. In the course of the proceedings, an opinion PPN-01-33#57/12.09.2022 was expressed, based on the DCC, that the complaint was groundless with arguments that the company had taken the necessary

measures to limit and prevent misuse of personal data and documents. They specify that access to the electronic signature of Dr. M.M. had three employees of the company - S.P. - employee from the "Human Resources" department, K.R. - head nurse at the medical facility and Dr. M.M. They add that due to the requirement of the NHIF and in order to facilitate the work of the doctors in the medical facility, Mrs. S.P., with the knowledge and permission of the doctors, submitted monthly reports, between the 1st and 5th of each month, to the NHIF for the activity performed by them. They point out that in the period of a pandemic situation, the medical facility was instructed by the Health and Safety Authority to open a vaccination office and to register an electronic signature with which to submit data on the vaccinations carried out on the territory of the medical facility, and for this purpose, the signature of Dr. M.M. They inform that in the process of work, the company has determined the head nurse K.R. to report the vaccinations performed in the MOH platform using the signature of Dr. M.M. They claim that on 05.01.2022, after submitting the report to the POS of the NHIF, Mrs. S.P. handed over the signature to the head sister K.R. and after that date the signature was with KR so that he could continue to update the information about the vaccinations and green certificates issued. They claim that "the electronic signature of Dr. M.M. and the link for the vaccination platform are installed only and only on the computer of the head nurse K.R., as "The computer on which K.R. works." is in her office, to which only she has access." They specify that the applicant was not a patient of the medical facility, did not perform medical examinations or manipulations at the medical facility, and the latter does not process his personal data. They specify that "for security purposes, all workstations in the medical facility have static IP addresses, but when a workstation accesses a page in the Internet traffic passes through the company's router and exits from the external IP address \*\*\*\*", which is why "even to be registered in the I.O. AD IP address, from where the information is accessed, only the external and not the internal IP of the computer itself will be displayed. They inform that after an "analysis of the computer of K.R." have not found information about events, history or files for the relevant dates 06-07.01.2022, due to the longer period of time that has passed - more than 7 months. Regarding the statements of the legal representative of Dr. M.M. for a hacker attack indicate that after checking and analyzing the entire information network and infrastructure of the company, they found no traces in the logs of such or installed malicious software. They believe that Mrs. K.R. abused her official position, acted unlawfully and intentionally, and in no way complied with the rules and policies introduced by the company regarding the protection of personal data and the application of the GDPR, and the company is not responsible for these actions. In view of the detected violation, they indicate that the medical facility has "taken actions to correct the way of working in the company and introduce additional rules and norms with



the aim of confidentiality of the received personal data in the work process, including their non-distribution", a training program has been drawn up and briefing of all employees of the company regarding the application of the GDPR and the rules newly introduced by the medical facility, part of the changes concern the use of electronic signatures, namely: "All personal electronic signatures are to be stored only and solely by their owners, and the responsibility for storage is entirely theirs. The submission of monthly reports on activities carried out with an electronic signature is carried out in the following way: the person who owns the signature personally provides it to an employee of the administration, personally entering the security password (pin code) and in his presence the report is submitted to the NHIF by an employee of the administration. After submitting the report, the signature owner collects it. In this way, the electronic signature is under constant control and monitoring of the owner. Assistance with the submission of a report by an administration employee in the presence of the owner of the electronic signature is optional and in order to facilitate the work of doctors. At the physician's discretion, he may submit the monthly report independently." In conclusion, they inform that the labor relations between the medical facility and Mrs. K.R. are terminated as of 31.08.2022. They find the complaint unfounded in relation to the medical facility, and the claims of the legal representative of Dr. M.M. in reverse for unproven. On 14.09.2022, another open session was held to consider the complaint on its merits, of which the parties are regularly notified. The complainant N.D. - regularly notified, does not appear or represent himself at the meeting before the commission. The defendant M. EAD is represented by legal counsel B.G. with a power of attorney on file. The respondent Dr. M.M. is represented by Adv. A. with power of attorney on file. DCC is represented by Adv. J.N. with a power of attorney presented at the meeting. The correct name of the legal entity constituted and regularly notified of the meeting - DCC - was specified in the meeting. The procedural representatives of the defendants dispute the appeal. No new evidence points to it. Adv. A. does not support the request for admission to interrogation of S.P., in her capacity as a witness. At the request of the procedural representatives of M. EAD and Dr. M.M. The consideration of the appeal in substance has been postponed to the next meeting of the CPLD on 23.11.2022, for the familiarization of Adv. A. and legal advisor B.G. with the evidence newly collected by the CPLD. To clarify the case from a factual point of view, I.O. AD was requested and in response by letter PPN-01-33#69/06.10.2022, information was provided that the IP address from which the vaccination status of the applicant on 01.06.2022 and 01.07.2022 is available is \* \*\*\*. In the course of the proceedings, the District Prosecutor's Office - Pazardzhik received a response that the pre-trial proceedings initiated in the case \*\*\*/2022 according to the inventory of the OD of the Ministry of the Interior - Pazardzhik "is in its initial stage", which is why it is impossible to provide information

about specifically established facts on it. With accompanying letter PPN-01-33#68/29.09.2022, the DCC submitted an additional statement and relevant evidence, namely a certified copy of Order No. 2 of 01/04/2021 and a payment order of 09/20/2021. the opinion of the company indicates that "to support its employees, the medical facility works in the direction of easing part of the doctors' commitments", and one of the reasonable assistance that the company has undertaken is assistance in applying for the issuance and renewal of electronic signatures of doctors from the pre-hospital care and "not least with the submission of monthly reports of the doctors from the pre-hospital care in PIS to the NHIF". They specify that the submission of reports is regulated by an internal order, "as an employee from the company's administration technically assists the doctors in submitting the reports", but only at the request of the doctor, who voluntarily provides his electronic signature to the employee." They add that the medical facility strives to provide all kinds of technical assistance to the employees of the medical staff, and every single action taken by the company is aimed at facilitating the work process, as the services offered are free of charge and not mandatory, "which gives employees complete freedom to choose whether to benefit or not." At an open meeting of the CPLD held on 23.11.2022, the complaint was examined on its merits. The complainant N.D. - regularly notified, does not appear, does not represent himself. M.C. - regularly notified, does not appear, is not represented. The defendant M. EAD - regularly notified, is represented by legal counsel B.G. The defendant M.M. - regularly notified, is represented by Adv. A. The defendant DCC - regularly notified, is represented by Adv. J.N. The procedural representatives of the defendants separately contested the complaint. They do not point to new evidence, they have no requests for evidence. Adv. A. does not support the request for the examination of a witness with the clarification that Mrs. K.R. refused to testify. The procedural representatives of the defendants support the written opinions expressed in the course of the proceedings about the groundlessness of the appeal and ask the commission to leave it without respect in relation to their trustees. Legal consultant B.G. adds that the TV journalist M.C. presented data concerning the applicant N.D., but this data was entirely in the context of the most relevant public issue possible at the time, namely the Covid-epidemic, vaccination and the affiliation of political party "B." and a political slogan denouncing vaccines as an experimental liquid with an appeal to their constituents not to be vaccinated. He points out that the personal example of each member of a political party, including and the applicant is determining the health of voters and society in general. In this sense, he considers that it is undoubtedly the duty of both the media and the journalist to provide information related to the official position of political party "B." to be brought to the knowledge of the viewers and to the public, because the comparison between official position and actual behavior is very

important to be made and to inform the people what is actually the true position of each member of this political party. Adv. A. emphasizes again the claims that the electronic signature was not in the possession of Dr. M.M., which is why she considers that the complaint is unfounded in relation to her client, since the alleged violation cannot be committed by her. 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 considering the collected evidence and the allegations, the commission accepts that the substantively examined complaint No. reasonable regarding Dr. M.M. and DCC. The subject of the complaint are allegations of illegal access and distribution of a special category of data related to the state of health and, more specifically, the vaccination status of the complainant, individualized by name and the position held by a member of parliament. Administrators of personal data in the specific case are: Dr. M.M., regarding access to the health status and more specifically the vaccination status of the applicant and M. EAD regarding the distribution of a special category of data related to the health status and specifically the applicant's vaccination status. The Commission does not look for a cause-and-effect relationship between the two processing hypotheses, since the sources of information are subject to protection, which is why Dr. M.M. and M. EAD should be considered as independent administrators of personal data, insofar as there is no data to jointly determine the purposes and means of processing. The procedural actions undertaken by the CPLD, including official collection of evidence, concern clarification of the case from the factual side, obligations of the administrative body arising from the APC, regarding the subject of the dispute - illegal access and dissemination of personal data regarding the vaccination status of the complainant. From Mrs. M.C. disclosure of her journalistic sources of information in connection with the broadcast report was not required, similar information was not required from the other participants in the administrative proceedings. Regarding M. EAD: From the evidence collected in the case file, it was established, and it is not in dispute between the parties in the proceedings, that on 09.01.2022 in the program "This Sunday", broadcast on the air of M. TV, a journalist was presented material - a report with a follow-up comment by a guest in the studio, which deals with the topic of the Covid-19 pandemic and questions about the attitude towards: 1) vaccination and the vaccinated for Covid-19; 2) anti-epidemic measures taken by the state in connection with the Covid-19 pandemic; 3) upcoming introduction of restrictive measures for admission to the building of the National Assembly, after presentation of the so-called "Green Certificate" and 4) upcoming on 12.01.2022 protest against the "Green Certificate" organized by the political party represented in parliament. IN.". It is evident from the content of the report that the reporter and

author of the program M.C. reports that the applicant N.D. was vaccinated against Covid-19 on August 19, 2021 with Jansen's vaccine. The statement was made on the sidelines of the National Assembly in an interview with MP N.D. himself. The interview is dated 01/07/2022 and was broadcast two days later in the program "This Sunday" on 01/09/2022 and broadcast on the BTV media. The interview contains data related to the applicant's state of health and, more specifically, the vaccination status, specifically that the person was vaccinated against Covid-19 on August 19, 2021, with the "Jansen" vaccine. Data on the vaccination status of the applicant, together with data contained in the material on the applicant's name, image and position held - a representative of the people, undoubtedly have the character of personal data within the meaning of the GDPR, insofar as the person can be indisputably individualized. The same should be qualified as a special category of data within the meaning of Art. 9 of the GDPR, insofar as they are related to the person's state of health - "personal data related to the physical or mental state of the person, including the provision of health services that provide information about his health state" (Article 4, item 15 of the GDPR) . According to Recital 35 of the GDPR, the personal data on the state of health of the data subject should cover any information related to his physical or mental state of health in the past, present or future. Moreover, at the national level, the Health Law (HLA) defines the concept of "health information" as personal data related to the state of health, physical or mental development of individuals, as well as any other information contained in medical prescriptions, prescriptions, protocols, certificates or other medical documentation. In this sense, as the commission has already had the opportunity to rule with opinion PNMD-01-12/2022, the set of all data contained in the certificate issued in connection with vaccination against Covid-19, including the vaccination itself and date of vaccination, as well as the vaccinated product itself, and can be disclosed directly or indirectly through it, fall within the scope of the concept of "health data" within the meaning of the GDPR and, in particular, "health information" within the meaning of the GDPR. In view of the content, nature and periodicity of the transmission, and in view of its dissemination and access, it is indisputable that the information was disseminated for journalistic purposes in connection with a journalistic investigation disseminated in the program of the media service provider M. EAD. It concerns an action on the processing of personal data within the meaning of Art. 4, § 2 of Regulation No. 2016/679, inasmuch as by means of process reporting and transmission, the personal data of the applicant are accessible and distributed to an unlimited circle of media viewers. By argument from Art. 25h, para. 1 of the LLDP, the processing of personal data for journalistic purposes is lawful when it is carried out for the realization of freedom of expression and the right to information, while respecting privacy. In this regard, the provision of Art. 9 of the GDPR regarding the processing of special categories of

personal data, including those related to health status, are inapplicable on the grounds of Art. 25 h, para. 3 of the Labor Code according to which, when processing personal data for journalistic purposes, Art. 6, 9, 10, 30, 34 and chapter five of GDPR.

According to recital 4 of Regulation (EU) 2016/679, the right to the protection of personal data must be considered in relation to its functions in society and in balance with other fundamental rights, such as freedom of expression and freedom of information, according to the principle of proportionality, insofar as the right to the protection of personal data is not an absolute right, as well as the right to freedom of expression and freedom of information (Article 11 of the Charter of Fundamental Rights in the EU). The concept of "journalistic purposes" is not defined by the legislator, but it has been thoroughly examined and interpreted in judicial practice. What is essential for journalistic activity is the collection, analysis, interpretation and distribution through the mass media of current and socially significant information. Every journalistic activity is a manifestation of the freedom of speech in the rule of law, and limiting the freedom of expression and information is permissible only within the framework of what is necessary in a democratic society according to Art. 10, § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Starting from the concept of journalism, as a practice of collecting, analyzing and interpreting information about current events, topics, phenomena, personalities and trends of modern life, presented in various genres and forms and distributed to a mass audience, the conclusion is forced that concerns the processing of personal data for journalistic purposes. By its very nature, journalistic activity requires the dissemination of information on matters of public interest. The public dissemination of information for these purposes is a journalistic activity, since the very fact of dissemination is an expression of an opinion, an opinion, a view, an assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalistic activity, the information must concern matters of value which, in view of the relations concerned, are of genuine public importance. When assessing the balance between the two competing rights, the principle of "data minimization" is relevant - the processed personal data should be appropriate, related to and limited to what is necessary in relation to the purposes for which they are processed, to the specific case for satisfaction of public interest. Journalistic objectives by definition include the realization of the right to information and freedom of expression. Limiting the freedom of expression and information is permissible only within the framework of what is necessary in a democratic society according to Art. 10, § 2 ECHR. By its very nature, journalistic activity requires the dissemination of information on matters of public interest. The publication of a report in a media broadcast constitutes public disclosure. The public dissemination of information for these purposes is a journalistic activity, since the very

fact of dissemination is an expression of an opinion, an opinion, a view, an assessment of public information and its importance for the interests of society. In order to process information for the purposes of journalistic activity, the information must concern matters of value which, in view of the relations concerned, are of genuine public importance, as in the present case. In the specific case, it is indisputable that the data subject is a public figure - a member of parliament, and as such enjoys a lower degree of protection of his personal data, but only to the extent that the data are relevant and related to the functions he exercises as a representative of the people and the positions he expresses as such and in this capacity to the voters. It is indisputable that the personal data on the applicant's state of health regarding the vaccination against Covid-19 were distributed by the media without the person's knowledge and consent. There is no evidence that the same was publicly disclosed by the applicant or the health authorities, but the same is irrelevant insofar as in the specific case, the provisions of art. 9 of the GDPR are inapplicable. Public figures have a lower threshold of protection of their private life, but interference with it is permissible only in a balance between the right to protection of privacy and the right to freedom of expression and the right to information. In this particular case, however, a balance has been struck. Sensitive health information within the meaning of the Health Act has been disclosed, namely personal data related to the state of health, physical and mental development of the natural person, as well as information related to the person contained in medical examinations, prescriptions, certificates and other medical documentation. The information was disclosed and disseminated by a media that is outside the circle of persons defined by the Health Act who have the right to process the personal data of citizens related to their state of health - medical and health facilities, state bodies competent in the field of health care and health insurance and relevant medical professionals. The evidence gathered in the file and the clarified factual situation lead to the conclusion that there is an overriding public interest in disclosing the information, given the public's right to information and the categorical position against the vaccination against Covid-19 and green certificates stated and posted by the applicant, which does not correspond with the actions of the national representative, who was vaccinated on a date before his speeches as a national representative, although he calls and agitates the persons to the contrary, claiming that the vaccines "are an experimental liquid" that he would never use. The information concerns a public figure and is necessary for the performance of a task in the public interest, to the extent that the same would not be satisfied without the disclosure of this data. The journalistic material is prepared and broadcast in a situation of a pandemic, in which the contribution of the media is the presentation of a tribune for active speaking and discussion of the topic, active search and clarification of different, including contradictory opinions and

positions, presentation of arguments of individual groups in society, with the emphasis on the truth, disclosure and presentation of a real factual situation, as an expression of the public's right to receive true, complete and understandable information to help it make an informed and reasonable judgment based on specific facts and circumstances, and not on falsely submitted information. The report reveals the publicly expressed opinion and statement of the applicant, not in a personal capacity, but as a representative of the people with influence and authority before the voters, regarding the essence of the pandemic and opposition, in his capacity as a public figure, to the measures taken by the state to deal with the pandemic, but at the same time realizing personal behavior that is contrary to the expressed public opposition. In this regard, the considerations of the defendant M. EAD can be shared, that the demonstration of a contradiction between behavior and publicly expressed opinion is subject to the exercise of civil control with the mass media for the purpose of public awareness and debate on an undoubtedly socially significant topic . And although the GDPR is designed to protect the personal data of natural persons, it cannot and should not be used as a tool to manipulate society and cover up behavior, such as the indisputable statement of untruths by a public figure on issues related to the public health. In the specific case, with a balance between two competing rights in a pandemic situation, the data on the person's health status are disclosed by the media in accordance with Art. 25 h of the Labor Code, insofar as they are relevant and related to guaranteeing the right to information of citizens with the degree of protection of the private life of public figures and their influence in society. Similar to the CEM's view, it can be concluded that journalistic audio-visual material contributes to the development of public dialogue on health policy and the responsibility of democratically elected figures to their constituents, as in the context of Art. 25 h of the GDPR is carried out in fulfillment of the public's right to information to publicly significant information. In this direction is the long-standing judicial practice and the practice of the ECtHR. The opinion of a certain category of persons - public figures, such as the applicant, expressed publicly contributes to the formation of a certain attitude of society as a whole, as well as influences the choice of a larger part of citizens, including in relation to the right to take informed decision about vaccination. Precisely because of this specific public position and influence of these persons, they should be subject to more intense public criticism in order to ensure the right of the public to seek and receive accurate and true information on issues important to society, which in the conditions of a pandemic is undoubtedly the issue of vaccination against Covid-19. The public has the right to be informed about the actions and deeds of these persons, so that every citizen can form an opinion regarding the person and the positions expressed by him in the context of the real and factual actions that contradict them. In a decision of the ECtHR in the

case of Katya Kasabova and Bozhidar Bozhkov v. Bulgaria regarding a sanction decision against journalists regarding reports on a permanently established corrupt practice in admissions to elite high schools in the city of Burgas, the ECtHR court emphasizes that too strict an attitude towards the professional behavior of journalists can lead to nullification of their obligations to inform the public and concludes that the intervention of the Bulgarian court in their right of expression was not "necessary in a democratic society". The decision of the ECHR in the case "Yordanov and Toshev (journalists) v. Bulgaria" is similar. Upholding the opinion expressed above in the case of Kasabova and Bozhkov v. Bulgaria, the court adds that when searching for the exact balance between the protection of freedom of expression, regulated in Art. 10, and the protection of the reputation of the persons against whom the accusations are made, which is one of the aspects of the right to privacy, protected by Art. 8 of the Convention, of particular importance is the vital role of "public watchdog" that the press fulfills in a democratic society. Although she must not cross certain boundaries, in particular with regard to the reputation and rights of others, it is her duty - in a manner consistent with her duties and responsibilities - to convey information and ideas on political and other public issues. The Court emphasizes that "sanctions imposed by the national authorities are capable of deterring the participation of the press in debates on matters of legitimate public interest" and the disclosure of the truth. Moreover, the Court links the freedom of dissemination of information with the right of everyone and society as a whole to be informed and emphasizes the duty of the media to provide information on matters of public interest. (in this sense, see also Decision of the Supreme Court of the Republic of Belarus No. 8/2019 of the Supreme Court under Code of Criminal Procedure No. 4/2019). Beyond any reasonable doubt in this case is the presence of heightened public interest in the information contained in the report.

Regulation 2016/679 gives enhanced protection to natural persons in relation to the processing of personal data, but also maintains a balance with other fundamental rights, in particular with freedom of expression and information, as these rights are provided for in the CCP and HOPES. Based on the stated considerations, given the specific factual situation and the person's quality as a public figure, the commission finds that the dissemination of information about the person's health status, regarding the vaccination against Covid-19, is in the public interest and the right of society to be informed. The publication in the specific case of such information is an integral part of the task of the media in a democratic society, insofar as the information presented is true and provoked, as is evident from the report, by the false information that the person presents. The appellant's actions and his anti-vaccination appeals and the statement made in the particular report, and not only that statement that he would never inject this "liquid", do not correspond to the factual actions of the appellant and the same may



mislead the public, given his quality as a public figure and the impact he has on part of the citizens of the Republic of Bulgaria.

In this regard, the commission considers that the processing is lawful and in accordance with Art. 25 h, para. 1 of the Labor Code and the violation indicated by the complainant is not present, given the fact that the person's consent is not an element of the legality of the processing of personal data for journalistic purposes, and the processing is carried out for the realization of freedom of expression and the right to information in a democratic community. With regard to Dr. M.M.: The above grounds for the legality of the processing of personal data by the media are irrelevant to the processing of personal data by Dr. M.M. The derogations provided for the processing of personal data for journalistic purposes are inapplicable to Dr. M.M., in her capacity as a personal data controller. From the evidence gathered in the case file, it was indisputably established that on 06.01.2022 and 07.01.2022, by means of a personal electronic signature of Dr. M.M., data on the vaccination status of Mr. N.D. were accessed, namely date of registration of immunization, national reference number of immunization, sequence of dose, date of next vaccine and availability of certificate. The data access channel is immuno.his.bg, the entry into the system is made through a qualified electronic signature, after checking whether the relevant doctor has an active registration with the Bulgarian Medical Union. It is undisputedly established that the access was made from IP address \*\*\*\*\* - external IP address of the DKC medical facility, in which Dr. M.M. working as of date of access. Accessed data is undoubtedly a special category related to the health status of the person, for reasons stated above. With regard to the latter, the GDPR introduces a ban on their processing (Article 9, Paragraph 1 of the GDPR), while allowing expressly and limited exceptions (Article 9, Paragraph 2 of the GDPR). In the specific case, the file lacks evidence of the existence of any of the exceptions introduced by the legislator referred to in Art. 9, para. 2, letters "a" - "j" in relation to Dr. M.M. The data are accessible without the knowledge and consent of the person, as the defendant is not the personal and/or attending physician of Mr. N.D., no is a patient of the medical facility, has not performed medical examinations or manipulations at the medical facility. During the proceedings, the legal representative of Dr. M.M. alleges that an order was created that obliges the doctor to physically provide this electronic signature, including allegations that the electronic signature was issued for official purposes. But during the proceedings, the facts claimed by the legal representative were not established, on the contrary, from the evidence collected by "Borika" AD and the internal rules and procedures, incl. order of the governor, it is established first that the signature was issued to Dr. M.M. in a personal capacity, regardless of the fact that it was received by a proxy authorized by Dr. M.M., and the procedures established in the hospital do not require the provision and storage of the electronic signature by the hospital employee,

namely the head nurse, and only supporting the work of the doctors and at their request. The evidence collected in the file testifies that as a result of gross negligence displayed by Dr. M.M. in relation to the storage and use of her personal electronic signature, there was unauthorized access to sensitive personal data about the applicant related to his vaccination status. Responsible for the latter is the administrator of personal data - Dr. M.M., insofar as the signature used for access is personal and the responsibility for its use and storage is also. In this particular case, however, Dr. M.M. failed to take appropriate measures to ensure and be able to prove that the complainant's personal data were processed/accessed in accordance with the GDPR. The statements that the provision of the signature for use by an employee of the administration of the medical facility is in fulfillment of an imputed obligation of Dr. M.M. cannot be credited as relevant and true. by the medical institution where he works. First of all, there is no evidence in this regard, her claims are disputed by the medical establishment, which categorically points out that the company provides each doctor with assistance in the administration of services, but at the request and initiative of the doctor, and not out of obligation. Apart from that, even if the opposite is true, to the extent that the signature is personal, the administrator of personal data, in this case Dr. M.M., is the one who should determine the purposes, the ways and the order in which, by means of her electronic signature, process/access personal data. Moreover, the signature provides access to a specific category of personal data - related to the state of health, which is why the control and measures introduced by the administrator should be increased. Such in the specific case are completely absent, which is why what was admitted by Dr. M.M. should be qualified as such under Art. 32, para. 1 and 2 of the GDPR, as there is no indisputable evidence of its responsibility for the actual access. The fact is that by means of the electronic signature, not once, but on two consecutive dates, the complainant's sensitive personal data were accessed illegally and without grounds in an electronic environment from the IP address of the medical facility where Dr. M.M. works, which proves that there is a lack of current control by the administrator, and in addition to current control there is also a lack of subsequent control by Dr. M.M. regarding access, which claims that it learned about the violation only after the CPLD informed it about the current proceedings, i.e. months after it was carried out. Allegations that another person misused and unlawfully accessed the personal data using the electronic signature of Dr. M.M., even if justified, although there is no such evidence in the file, cannot remedy the violation, insofar as it is imputed to the responsibility of the administrator ( Article 32, Paragraphs 1 and 2 of the GDPR) to apply appropriate measures to prevent unlawful processing of personal data, taking into account the scope, context and purposes of the processing, as well as risks of varying probability and severity for the rights of individuals persons. There are no measures

in this case at all, a fact that is also confirmed by the legal representative of Dr. M.M., who states that her client does not use her signature, or does not regulate access to immuno.his.bg - a huge database with sensitive personal data, access to which is regulated and limited, provided through a qualified electronic signature, after checking whether the relevant doctor has an active registration with the Bulgarian Medical Union. It is indisputable that Dr. M.M. did not organize the storage of the signature, which is an entry for the database containing information about the health conditions of the persons, respectively did not create or implement appropriate technical and organizational measures, did not make an assessment, did not assess the risks associated with the use of the signature and accessing this special category of personal data. Given the established violation, the fact that it concerns the processing of a special category of data and the fact that the act is not a one-time act and has been completed, the commission considers the exercise of corrective authority under Art. 58, § 2, letter "i" of the GDPR - imposition of a fine on Dr. M.M. for violation of Art. 32, para. 1 and 2 of GDPR. The corrective measures under Art. 58, § 1, letters "a", "c", "d", "e", "f", "g", "h" and "j" of the GDPR are inapplicable due to the nature of the violation, those under Art. 58, § 2, letter "b" disproportionate, and those under letter "d" inexpedient considering the actions taken by Dr. M.M. actions to control its electronic signature after the violation has been established. When determining the amount of the fine, the circumstances that the violation was the first found by the CPLD regarding this administrator, as well as the workload and commitment of Dr. M.M. should be qualified as mitigating factors. and of doctors in general in the pandemic. As aggravating factors, the commission accepts the circumstances that the accessed data is a special category and it concerns a repeated violation, in conditions of negligence on the part of the administrator. Regarding the DCC: The evidence collected in the case file, the statements of the defendants, including those of the DCC, testify to a violation of Art. 32 of the GDPR regarding the practices in the medical facility for allowing the use of electronic signatures of doctors for the processing of sensitive personal data related to health, including access to such data. Undoubtedly, the medical facility, as a separate administrator of personal data, as of the date of the violation - January 2022, has not created appropriate technical and organizational measures for the processing of sensitive personal data by the administration of the medical facility, or those created are not able to guarantee and prove that the processing is carried out in accordance with the GDPR, even more so because there is a lack of training and control regarding the procedure, although formally unwritten, which clearly from the evidence has emerged as an unregulated and unregulated practice, carried out with the knowledge of the medical facility. The fact is that the infrastructure/IP address of the DCC was used for the illegal access, which did not create an appropriate control mechanism.

The fact is that after the initiation of the present proceedings, the company "took actions to correct the way of working in the company" and introduced a training and instruction program for all employees of the company regarding the application of the GDPR and the rules newly introduced by the medical facility, part of the changes concern the use of electronic signatures, namely: "All personal electronic signatures are to be stored only and exclusively by their owners, and the responsibility for storage is entirely theirs. The submission of monthly reports on activities carried out with an electronic signature is carried out in the following way: the person who owns the signature personally provides it to an employee of the administration, personally entering the security password (pin code) and in his presence the report is submitted to the NHIF by an employee of the administration. After submitting the report, the signature owner collects it. In this way, the electronic signature is under constant control and monitoring of the owner. Assistance with the submission of a report by an administration employee in the presence of the owner of the electronic signature is optional and in order to facilitate the work of doctors. At the physician's discretion, he may submit the monthly report independently." It is a fact that the introduced additional measures cannot correct the inaction on the part of the health facility, which with its passive behavior contributed to the committed violation, but are grounds for imposing a corrective measure under Art. 58, § 2, letter "b" of the GDPR - an official warning to the company given the fact that, although at a later stage, the measures were revised and updated in accordance with its obligation under Art. 24, para. 1 of GDPR. The imposition of a sanction on the DCC administrator is excessive inasmuch as the administrator has no direct relation to the admitted violation, but with his passive behavior has created additional prerequisites for its admission. Based on the above and based on Art. 38, para. 3 of the Personal Data Protection Act, the Commission for the Protection of Personal Data DECIDES: 1. Declares complaint PPN-01-33/17.01.2022 as unfounded in relation to M. EAD. 2. Declares the complaint to be well-founded in relation to Dr. M.M. 3. Based on Art. ground Art. 83, § 4, letter "a" in connection with "Art. 58, § 2, letter "i" of Regulation EU 2016/679 imposes on Dr. M.M. with EGN\*\*\*\*\*, in her capacity as a personal data administrator, fined in the amount of BGN 500 (five hundred BGN) for violation of Art. 32, § 1 and 2 of the regulation. 4. Declares the appeal to be well-founded in relation to DCC. 5. Based on Art. 58, § 2, letter "b" of the GDPR issues an official warning to the DCC with EIK \*\*\*\*\*, in its capacity as a personal data administrator, for a violation of Art. 32, § 1 and 2 of the GDPR. The decision is subject to appeal within 14 days of its delivery, through the Commission for the Protection of Personal Data before the Administrative Court of Sofia - city. After the decision enters into force, the amount of the imposed penalty should be transferred by bank transfer: Bank BNB - Central Bank , IBAN: BG18BNBG96613000158601, BIC BNBGBGSDCommission

for Personal Data Protection, BULSTAT 130961721.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

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Decision on appeal with reg. No. PPN-01-33/17.01.2022

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