

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-324/14.04.2021 Decision on appeal with reg. No. PPN-01-324/14.04.2021 DECISION no. PPN-01-324/2021 Sofia, 04/07/2022 The Commission for the Protection of Personal Data (PCPD) composed of: Tsanko Tsolov, Maria Mateva and Veselin Tselkov at a meeting held on 01/26/2022, on the basis of 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 relation to the processing of personal data and on the free movement of such data (Regulation , GDPR), examined the merits of complaint No. PPN-01-324/14.04.2021. 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 filed by S.I., with allegations of unlawful processing - use and distribution of his personal data by S.Sh, by entering them in an invitation addressed to him, placed at " prominent place' - 'on the general board'. A copy of the invitation, the same dated 12.04.2021, from S.Sh. is attached to the complaint. - manager of the condominium located in ***** , next to S.I. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, Mrs. S.Sh. was informed about the administrative proceedings initiated in the case, she was given the opportunity to submit a written opinion on the allegations presented in the complaint and to present evidence relevant to the case. In response, a response was filed with Reg. No. ППН-01-324#5/17.09.2021, with relevant evidence attached to it - a certified copy of the process invitation and Information rights of the subjects of personal data, without date of preparation, acceptance , entry into force. Mrs. S.Sh. disputes the complaint. He informs that he is the manager of a condominium located in ***** and adds that for a monthly fee the complainant performs "full-time the functions of a doorman" in the condominium (EU). She claims that the relationship between the applicant and the EU was not regulated according to the requirements of the Labor Code, which is why on 12.04.2021, in the presence of witnesses, she handed Mr. S.I. the procedural invitation to conclude an employment contract for the position of "porter". He adds that Mr. S.I. refused to sign that he had received the invitation, a fact that was certified by the signatures of the witnesses V.I. and J.P. Mrs. S.Sh. denies that it distributed the personal data of the applicant by placing the invitation on the general board in the course of the residential building or in any other way, and the statements of Mr. S.I., in this regard, qualifies as defamation. The Commission for the Protection of Personal Data is an independent state body that protects individuals in the processing of their personal data and access to such data, as well as control of compliance with the GDPR and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural

persons in connection with the processing of personal data and on the free movement of such data. In order to exercise its powers, the commission must be validly referred. The application submitted by Mr. S.I. complaint PPN-01-324/14.04.2021 contains the required details: information about the complainant, the nature of the request, date and signature, the passively legitimized party is indicated, therefore the complaint is regular. The complaint was filed by an individual with a legal interest against a proper party - an individual, personal data controller - S.Sh., in her capacity as a condominium manager. 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. The negative prerequisites under Art. 27, para. 2 of the APC. According to the stated reasons, at the meeting of the commission held on 17.11.2021, the complaint was accepted as admissible and the following parties were constituted as parties to the proceedings: complainant - S.I. and the defendant - S.Sh., in her capacity as a house manager of a condominium located in *****. An open hearing has been scheduled for consideration of the appeal on the merits on 26.01.2022 at 1:00 p.m., of which the parties are regularly notified and instructed to allocate the burden of proof in the process, and the appellant is informed that it follows, no more later than the date of the hearing, to commit evidence in support of his claims, given the fact that they are disputed by the respondent. At an open meeting of the CPLD held on 26.01.2022, the complaint was examined on its merits. The applicant S.I. - regularly notified, appears in person. The respondent S.Sh. in the capacity of house manager of a condominium located in ***** - regularly notified, appears in person. Bring a witness. The parties refuse to enter into an agreement. The complainant supports the complaint, does not point to new evidence, there are no requests for evidence. He states that the invitation was served to him, but he refused to accept it, as a result of which it was placed on the board at the entrance to the EU. The respondent Mrs. S.Sh. disputes the appeal. He claims that the invitation was delivered personally to the applicant in the presence of witnesses. She denies placing the invitation on the board at the entrance to the EU. Asks the commission to allow a witness to be questioned, to establish the content of the invitation attached to the file, in the part concerning its delivery to the applicant. He clarifies that the leading witness was personally present at the delivery of the invitation and has direct perceptions regarding the disputed issue in the

file, as he certified the manner of delivery of the invitation to Mr. S.I. with his signature under the invitation. The Commission disregards the defendant's request for the collection of oral evidence, insofar as it is intended to prove the content of a private witness document - an invitation, undisputed by the complainant. Given the evidence collected in the file and the statements made by the parties, the commission finds the case to be clarified from a factual point of view. On the merits, the applicant maintains the appeal. Asks the committee to respect it and sanction the administrator's actions. The defendant maintains an opinion that the complaint is groundless and asks the commission to reject it. 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 evidence collected and the allegations made, the commission accepts that the substantively examined complaint No. PPN-01-324/14.04.2021 is unfounded. The subject of the complaint is the allegations of unlawful processing - use of the complainant's personal data in the amount of three names, social security number and address, contained in an invitation addressed to him by S.Sh, and their distribution to an unlimited circle of persons by placing the invitation in a visible and generally accessible place - on the "common board". The parties do not dispute that the appellant performed the functions of a porter in the condominium located in *****, of which the respondent - S.Sh. is the house manager, without the relations between the parties being regulated in accordance with the Code of labor. It is not disputed that there is a written invitation from Mrs. S.Sh., in her capacity as a house manager, addressed to the applicant, for the conclusion of an employment contract between EU and Mr. S.I. in connection with his position. The invitation, evident from its content, contains three names, TIN and address of the applicant, and it should be noted that the same is from 12.04.2021, on which date it is indisputable that the applicant was performing the position of porter in the EU. Those gathered in the file testified that on 12.04.2021 the invitation was delivered to Mr. S.I., a fact which was certified by the signatures of the witnesses V.I. and J.P., who were present when it was handed over, certified that Mr. S.I. refused to sign that he had received a copy of the invitation. Evidence in the chosen direction has not been committed, and the evidentiary value of the document has not been challenged by the applicant. The information contained in the invitation about the applicant in the amount of three names, social security number and address have the quality of personal data, given the fact that by means of them the person can be unambiguously individualized. In this regard, it is indisputable that the actions of using the applicant's personal data for preparing the invitation and placing the invitation in a publicly accessible place should be qualified as processing - use, respectively distribution, of personal data within the meaning of Art. 4, item 2 of the GDPR

and as such should meet the requirements of the GDPR and the GDPR. The use of the applicant's personal data for the purposes of an invitation prepared for him to draw up a written employment contract between the parties is lawful. The same occurs in the hypothesis of Art. 6, § 1, letter "c" of the GDPR - the processing is necessary to comply with a legal obligation towards the administrator arising from the Labor Code, given his capacity as the employer of Mr. S.I. and the labor relations between them with a view to the position performed by Mr. S.I., against payment, as a porter in the EU, represented by Mrs. S.Sh. In this regard, and given the complainant's claims that his data were used to compile the invitation without his consent, it should be noted that consent is only one of the grounds for lawful processing of personal data listed in Art. 6, § 1, letters "a" - "f" of the GDPR. Regardless of the fact that it is indicated in the first place, all legal grounds are alternative and equal and are not arranged in a hierarchical relationship, such as the presence of any is of them makes the processing lawful, provided that the other requirements of the regulation are also met. The file lacks evidence of the applicant's alleged distribution of his personal data to an unlimited circle of persons, by placing the invitation in a prominent and generally accessible place - on the "general board" by Mrs. S.Sh. The same are disputed by the defendant, and despite the specific instructions given to the appellant on the distribution of the burden of proof in the trial, Mr. S.I. does not commit evidence to support his claims. In this regard, with a view to distributing the burden of proof in the process, in the event of a challenge by the defendant and due to the lack of procedural activity on the part of the applicant, the complaint, in its part concerning allegations of distribution of personal data, should be dismissed as unproven, insofar as according to the principle of truth under Art. 7 of the APC, the administrative acts are based on actually established facts of the case. For the sake of completeness, it should be noted that the applicant's inaction cannot be compensated ex officio, insofar as according to Art. 36, para. 2 of the APC, the parties should assist the authority in gathering evidence, being obliged to provide the evidence from which they derive rights, and which are with them and are not with the administrative body, as is the case in the present case.

Based on the above and based on Art. 38, para. 3 of the Personal Data Protection Act, the Personal Data Protection Commission,

RESOLVE:

Announces appeal PPN-01-324/14.04.2021 filed by S.I. against S.Sh. 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.

MEMBERS:

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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