

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeal with reg. No. PPN-01-898/17.12.2020 Decision on appeal with reg. No. PPN-01-898/17.12.2020 DECISION no. PPN-01-898/2020 Sofia, 05/05/2022 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 23.03. 2022, 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 connection with the processing of personal data and on the free movement of such data (Regulation , GDPR), examined the merits of complaint No. PPN-01-898/17.12.2020 filed by S.D. 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.D., with allegations of illegal processing of her personal data by "D.K. " EOOD, with EIK *****, in connection with an employment contract registered with the National Revenue Agency (NAA), which she claims she did not conclude with the company. The complainant adds that her personal data were unlawfully processed by "D.K. " EOOD and for applying for the issuance of a Type C Control Authority Certificate for electrical systems and equipment and physical factors of the working environment by the Executive Agency "Bulgarian Accreditation Service" (IA BSA), as they were provided by the company to the agency without legal reason. The complainant points out that she discovered the violation related to the employment contract registered with the NRA at the end of November 2020, after consulting the NRA website, through PIK, and the violation regarding the provision of her personal data to IA BSA - in December 2020. , in connection with the response received by the agency. She adds that after discovering the violation, she contacted a representative of "D.K. EOOD, from which she received a copy of the employment contract registered with the National Revenue Agency, containing her personal data, but not bearing her signature. She claims that in the course of the conversation Mrs. P. - the manager of the company informed her that in October 2020 "D.K. " EOOD has concluded a contract for the sale of a certified control body with "F. " EOOD, former employer of the applicant, as in order to submit an application for the issuance of Certificate C to "D.K. EOOD, it was necessary to use the personal data from the applicant's employment file - a copy of an identity card, a diploma for completed higher education, a work certificate, "for the transfer of a Certificate from one legal entity to another", on the condition that the management staff is the same. The complainant is categorical that she has no employment-legal relations with "D.K. EOOD and its personal data were processed by the company without its knowledge and consent. Informs that since 06.01.2020 he is in employment and legal relations with "R.K.G. Ltd., where he

holds the position of inspector for working environment factors. In this regard, she adds that, in view of the specifics of her position, it is inadmissible and incompatible to exercise the same or identical activity in another enterprise, a circumstance which she declared to her employer - "R.K.G. Ltd. He asks the committee to investigate the case. Attached to the complaint is a copy of reference No. ***** for accepted and rejected notifications under Art. 62, para. 5 of KT, employment contract No. *****, according to the inventory of "D.K. " EOOD, letter with ex. No. ***** from 10.12.2020 according to the inventory of IA BSA. In view of the principles of equality of the parties and truthfulness advocated in the administrative process, "D.K. EOOD has been informed of the administrative proceedings initiated in the case, it has been given the opportunity to submit a written statement on the allegations presented in the complaint and to present relevant evidence. In response, the company does not contest the allegations of unlawful processing of the complainant's personal data set forth in the complaint. They confirm that Mrs. S.D. did not sign the employment contract registered with the National Revenue Agency, did not start work at the Control Authority and did not participate in its activities. As the reason for their actions, they point to the "incorrect regulation in item 5.3.2 and item 2.7.5 of the BAS QA 2 Procedure of the IA BSA" on the occasion of which they claim that "The transfer of the BAS from one legal entity to another is done with a notarized a purchase and sale agreement, with which, in addition to everything else, you also buy staff" and add that "following the instructions for the implementation of BAS QA 2 they have committed violations". They ask the commission to disregard the complaint, as unfounded, as far as the company's actions did not damage the prestige of the complainant and actions were taken to cancel the contract that same month, after a meeting with Mrs. S.D. contact by phone. Relevant evidence is attached to the opinion, including a certified copy of: employment contract No. *****, according to the inventory of "D.K. " EOOD, transfer protocol dated 12.06.2020 between "F. " EOOD and "D.K. " EOOD and the purchase and sale agreement concluded between the companies on 12.06.2020. In the course of the proceedings, the NRA requested and presented a certificate of employment contracts registered in the NRA with S.D. The NRA informs that the person has data on submitted notifications under Art. 62, paragraph 5 of the Labor Code for an employment contract concluded with "D.K. EOOD, as follows: 1. for an employment contract concluded on 17.07.2020, canceled on 04.11.2020 and 2. for an employment contract concluded on 01.11.2020, canceled on 27.11. 2020. 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 GDPR. In order to exercise its powers, the commission must be validly referred. The complaint contains the required details: details of the complainant, the

nature of the request, date and signature, the passively legitimized party is indicated and the date of detection of the violations, so the complaint is regular. The subject of the complaint are allegations of unlawful processing of the complainant's personal data by "D.K. EOOD in connection with an employment contract registered in the NRA dated 01.11.2020 containing three names, social security number and level of education of the applicant, the same personal data, given the fact that by means of them the person can be indisputably individualized. The Commission was notified on 17.12.2020, less than two months after the alleged violation was committed, which makes it necessary to conclude that the complaint was filed within the period under Art. 38, para. 1 of the Labor Code. The subject of the complaint are also allegations of unlawful provision of the complainant's personal data - names, education and specialty - diploma of completed higher education and work certificate, to the IA BSA for the purposes of the issued to the company Certificate for Control Authority C for electrical devices and facilities and physical factors of the work environment. The Commission was notified on 17.12.2020, less than a month 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, as far as it can be seen from the attachments to the file, the response from IA BSA that the personal data were provided on 26.11.2020, a circumstance about which the complainant was notified on 10.12.2020. The complaint was filed by a natural person with a legal interest against a proper party - administrator of personal data, such as the title "D.K. EOOD indisputably owns within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679 in relation to the applicant, given the evidence collected in the case file and the fact that it is a legal entity that only determines the purposes and means of processing personal data. 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. For the stated reasons and given the absence of the negative prerequisites specified in Art. 27, para. 2 of the APC, at a meeting of the commission held on 26.01.2022, the complaint was accepted as admissible and the following were constituted as parties to the proceedings: complainant - S.D. and respondent - "D.K. EOOD. An open hearing is scheduled to consider the merits of the appeal on 23.03.2022 at 1:00 p.m., of which the parties are regularly notified. A copy of the written opinion expressed by the

defendant has been provided to the complainant for perusal. In order to clarify the case from a factual point of view, the IA BSA requested a certified copy of a letter with No. ***** from "D.K. EOOD, together with its annexes, including annex BAS QA 2.7.5 of 26.11.2020, with deleted personal data of persons other than the applicant, as well as a reference to provided documents/records for the transfer of granted accreditation to an Authority for type C control under "F. " EOOD of "D.K." EOOD concerning the person S.D., including a certified copy of submitted application BAS QA 2.7.5 dated 15.06.2020 according to addressed to Mrs. S.D. answer ext. No. ***** from 10.12.2020 according to the inventory of IA BSA. The agency has been notified of the position of the company and the allegations that the committed violation is due to the "incorrect regulation item 5.3.2 and item 2.7.5 of the BAS QA 2 Procedure of the IA BSA"., In response and with an accompanying letter *** ** IA BSA has attached the required documents. An attitude was taken regarding the company's claims about the reason for the committed violation, for which the CPLD was referred. In this regard, the IA BSA points out that the allegations of "incorrect" regulation of the Agency's procedures are completely unfounded. They believe that it is a vicious and completely incorrect interpretation of the Accreditation Procedure /BAS QR 2/ and shows both the deep ignorance of it and the complete ignorance of the accreditation processes on the part of "D.K." EOOD. They inform that at the time of operation of the Accreditation Procedure /which is alleged to be illegal/, and at the present moment, IA BSA has a confirmed status and an effective multilateral agreement for mutual recognition both by the European Accreditation Organization and by other international organizations in the field of accreditation. They add that according to item 7.1 of the Accreditation Requirements described in EN ISO/IEC 17011:2017, the general requirements for accreditation of conformity assessment bodies should be those defined in the relevant international standards and/or other regulatory documents for the functioning of the bodies for conformity assessment. The personnel requirements for any person who wishes to obtain accreditation /regardless of whether he is an applicant for initial accreditation, an applicant for re-accreditation or an extension of the scope of accreditation, or an applicant for accreditation in an accreditation transfer procedure/, are related precisely to the application of international standards specified explicitly in Regulation /EC/ 765/2008. The peculiarities of the applicable regulatory framework determine imperatively that the criteria and conditions for the transfer of accreditation, including the rules laid down in this regard, regarding specific personnel requirements, both of the accredited person and of the person who wishes to have the accreditation transferred to him, can be subject to assessment only and only by the recognizing organizations (EA) and in accordance with the procedure defined in the Regulation. On the other hand, and according to Regulation /EC/ 765/2008, and

according to ZNAOOS, the only competent authority on the territory of the Republic of Bulgaria in the field of accreditation, respectively, and transfer of accreditation, always including assessment of compliance with certain harmonized standards and their specific requirements for the staff of the OOS and the accredited person, is the Executive Agency of the Bulgarian Accreditation Service. They are categorical, "neither in the ZNAOOS, nor in the accreditation procedures, nor in any of the provisions regulating personnel requirements, neither the "sale" of the OOC nor the "sale" has ever been and has not been regulated anywhere " on staff! At the committee meeting held on 23.03.2022, the complaint was examined on its merits. The parties - regularly notified, do not appear, do not represent themselves. 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 given the evidence collected and the allegations made, the commission accepts that the substantively reviewed complaint No. PPN-01-898/17.12.2020 is well-founded. The subject of the complaint are allegations of unlawful processing of the complainant's personal data by "D.K. " EOOD in connection with an employment contract registered with the National Revenue Agency dated 01.11.2020 containing three names, social security number and address of the complainant. The subject of the complaint are also allegations of unlawful provision of the complainant's personal data - names, education and specialty - diploma of completed higher education and work certificate, for the purposes of issuing to the company a Type C Control Authority Certificate for electrical systems and equipment and physical factors of the work environment. The factual situation is not in dispute between the parties - the applicant has no employment-legal relations with "D.K. " EOOD, did not provide her personal data to the company, did not sign the employment contract registered with the NRA, did not start work at the Control Authority of type C for electrical systems and equipment and physical factors of the working environment of "D.K. EOOD and did not participate in its activities, the latter confirmed in a written statement of the company to the CPLD. However, despite the above, the data in the file testify to the processing of the applicant's personal data by "D.K. " EOOD for an employment contract drawn up dated 01.11.2020, with parties employer "D.K. EOOD and employee S.D., containing three names, social security number and address of the complainant. Although the employment contract was not signed by the employee, the company submitted a notification to the National Revenue Agency on the basis of Art. 62, para. 5 of the Labor Code, for its registration, and it should be noted that the employment contract was deleted at the initiative of the company. In the course of the proceedings, processing of the applicant's personal data by "D.K. EOOD in the hypothesis of providing them to the National Revenue Agency for registration and of another

employment contract between the parties, with a date of conclusion of 17.07.2020, deleted on 04.11.2020, again at the initiative of the company. The processing of the applicant's personal data for the registration of employment contracts in the National Revenue Agency is illegal and in violation of Art. 6, § 1 of the GDPR. The order and content of the notification under Art. 62, para. 5 of the CT, the same regulated accordingly by Ordinance No. 5 of December 29, 2002, issued by the Minister of Labor and Social Policy. According to the cited acts, the notification contains data about the worker and the employee in a volume of three names and a single civil number, the same personal data about the individual given the fact that the person can be indisputably individualized. The claims of the complainant that her personal data were processed by the company without her knowledge and consent for the purposes of the employment contract and were provided to the National Revenue Agency for its registration are not disputed by the respondent. In this regard, and given the categorical statements of the complainant that she did not conclude such a contract, it follows that there is no consent of the data subject for the processing of his personal data for the purposes of the contract. There is no evidence to justify the legality of the processing based on a contract concluded between the parties for the implementation of any necessary processing of personal data of Mrs. S.D. or to take steps at the data subject's request prior to entering into the contract. There is also no legally established obligation of the company, as an employer and insurer, which in this case it undoubtedly does not possess in relation to the applicant, to submit notifications to the National Revenue Agency under Art. 62, para. 3 of CT containing personal data of Mrs. S.D. In the specific case, none of the other conditions for admissibility of the processing are present. Evidence to the contrary has not been engaged and is not asserted by the defendant company, which indicates that there is no labor-legal relationship between the parties. The hypothesis of the existence of a legitimate interest of the administrator which is superior to the interest of the affected natural person is inapplicable. The remaining conditions are irrelevant - they are applicable in other, different and incompatible with the present hypotheses concerning the processing of personal data for the protection of vital interests related to the life and health of the data subject or the performance of a task of public interest, as well as in the exercise of official powers, which in the present proceedings have not been found to have been delegated to the company. An analysis of the collected evidence leads to the conclusion that the applicant's personal data were processed in violation of Art. 6, § 1 of the Regulation, without any of the conditions specified in the regulation for the legality of the processing being present, as the rights of the person referred to the CPLD were violated. Violation of Art. 6, § 1 of the GDPR has also been established in relation to the provision of the personal data of the complainant by "D.K." EOOD of IA BSA for application in the Accreditation

Procedure for issuing a Certificate for Control Authority C for electrical systems and equipment and physical factors of the working environment. Personal data of the applicant in the amount of names, education and specialty - diploma for completed higher education and work certificate, were processed in the hypothesis of use and provision by the company of IA BSA on 26.11.2020. The processing is illegal, without presence to any of the prerequisites under Art. 6, § 1 of the GDPR, given the factual situation established in the case and the fact that the applicant does not have employment-legal relations with "D.K. " EOOD, did not provide her personal data to the company, did not start work in the Control Authority of "D.K. EOOD and did not participate in its activities. The company's claims that the committed violation is due to the "incorrect regulation in item 5.3.2 and item 2.7.5 of the BAS QA 2 Procedure of the IA BSA" and the fact that "the transition of the OOS from one to another legal entity becomes a notarized purchase-sale contract, with which, in addition to everything else, you also buy personnel". There are no instructions or a legally regulated procedure in the sense put forward by the defendant, and it should rather be assumed that in this case it is a matter of ignorance and/or misinterpretation of the provisions regarding accreditation, an opinion that is also shared by IA BSA. In this regard, it cannot be assumed that the processing of personal data for the applicant by the company in an accreditation procedure is necessary for compliance with a legal obligation that applies to the administrator, and the view of the existence of a preferential legitimate interest of "D.K. EOOD above the interests of the subject of personal data. Contrary to the defendant's claims, although the data were provided to IA BSA within the framework of a statutory procedure, their processing by the company is illegal given the lack of valid contractual relations between the company and Mrs. S.D. This circumstance is fully known to the company at the date of application for accreditation procedure, which leads to the conclusion that the company's actions are purposeful and deliberate (intentional), aiming to mislead the accreditation body - IA BSA. Due to the nature of the detected violations and in the conditions of operational autonomy, the commission considers that in view of the established factual situation and the evidence collected in the file, the measures under Art. 58, § 2, letter "a", "c", "e", "e", "g", "h" and "j" of Regulation EU 2016/679 are inapplicable, and the imposition of corrective measures under Art. 58, § 2, letters "b" and "d" of the GDPR is inappropriate and disproportionate to the violations and the circumstances in which they were committed by the administrator. It considers the large volume of processed personal data to be appropriate, dissuasive and proportional, given the severity of the violations data and the fact that they are complete and purposeful, the involvement of the company's administrative-criminal liability with the imposition of a pecuniary sanction for violation of Art. 6, § 1 of the GDPR. When determining the type and amount of the corrective measure imposed on the administrator, the

commission qualifies as aggravating the circumstances that it concerns three violations committed by the administrator, the processed personal data is in large volume, the violations have been completed, the actions of the administrator are purposeful and conscious, and the violations became known to the CPLD as a result of referral by the victim. As mitigating factors, the commission considers the following circumstances: it concerns a violation of the rights of an individual; until now, in relation to the administrator, CPLD has not exercised corrective powers; actions have been taken to stop the violation regarding employment contracts registered in the NRA - on the initiative of the company, notices to cancel the contracts have been submitted to the NRA; the company is a micro-enterprise within the meaning of art. 3, para. 3, item 1 of the Law on Small and Medium Enterprises insofar as the announced average number of personnel is less than 10 people, namely 3 people, and the total value of assets, according to the last published report for 2020, amounts to BGN 10,000. The circumstances under Art. 83, § 2, letters "b" and "i" of the Regulation are irrelevant insofar as it concerns an administrator - a legal entity that does not constitute guilt, and at the time of the offense approved codes of conduct, respectively approved certification mechanisms are not introduced.

Based on the above considerations, the commission considers that, in view of the principle of proportionality between the severity of the violation and the amount of the penalty, the imposed sanction should be in the amount of BGN 5,000 (five thousand BGN) - an amount around the minimum and well below the average provided for in the regulation on this violation. Taking into account the purpose of the punishment, which should have a deterrent and warning function, the nature and severity of the violation, the public relations it affects, the categories of personal data affected, the commission considers that the corrective power exercised in terms of type and amount undoubtedly meets the requirements of the LLPD and Regulation 2016 /679 effectiveness and deterrent effect, while at the same time not violating the principle of proportionality and the requirement of proportionality.

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:

1. Declares complaint No. PPN-01-898/17.12.2020 as well-founded.
2. Based on Art. 83, § 5, letter "a" in connection with Art. 58, § 2, letter "i" of Regulation EU 2016/679 imposes on "D.K." BGN) for violation of Art. 6 § 1 of the Regulation.

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 entry into force of the decision, the amount of the imposed penalty should be transferred by bank transfer:

BNB Bank - Central Bank, IBAN: BG18BNBG96613000158601

BIC BNBBGGSD

Commission for Personal Data Protection, BULSTAT 130961721.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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