

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-192/06.03.2020 Decision on appeal with reg. No. PPN-01-192/06.03.2020 DECISION no. PPN-01-192/2020 Sofia, 20/04/2021 The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Vencislav Karadjov and members - Tsanko Tsolov, Maria Mateva and Veselin Tselkov, on a regular basis meeting held on 10.03.2021, on the basis of Art. 10, para. 1 of the Personal Data Protection Act in connection with Art. 57, paragraph 1, letter "f" of Regulation 2016/679, examined complaint No. PPN-01-192/06.03.2020, submitted by B.S. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The complainant informed that in the period 18-25 January he spent the winter vacation in Bansko for the purpose of skiing. For this purpose, he bought a ski pass for him and his companions (his daughter-in-law and her two little girls). Mr. B.S. was very surprised that the personal data administrator requested photos and registered the personal data of all individuals without any consent. It indicates that there is no information on the site of the cab operator or the place about the need to process personal data. Furthermore, the applicant's wife used his ski pass on the second day and the security stopped it with the explanation that the ski pass is like a personal document (identity document) and therefore cannot be transferred. Again, there is no information about how they work with personal data and what the purpose is. The complainant states that for minors, from what he has read in the GDPR, it is mandatory for a parent or legal representative to give consent for the processing of personal data. Mr. B.S. states that he is not the parent or legal representative of the two children. The complainant noticed that the operator only asked for personal data for long-term ski passes (6 days), because when he bought one for two days, the operator did not ask for them. In the conditions of the official beginning laid down in the administrative process and in fulfillment of Art. 26 of the APC, the interested party was notified of the initiation of the proceedings - "Yu. AD. The possibility under Art. 34, para. 3 of the APC for expressing an opinion with relevant evidence on the allegations made in the complaint. The Commission received a reply that the complaint was groundless. Yu. states that the company operates in the field of tourism and provides tourist services on the territory of the Bansko Ski Center. The processing of those mentioned in the complaint of Mr. B.S. personal data: names and photo, is justified by the provision of Article 6, paragraph 1, letter "b", proposal. first of Regulation (EU) 2016/679, namely the processing is "necessary for the performance of a contract to which the data subject is a party. "The purchase of a lift card gives rise to counter-obligations for both parties under a peculiarly concluded contract for the use of a service, with a view to its exact performance. The obligations include, on the one hand, the provision of services by the company, and on the other hand, the use of these

services by the client, in strict compliance with the rules established by the company. These rules are published on the company's website and are generally available to all customers using the services offered by "Y. AD services. In the General Rules, it is clearly stated that every client of the Ski Center, using the services and exercising the activities specified in these general terms and conditions, is obliged to familiarize himself with their provisions. It is also recorded that by purchasing a service or practicing winter sports on the territory of the Bansko Ski Area, i.e. by carrying out an activity regulated by the established rules and general conditions, the client agrees to the general and special rules specified therein in relation to the specific service and/or activity. Item 79 of the General Rules states that it is prohibited to transfer lift cards and tickets to third parties. This rule is also clearly written on the back of the lift cards themselves. Item 80 of the General Rules, based on Art. 27, para. 3 of the Ordinance on the safety and information security of the ski slopes in the Republic of Bulgaria, states that any use of lift cards and tickets contrary to the established general conditions / including use of a lift card by a person other than the one to whom the card is issued/ is considered a violation, and when a violation is detected by the persons authorized for the purpose, the lift card/ticket is blocked/deactivated. Data processing during the purchase of lift tickets is necessary not only from the point of view of monitoring the performance of the contract to which the data subject is a party, but also with a view to ensuring public order in the ski area and implementing legal obligations/authorities. Moreover, in the specific case, the processing is necessary for compliance with a statutory obligation/authority assigned to "Y." AD. The company is the concessionaire of the "Ski-area with the center of the city of Bansko", i.e. it is a person within the meaning of Art. 157, para. 1 of the Law on Tourism. As such a person, according to Art. 25, para. 1 of the Ordinance on the safety and information security of the ski slopes in the Republic of Bulgaria and on determining the safety rules on the territory of the ski slopes and ski areas and on the organization of the work of the patrols, Yu. appoints a ski patrol. The ski patrol, according to Art. 27, para. 1, except for the control under Art. 24, para. 1 also carries out control for compliance with the rules for safe behavior, as well as the rules for using the ski area/ski slope, established by the person under Art. 157, paragraph 1 of the Law on Tourism. According to para. 2 of this provision, in the performance of their official duties, ski patrollers have the right to issue a warning to persons who do not comply with the rules of safe behavior, the rules for the protection of public order, as well as the rules for using the ski area/ski track established by the person under Art. 157, para. 1 of the Law on Tourism. In case of non-fulfilment of the given warning, the ski patrol has the right to limit the access of the violators to the facility/facilities serving the ski area/ski slope by deactivating the lift card or in another appropriate way. Of interest in the specific case is the provision of para. 3 of Art. 27 of

the Ordinance, according to which deactivation of a lift card is carried out upon establishing the use of: 1. a named lift card/identification card with a photo by a person other than the person to whom it was issued; 2. lift card with forged validity period and/or with forged names and photo. The conclusion is that the company has the authority to deactivate named lift cards and those with photos in case of violations of the established order for the use of the ski area and the cards themselves, i.e. the legal norm itself allows for such personalized lift cards. With regard to the transparency of the processing of personal data, it is stated that the General rules for the use of the ski slopes and the cable cars and the general terms and conditions for the issuance, sale, validity and use of tickets and lift cards in the ski zone with the center in the city of Bansko, as well as the privacy policy, which informs about the processing of personal data, are generally available on the company's official website, and the complainant undoubtedly knows this and has obviously informed himself and seen them on the website as well, having attached to the complaint a copy of the website where they are placed. Pursuant to Art. 34, para. 3 of the APC, the applicant was also given the opportunity to familiarize himself with the opinion expressed by the respondent and the evidence presented. A deadline is provided for expressing an opinion, making an objection or a request. No opinion was received within the statutory period. Regarding the regularity and admissibility of the appeal, the CPLD finds the following: The considered appeal complies with the requirements for regularity under Art. 29 of the APC, Art. 38, para. 2 of the Labor Code and under Art. 28, para. 1 of the Regulations for the Activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA) – there are data on the complainant; nature of the request; date of knowledge of the violation; person against whom the complaint is filed; date and signature. The complaint is procedurally admissible - submitted within the period under Art. 38, para. 1 of the GDPR by a data subject with a legal interest. The same has as its subject an allegation of violation of rights under Regulation 2016/679 or the PPE. The complaint was referred to a body competent to make a decision - the Commission for the Protection of Personal Data, which according to its powers under Art. 10, para. 1 of the Labor Code in connection with Art. 57, paragraph 1, letter "f" of Regulation 2016/679 deals with complaints submitted by data subjects. The prerequisites for admissibility are also present under Art. 27, para. 2 of the APC. In the case established in this way, the CPDP examined the complaint, establishing the following: The Commission for the Protection of Personal Data is an independent supervisory body that provides protection of individuals in the processing of their personal data and in providing access to this data, as well as the control of compliance with the 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 (in short "the Regulation" or Regulation 2016/679) and the Law on protection of personal data (PLD). One of the tasks of the CPLD under Art. 10, para. 1 of the Labor Code in connection with Art. 57, paragraph 1, letter "f" of Regulation 2016/679 is to consider complaints submitted by data subjects and to investigate the subject of the complaint to the extent appropriate. The expediency in considering appeals is procedurally developed in Art. 38, para. 4 AZLD - when the complaint is clearly groundless or excessive, the complaint can be left without consideration by a decision of the Commission. Regulation 2016/679 and the Personal Data Protection Act (PDPA) define the rules regarding the protection of natural persons in connection with the processing of their personal data, as well as the rules regarding the free movement of personal data. The aim is to protect the fundamental rights and freedoms of natural persons, and in particular their right to the protection of personal data. The processing of personal data by personal data controllers, both in the public and private spheres, is lawful and permissible, if any of the legal grounds exhaustively listed in Art. 6, paragraph 1 of Regulation (EU) 2016/679:

- a) the data subject has consented to the processing of his personal data for one or more specific purposes;

- b) the processing is necessary for the performance of a contract to which the data subject is a party, or to take steps at the request of the data subject prior to the conclusion of a contract;

- c) the processing is necessary for compliance with a legal obligation that applies to the administrator;

- d) the processing is necessary to protect the vital interests of the data subject or another natural person;

- e) the processing is necessary for the performance of a task of public interest or in the exercise of official powers granted to the administrator;

- f) the processing is necessary for the purposes of the legitimate interests of the controller or a third party, except when such interests are overridden by the interests or fundamental rights and freedoms of the data subject that require the protection of personal data, in particular when the data subject is a child.

Consent under letter "a" is one of the grounds for collecting and processing personal data. Notwithstanding the fact that it is listed first, all legal grounds are alternative and equal, and are not arranged in a hierarchical relationship. The presence of any of them makes the processing lawful, provided that the other requirements of the regulation are also met.

In cases where a personal data controller makes a judgment whether to process personal data on the basis of consent, it must investigate whether there is no other legal basis for its processing. If another reason is present, it is not necessary to require consent from the data subject.

The subject of the complaint is an allegation of unlawful processing of personal data in the form of names and facial images for the purposes of issuing a lift card, both to the complainant and to minors without parental consent. A second allegation of violation is lack of information about the need to process personal data.

From the information and evidence gathered in the case file, it is established that "Y." AD is a person within the meaning of Art. 157 of the Tourism Act (TA), which is granted rights to use the facility adjacent to the ski slope – in this case, a lift.

In accordance with Art. 159 of the Labor Code by the Council of Ministers, an Ordinance was adopted on the safety and information security of the ski slopes in the Republic of Bulgaria, as well as on determining the safety rules on the territory of the ski slopes and ski areas and on the organization of the work of the ski patrols (briefly hereinafter " the Ordinance").

In Art. 23, para. 1 of the Ordinance, it is stated that the users of the ski areas are obliged to comply with the mandatory rules for safe behavior specified in Annex No. 2, as well as those established by the person under Art. 157, para. 1 of the Tourism Act rules for using the ski area.

Pursuant to the said provision, by Yu. for prepared General rules for the use of ski slopes and cable cars and general conditions for issuing, selling, validity and use of tickets and lift cards in the ski area centered in the city of Bansko (in short, hereinafter "the General Rules", valid for the 2019-2020 season. As can be seen from the written evidence presented, the said rules were approved on 01.11.2019 (before the complainant used the service), and it was ordered that they be published on the company's website as well .

Items 79 and 80 of the General Rules stipulate that it is prohibited to sell, resell and resell a lift card by a person other than the one to whom the card was issued, and the use of a lift card in violation of the General Rules leads to blocking/ card deactivation.

The above-mentioned rules were adopted on the basis of Art. 27, para. 3 of the Ordinance, according to which deactivation of a lift card is carried out upon establishing the use of:

1. name lift card/identification card with a photo of a person other than the person to whom it was issued;
2. lift card with forged validity period and/or with forged names and photo.

Given the above, for the administrator of personal data Yu., as well as for those appointed by him in accordance with Art. 25, para. 1 of the Ski Patrol Ordinance, there is a statutory obligation to monitor compliance with Art. 27, para. 3 of the Ordinance.

As can be seen from the mentioned provision, there is a requirement for the card to be named and with a photo of the person

to whom it was issued, which is why the personal data in this case are processed on the basis of Art. 6, paragraph 1, letter "c" of Regulation 2016/679 - to fulfill a legal obligation that applies to the controller. In this case, consent from the subject is not necessary.

In connection with the above, it should be pointed out that the allegation of illegal processing of the personal data of minors for the purpose of issuing a lift card, without the consent of a parent, is unfounded. Pursuant to Art. 25c of the GDPR, the processing of data of a person under the age of 14 based on consent within the meaning of Art. 4, item 11 of Regulation (EU) 2016/679, is lawful only if the consent is given by the parent exercising parental rights or by the guardian of the data subject. In this case, as stated, the processing of personal data is not based on consent, but on a legally established obligation, therefore consent is not necessary.

The second alleged violation - that there is no information on the cab operator's website about the need to process personal data - is also unfounded. As stated, by order of 01.11.2019, the General Rules of the Concessionaire were published on the site, where the rules for using the cards are described in items 78-80. An official check of the site found that a Privacy Policy was also published, which states what categories of personal data are processed and the purposes of processing, including the provision of a service - activation of a lift card, prevention of unregulated use of the lift card in violation of the approved General Rules. The General Rules and Privacy Policy are also published in English. In view of the above and in view of the nature of the provided service (tourist), the actions taken to notify the subjects of the processing of their personal data are sufficient.

Thus motivated and based on Art. 38, para. 4 of the Labor Code in connection with Art. 38, para. 1 of the Regulations for the activity of the CPLD and its administration, the Commission for the Protection of Personal Data

RESOLVE:

Leave appeal No. PPN-01-192/06.03.2020 filed by B.S. against "Yu." AD, without consideration as obviously unfounded. This decision can be appealed 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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