

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-654/14.09.2020 Decision on appeal with reg. No. PPN-01-654/14.09.2020 DECISION no. PPN-01-654/2020 Sofia, 02/03/2022 The Commission for the Protection of Personal Data (PCPD) in composition: Chairman: Ventsislav Karadjov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 15.12. 2021, on the basis of Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1, letter "f" of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data (Regulation , GDPR), examined the merits of complaint No. PPN-01-654/14.09.2020. The administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The Commission for the Protection of Personal Data has been referred to a complaint filed by M.B., alleging unlawful processing of his personal data by an employee of the Ministry of Internal Affairs (MI). The complaint is also addressed to the Director of the ODMVR - the city of Varna and to the District Prosecutor's Office - Burgas. The complainant informed that, together with four of his friends, he attended a football match held on 12.09.2020 between CSKA and Chernomorec. He adds that during the break between the two halves he and his friends left the stadium to pick up scarves, hats and t-shirts of the team they support - CSKA, and on the way back to the stadium "right on the corner of 8th Primorski Polk Blvd. and "Nikola Vaptsarov" Street were attacked by an unknown man with accusations that they threw a bomb at the stadium. He claims that when they shouted, three policemen approached them, and one of the policemen, without identifying himself, demanded their identity cards, which he photographed with his phone, after which he returned the identity documents. He considers the actions of the police officer illegal and in violation of Art. 45, para. 1 and 2 of the Labor Code and asks the commission to check the case. In addition, he claims that a crime under Art. 325, para. 1 of the Criminal Code, as well as a violation of Art. 6, para. 2 and Art. 14, para. 5 of the Ministry of Interior. No evidence was attached to the complaint, witnesses to the violations were named. The complaint was filed electronically, without a qualified electronic signature, which is why the complainant was given instructions on the regularity of the request, the same fulfilled - the complaint was confirmed - filed on 13.01.2021, with the complainant's signature. In view of the above and in view of the principles of equality of the parties and truthfulness advocated in the administrative process, the Minister of the Interior has been informed about the administrative proceedings initiated in the case, he has been given the opportunity to engage in a written opinion on the allegations presented in the complaint and to present evidence relevant to the case . In response, an opinion was expressed that the appeal was groundless. They inform about an investigation initiated in the case of a file \*\*\*\* in

the inventory of the ODMVR-Varna, in which no evidence was found that police officers had taken pictures of personal documents with a mobile phone, as well as that they had witnessed such actions by other of their colleagues . They add that the inspection did not reveal any evidence of disciplinary violations or crimes committed by the police officers. They point out that after the inspection was completed, the file was sent to the District Prosecutor's Office - Varna, where a DP \*\*\* was formed under Art. 131, para. 1t. 12 of the Criminal Code, for which they have no data as to whether it has ended. They ask the commission to dismiss the complaint as groundless and unproven. At a meeting of the CPLD held on 20.10.2021, the complaint was accepted as regular and admissible - it contains mandatory required details, it was submitted within the time limit under Art. 38, para. 1 of the Personal Data Protection Act by a natural person with a legal interest against a proper party - personal data controller within the meaning of Art. 4, § 7 of the GDPR, whatever capacity the Minister of Internal Affairs has within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679 and the special norm and Art. 29, para. 1 of the Law on the Ministry of the Interior. The subject of the complaint are allegations of unlawful processing - collection and storage of the applicant's personal data, contained in an identity document, by an employee of the Ministry of Internal Affairs, by taking a photo of the identity card with a mobile phone and storing the photo taken in the device. The Commission was notified on 14.09.2020, just two days after the alleged violation was committed, which makes it necessary to conclude that the complaint was 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, examines complaints filed by a data subject against acts and actions of personal data controllers that violate the rights of natural persons related to personal data processing, as there are no 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. In this regard and for the sake of completeness, it should be noted that the above refers to the allegations made in the complaint regarding violations of the WPLD, as the allegations of committed crimes and disciplinary violations are not within the competence of the WPLD, but of the other bodies referred to the case, the Ministry of Internal Affairs and the Prosecutor's Office . For the stated reasons and given the absence of the negative prerequisites specified in Art. 27, para. 2 of the APC, as parties to the proceedings are constituted: applicant - M.B. and the respondent – the Minister of the Interior. An open hearing has been scheduled for consideration of the merits of the complaint on 15.12.2021 at 1:00 p.m.,

of which the parties have been regularly notified and they have been instructed to allocate the burden of proof in the trial. The complainant was provided with a certified copy of the defendant's written statement that the complaint was unfounded, with instructions that he should present evidence regarding the allegations of unlawful collection and storage of his personal data set forth in the complaint no later than the date of the open hearing. . Despite the given instructions, they have not been deposited in the CPLD. In order to clarify the case from a factual point of view, information has been requested from ODMVR-Varna and RP-Varna. In response and with a letter PPN-01-654#11/29.11.2021 from the Ministry of Internal Affairs and Communications - Varna informs that during the inspection carried out in the case "no evidence was found that police officers made inquiries of those mentioned in the complaint of M.B . persons to have photographed personal documents with a mobile phone, as well as to have witnessed such actions by other colleagues. From the performed inspection, no data was found about disciplinary violations or crimes committed by police officers". They add that after the inspection was completed, the file was sent to the District Prosecutor's Office - Varna by jurisdiction and pre-trial proceedings No. \*\*\* were initiated under Art. 131, para. 1, item 12 of the Criminal Code – causing bodily harm to M.B. on hooligan motives. The latter is also confirmed by the response of the RP - Varna, submitted to the CPLD with letter PPN-01-654#11/29.11.2021, in which, as an addition, it is indicated that the pre-trial proceedings were stopped by a decree of 14.06.2021. due to an unidentified perpetrator of the act. At a meeting of the commission held on 15.12.2021, the complaint was examined on its merits. The complainant M.B. - regularly notified, does not appear or represent himself at the meeting before the commission. The Minister of the Interior is represented by a legal advisor with a power of attorney for the administrative file. Disputes the complaint. It does not point to new evidence, there are no requests for evidence. He considers the complaint unfounded and unproven and asks the commission to disregard it, stating that the practice of Ministry of Internal Affairs officials of capturing an identity document with a mobile device, described in the complaint to the CPLD, is not described as a procedure in any internal document and does not is the practice of the department's employees. 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 given the evidence collected and the allegations made, the commission accepts that the substantively examined complaint No. PPN-01-654/14.09.2020 is unfounded. The subject of the complaint are allegations of illegal processing - collection and storage of the applicant's personal data, contained in an identity document, by an employee of the Ministry of Internal Affairs, by taking a photo of the identity card with a mobile phone and storing the photo

taken on 12.09.2020 in the device ., around 7:40 p.m. in the city of Varna "at the corner of 8th Primorski Polk Street and Nikola Vaptsarov Street", during an inspection by the law enforcement authorities for a violation of public order. The photographing of an identity document - identity card and the storage of the image taken is a form of personal data processing within the meaning of Art. 4, item 2 of the GDPR to the extent that the same was done by automatic means, and the information contained in the identity document has the character of personal data about the person, through which the latter can be indisputably individualized. The appellant's claims that during a check by the Ministry of Internal Affairs officers, his identity document was photographed with a mobile device - the phone of one of the policemen, and the photo was stored in the memory of the device, are disputed by the respondent. An inspection carried out in the case by the ODMVR - Varna did not find evidence that police officers "took pictures of personal documents with a mobile phone, as well as that they witnessed such actions by other of their colleagues." In this regard and insofar as the complainant did not commit evidence in support of the allegations of personal data processing presented in the complaint, it should be disregarded as unfounded and unproven, given the allocation of the burden of proof in the process. Based on the above and based on Art. 38, para. 3 of the Polish Data Protection Authority, the Commission for the Protection of Personal Data,

RESOLVE:

Complaint No. PPN-01-654/14.09.2020, filed by M.B., is dismissed as groundless and unproven.

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

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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