

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-778/04.11.2020 Decision on appeal with reg. No. PPN-01-778/04.11.2020 DECISION no. PPN-01-778/2020 Sofia, 12.01.2022 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 03.11. 2021, based on 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-01-778/04.11.2020. The administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The Commission for the Protection of Personal Data was referred to a complaint filed by M.Ch., T.Ch. and St.S., through Adv. M.A. with allegations of illegal processing of personal data presented in the same, in the hypothesis of video surveillance carried out by S.P.S., Z.S., P.S. and L.S., with whom they are in "severely deteriorated relations". It is alleged that the applicants M.Ch. and T.Ch. are co-owners of an immovable property - a residential building and an adjoining yard located in the city of ***, with identifier ***, which they live in together with the complainant St.S., son of T.Ch. It is stated that the yard has been improved and is used daily by the applicants for recreation and growing fruits and vegetables. It is said that S.P.S., Zh.S. live next door to the property. and their sons P.S. and L.S., the same installed a video surveillance camera in April 2020, within the scope of video surveillance of which falls the courtyard of the applicants, the entrance of the building they live in and windows on the facade, a circumstance objectified in the Constitutive Protocol of 29.07 attached to the complaint. 2020 under Art. 593 of the Code of Civil Procedure with reg. No. ***. Relevant evidence is attached to the complaint - a copy of the notarial deed for donation No. ***; notarial deed for real estate acquired under regulation No. ***, notarial deed for ownership of real estate acquired under regulation No. ***; notary deed of real estate ownership No. ***, certificate for heirs No. ***, certificate for heirs No. ***, Sketch of PI No. *** and power of attorney. According to the principles of equality of the parties in the proceedings and truthfulness, S.P.S., J.S., P.S. and L.S. are notified of the filed complaint, and are given the opportunity to submit a written statement and relevant evidence. In response, an opinion was expressed by Zh.S., P.S. and L.S., through a lawyer, who object that they should not be constituted as a party in the proceedings since they are not the owners of the property in which the camera is installed and they did not install it. They inform that the camera was installed by S.P.S., husband of Zh.S. and father of P.S. and L.S., the same owner of the apartment on which the camera was installed and user of the yard area covered by video surveillance. They point out that

the purpose of the video surveillance is to protect the property of S.P.S. - parked "under the camera a van that is always full of goods, as well as in a garage located in the southwest corner of the lot." They dispute the claims that the appellants' property - the entrance to the residential building, windows on the facade and the courtyard - fall within the scope of video surveillance" and point out that although the camera is directed in the direction of the appellants' property "in reality the property itself does not fall within the scope of video recording'. They inform about the issued Order No. **** of the deputy. the mayor of the municipality of B. for the establishment of the appellants T.Ch. and M.Ch. right of passage for a period of 12 months, from the entry into force of the promissory note, through municipal land property No. ****, in which the cooperative was built, in which S.P.S. owns property. and where the camera is installed, in connection with a permit issued for the construction of a massive fence along the property boundary between PI No. *** and No. ***. They add that the order was appealed by S.P.S., but it was upheld and the proceedings terminated, as Mr. S.P.S. has been notified by the municipal administration that he should provide access to the property from T.A Street" and "has been warned not to park his van between 08:00 and 18:00 in this part of the property, in view of ensuring access of workers and construction equipment to the property". They add that "precisely due to the upcoming construction, which requires the demolition of the yard from T.A. Street/removal of the front door from this street, removal of the fence between the two properties, entry of trucks and heavy construction equipment, unimpeded entry of strangers construction workers/" S.P.S. ordered, purchased and installed a video surveillance camera "in order to protect his property located in garage No. 6 and the goods in the van parked in that part of the property, as well as possible damage to the facade of the building." Relevant evidence is attached to the opinion, namely a copy of Decision *** of the Administrative Court – B., Order No. *** of the mayor of the municipality of B., letter ex. No. *** of the Deputy Mayor of Economy and Finance of the Municipality of B., notarial deed No. ***, building permit No. ***, certificate for heirs No. **. and power of attorney. In order to clarify the case from a factual point of view, an inspection was carried out on the subject of the complaint, the results of which are objectified in Constitutive act PPN-02-332/29.06.2021, with annexes to it, including the Constitutive protocol of 06.09.2021 ., graphic images of the location and range of the cameras and a completed questionnaire from S.P.S. The inspection was opened on 09.06.2021 at the address indicated in the complaint, with the delivery of the inspection order to S.P.S., in the presence of his son P.S. and V.P. – a lawyer, who assist and provide the opportunity for access and collection of evidence by the examining team. The inspection found the following: At the address indicated in the complaint, there is a residential building - a condominium and an adjacent yard, in which additional buildings, used by the residents for garages,

were built. The building has three floors with two apartments per floor, like the apartment owned by S.P.S., in which he and his wife Zh.S. live. and his son P.S. together with his family, is located on the first floor. The appellants' property is located next door, and the two properties are separated by a wire mesh fence. Between the residential building in which S. lives and the appellants' property, in the yard adjacent to the residential building, there is an alley used by the residents of the residential building to access their garages. This alley is located right under the windows of S.'s apartment and is often used by S.P.S. to park his personal van. The presence of one IP Automat video camera, model V380-522, 2MPix – Full Hd 1080p, Lens 3.6mm, installed in May 2020 by a friend of P.S., for the purpose of guarding the home and the van, was found at the address . The camera is mounted on the facade of a glazed terrace of S.'s residence and has the possibility of a 360° panoramic view, being able to rotate 320° horizontally and 90° vertically. At the time of inspection, it was found that the horizontal rotation was not functioning and the camera could only be rotated 90° vertically. S.P.S. claims that since the installation of the camera, the horizontal rotation function has not been active. The video camera has the ability to record video frames on ONVIF TF - a memory card, which at the time of the inspection was missing and according to S.'s claims - it was never inserted, but video surveillance was always carried out only in real time and no video frames were recorded . The camera has the ability to record and transmit sound. Access to the output image in real time is carried out only by P.S. – remotely via a software application installed on his mobile phone. No decision was taken at the general meeting of the condominium to build a video surveillance system in the apartment building, but S. claim that none of the residents in the apartment building have any objection to the installed video camera, pointing out that there are more video cameras installed in the building, found by the inspector team at the external inspection, which are owned by other residents. S.P.S. declares that he plans to convene a general meeting of the condominium in a timely manner, with a view to making a legitimate decision, according to Art. 11 of the Condominium Management Act. The inspection team found that when pointed in its final vertical position, the video camera captured the windows of S.'s glazed terrace and the driveway on the property used for vehicular access to the garages, where S.P.S. parks his van. When the camera is in its final vertical position, it again captures the terrace windows and driveway, but also covers the entrance to the property for cars, a small section of the fence separating the property from the appellants' property, and a very small part of the appellants' property , including part of their house and the approach to its entrance. The categories of natural persons whose personal data are processed by means of the built-in video surveillance system are: visitors and residents of the residential building - condominium, as in the final position up the vertical of the video camera, its scope may

also include residents and visitors in the property of the complainants , but due to the low quality of the picture, their identification would be very difficult. It has been established that the video surveillance system built in this way allows the identification of natural persons, but there is no possibility of their facial recognition (through the use of a database with biometric data). The review team was not provided with evidence of technical and organizational data protection measures in place. No documents (rules, procedures, instructions or others) have been presented, regulating the processing of personal data through the built-in video surveillance system. The video surveillance system does not transmit and record snapshots and video frames from the image on a remote device - FTP/Cloud server or on another data storage location. The checking team found that there were informational stickers placed on the front door of the apartment building, warning about the video surveillance, which did not contain information about the administrator of personal data, as well as contact details. The Commission for the Protection of Personal Data is an independent state body that protects individuals in the processing of their personal data and access to such data, as well as control of compliance with the GDPR and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free movement of such data. In order to exercise its powers, the commission must be validly referred. Complaint PPN-01-778/04.11.2020 contains the required details, namely: there are data on the complainants, the nature of the request, date and signatures, a power of attorney for representative authority is attached, the persons against whom it is filed are indicated, with therefore it is regular. The subject of the complaint is unlawful processing of the personal data of the complainants by S.P.S., Z.S., P.S. and L.S. in the hypothesis of video surveillance carried out by means of a camera installed at the address ***, within the scope of which it is claimed that the property of the appellants, which is next door - the yard, the entrance to the building they live in and windows on the facade of the building fall. The complaint was submitted within the period under Art. 38 of the Labor Code by natural persons with a legal interest against passively legitimizing parties - natural persons who are claimed to be administrators of personal data within the meaning of Art. 4, para. 7 Regulation EU 2016/679, insofar as it is claimed that they themselves determine the purposes and means of processing personal data through video surveillance. 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. For the stated reasons and given the absence of the negative prerequisites of Art. 27, para. 2 of the APC, at a meeting of the commission held on 09/08/2021, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: appellants - M.Ch., T.Ch. and St.S. and responsible, passively legitimized parties - S.P.S., Zh.S., P.S. and L.S. An open hearing has been scheduled to consider the merits of the appeal on 03.11.2021, of which the parties are regularly notified. They were informed about an inspection carried out on the subject of the complaint, a report of which, together with attachments, was provided to them for perusal. At an open meeting of the CPLD held on 03.11.2021, the complaint was examined on its merits. The applicants M.Ch., T.Ch. and St.S. are represented by Adv. M.A. with a power of attorney on file. The defendants S.P.S., Z.S., P.S. and L.S. - regularly notified, do not appear or represent themselves at the meeting before the commission. Lawyer M.A. supports the complaint, declares that she has familiarized herself with the materials collected in the case file. Informs that a civil case *** is also pending between the parties in the administrative proceedings, which was initiated on the claims of the plaintiffs, the appellants in the present proceedings, - objectively and subjectively, against the defendants with a legal basis, Art. 45 of the ZZD. He adds that a forensic technical expertise has been included in the case, which explains in detail what the characteristics of the installed camera are, and in a court session the expert stated that the front door of her trustees, as well as part of the yard, fall within the scope of this camera. He adds that, from oral evidence collected during the civil case, it is indisputably established that the camera has been operating since 2020, and the van was parked at the site only at the beginning of 2021, in connection with a transcript received from the claim in the civil case and the defendants' organized defense against the objectively and subjectively joined claims brought against them. He claims that in the course of the civil case, clear evidence was collected that until the end of 2020, the camera moved not only vertically in the form that representatives of the CPLD found during the inspection, but moved in all directions according to its technical parameters and in the manner described in the finding document of notary K.M. To prove the latter, he asks the Commission to allow the collection of oral evidence. The Commission disregards the request for the collection of oral evidence regarding the direction and scope of the trial chamber, given the presence of indisputable written evidence in this direction, namely Constitutive Protocol of 29.07.2020 under Art. 593 of the Code of Civil Procedure with registration No. *** according to the inventory of notary K.M. In essence, Adv. M.A. maintains an opinion on the merits of the complaint and asks the CPLD to issue

an order to stop the filming of the entrance to the building of its trustees, as well as their courtyard. 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 Administrative-Procedural Code, requiring the existence of established actual facts, taking into account the collected evidence and the statements made by the parties, the commission, by a majority of three votes, accepts that the substantively examined appeal No. PPN-01-778/04.11.2020 is partially justified. Disagreeing with the arguments for the merits of the complaint, Mr. Veselin Tselkov voted with a dissenting opinion, finding the complaint unfounded. The subject of the complaint is unlawful processing of the personal data of the complainants by S.P.S., Z.S., P.S. and L.S. in the hypothesis of video surveillance carried out by means of a camera installed at an address in the city of B., in the scope of which it is claimed that the property of the appellants, which is next door - the courtyard, the entrance to the building they live in and windows on the facade of the building fall. From the evidence gathered in the file, it was established, and it is not disputed between the parties in the proceedings, that the parties are neighbors. The defendants live in an apartment on the first floor of the building in condominium mode, located in the city of B, and the appellants live in a property located next door, and the two properties are separated by a fence - a wire mesh. Between the residential building in which S. lives and the appellants' property, in the yard adjacent to the residential building, there is an alley used by the residents of the residential building to access their garages. The alley is located right under the windows of S.'s apartment and, according to the defendants, is often used by S.P.S. to park his personal van. The parties in the proceedings do not dispute, and an inspection carried out by a CPLD team has established that a video surveillance system consisting of 1 stationary IP Automat camera, model V380-522, 2MPix – Full Hd 1080p has been built and is functioning in the property of the defendants. , Lens 3.6mm. The camera is mounted on the facade of a glazed terrace of S.'s residence and has the possibility of a 360° panoramic view, being able to rotate 320° horizontally and 90° vertically. At the time of inspection, it was found that the horizontal rotation was not functioning and the camera could only be rotated 90° vertically. Access to the output image in real time is carried out only by P.S. - remotely by means of a software application installed on his mobile phone, and the presence of recording devices and other technical equipment enabling video recording was not detected, although the video camera has the ability to record video frames on an ONVIF TF - memory card, as at the time of verification is missing. As far as recording and storage of footage from the video surveillance has not been established, a conclusion is required for "monitoring control" carried out by the defendant - a limited form of video surveillance - surveillance with technical means, without the possibility of recording the

received data, in the sense of § 1, item 6 from the DR of ZCHOH. The evidence in the case file testifies that only P.S. has access to the personal data collected by means of the technical device, considering that he has the capacity of a personal data administrator within the meaning of Art. 4, para. 7 of the GDPR. There is a lack of evidence that the other defendants, passively legitimized parties in the proceedings, have anything to do with the surveillance, respectively access to the personal data collected through it, given that in relation to them - Zh.S., S.P.S. and L.S., the complaint should be dismissed as unfounded. In the proceedings, it is not disputed that the purpose of surveillance is the protection of movable property - the defendants' bus. However, it was established that a part of the property of the appellants also falls within the scope of surveillance - the front door of the yard and the front door of the residential building, a circumstance which is evidenced by the findings protocol under Art. 593 of the Civil Code dated 29.07.2020 with reg. No. *** according to the inventory of notary K.M. The latter is evidenced by an inspection carried out by a CPLD team, which found that "when the camera is in its final position vertically upwards, it captures the windows of the terrace and the alley again, but also covers the entrance to the property for cars, a small part of the fence, separating the property from that of the appellants, as well as a very small part of the appellants' property, including part of their house and the approach to its entrance. In view of the above, the defendants' claims that in "The range of the camera is entirely on the property of the defendants" does not correspond with the evidence collected on the file. Given the purpose of surveillance carried out by means of a technical means and its scope, the same is illegal, and also in violation of the principle of reducing data to a minimum - Art. 5, § 1, letters "a" and "c" of the GDPR. Contrary to the monitoring by means of a technical means carried out within one's own property or on one's own property, it cannot be assumed that the monitoring by means of a technical means of a part of neighboring foreign properties represents a legitimate interest of the administrator, given the lack of a preferential interest of the latter over the interest of the physical persons subject to surveillance. It is not disputed that the surveillance of the property of the applicants by means of a technical means is carried out without their consent (Art. 6, § 1. letter "a" of the GDPR), and that the prerequisites of Art. 6, § 1, letters "b", "c", "d" and "e" of the GDPR. In the specific case, the processing of personal data by means of monitoring by means of a technical means of neighboring properties is also in contradiction with the principle of "reducing the data to a minimum" under Art. 5, § 1, b. "c" of the GDPR, given the fact that the same is not limited to what is necessary in relation to the goals for its implementation - protection of movable property of the defendants. Moreover, the commission finds that the monitoring of the place where the vehicle is parked is also in violation of the principle of legality, insofar as there is no condition for its legality - the movable

object monitored by means of the camera is parked on a terrain that is not owned by the administrator and soon should be treated as an area adjacent to the condominium. In this regard, it cannot be accepted that P.S. has an overriding legitimate interest over the interest of the other co-owners in the condominium, as the fact that the person's motor vehicle is predominantly parked in this place does not change this circumstance, insofar as it is not disputed that the motor vehicle is in motion and does not permanently reside in the place that under surveillance, especially since there is no decision of the General Assembly of the condominium regarding the video surveillance of this area, as far as the bus is parked in the yard of the cooperative behind the front door. We cannot support the respondent's understanding that the protection of movable property may take priority over the protection of the personal freedom and integrity of the applicants by monitoring their yard and approach to the residential building they occupy or by monitoring terrain that is not property of the administrator. In case the person wants to guard this property, he should install a camera with appropriate technical parameters, and in case the condominium decides to monitor this perimeter around the condominium, then the administrator should take appropriate organizational measures and technical measures so as to limit the surveillance of public places and foreign property or parts thereof. In this case, it is not disputed that the surveillance of the place where the vehicle is parked is carried out without the consent of the other co-owners of the property (Art. 6, § 1. letter "a" of the GDPR), and that for its implementation there are no the prerequisites of art. 6, § 1, letters "b", "c", "d" and "e" of the GDPR, as an overriding legitimate interest of the administrator cannot be justified on the grounds set out above, in view of which the monitoring is in violation of the principle of legality. The latter applies with even greater force in relation to the surveillance of public places, in this case part of a street adjacent to the property.

Given the nature and type of the detected violation and the fact that the same has not been suspended, and also that the affected personal data are not sensitive within the meaning of the law and there is no evidence of damage caused by the processing, the commission considers it expedient, proportionate and effective to impose a corrective measure under Art. 58, § 2, letter "d" of Regulation EU 2016/679, finding that the same will achieve the purpose of the law - it will stop the violation and restore the established legal order regarding the processing of personal data. The remaining measures under Art. 58, § 1, letters "a", "b", "c", "e", "f", "g", "h" and "j" of the GDPR are inapplicable and inexpedient due to the nature of the violation and the circumstance, that at the time of pronouncement the same has not been suspended. The Commission finds that insofar as the violation is the first, the imposition of a fine on the administrator would be excessive and in violation of the principle of

proportionality under Art. 6 of the APC, according to which "when the administrative act affects rights or creates obligations for citizens, those measures are applied that are more favorable to them, if the goal of the law is achieved in this way." However, it should be noted, that the non-fulfilment of the commission's order, within the specified period, is accompanied by a sanction for non-fulfilment in view of its effectiveness and the possibility of an additional sanctioning mechanism for verification and control of the implementation. The goal is to achieve general prevention and proportionate and lawful processing of personal data. Thus, the orders are effective, as they are attached to the corresponding sanctions in case of non-fulfilment, and the legislator provides that in case of non-compliance with an effective order of the supervisory authority, an administrative penalty "fine" or "property penalty" will be imposed under Art. 83, paragraph 6 of Regulation 2016/679 in amounts up to EUR 20,000,000.

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

RESOLVE:

1. Declares complaint PPN-01-778/04.11.2020 as groundless and unproven regarding Zh.S., S.P.S. and L.S.
2. Declares the complaint well-founded in relation to P.S.
3. Based on Art. 58, § 2, letter "d" for violation of Art. 5, § 1, letters "a" and "c" of Regulation (EU) 2016/679 issued an order to the administrator P.S. to stop filming other people's property and public areas by dismantling the camera.
4. Deadline for execution of the order - one month from the entry into force of the decision, after which to notify the commission of the execution by presenting the relevant evidence.

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

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

(O.M. on items 2, 3 and 4)

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