

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-74/25.01.2021 Decision on appeal with reg. No. PPN-01-74/25.01.2021 DECISION no. PPN-01-74/2021 Sofia, 07/07/2021 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 19.05.2021, 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 the merits of complaint No. PPN-01-74/25.01.2021, filed by A.I., G.T. and G.Ya. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The complainants indicate that they were posted to the District Court - B on the basis of an order. On 21.05.2020, a request was filed in the High Judicial Council by RS B. to terminate the order for posting. On 31.07.2020, judge A.I. made a request to the chairman of the RS B. with a view to realizing his right to information and realizing the protection of his personal data, as well as on the occasion of pending information in the space that the request was handed over to an individual by the president of the court, which individual has deposited in the registry of the SJC. He requested to be provided with a reference for the postal operator with which the request was sent to the SJC. In the event that a postal operator was not used, an answer should be given by which means the request was sent to the SJC. No proper response was given to the request thus made. The complainants have reason to believe that upon delivery of the request to the addressee, the rules for processing personal data, objectified in the request for termination of the secondment order, filed on 21.05.2020 in the High Judicial Council, may have been violated, according to them, by a physical a person for whom there is no data to be a personal data administrator or a person designated by the chairman of RS B. who can process personal data and is a courier of the court or was carried out by a proper postal operator holding a proper postal license service. The complainants request that appropriate actions be taken by law to verify the legality of the actions and inactions of the administrative head of RS B. A complaint with identical content was submitted to the CPLD under the jurisdiction of the Inspectorate to the SJC. 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 has been notified of the initiation of the proceedings - District Court B. (abbreviated RS B.). The possibility under Art. 34, para. 3 of the APC for expressing an opinion with relevant evidence on the allegations presented in the complaint. The Commission received a reply that the complaint was groundless. The administrative head of RS B. indicates that on 21.05.2020 a request was addressed to the SC of the Supreme Court on the basis of Art. 80, para. 1 in conjunction with Art. 30, para. 5, item 18 of the Civil Code. He considers that the applicants are judges who are public figures

and their names are publicly known and are available in numerous documents - court acts, minutes of meetings, declarations before the Inspectorate of the SJC, etc., which are accessible to an unlimited number of persons. There is no legal obligation to store information about the method of sending the generally daily and numerous correspondence. In this regard, the court does not keep evidence of the method of sending the request to the SJC. The only evidence is the sending of the request from the court e-mail service to the SJC e-mail, which is the imposed practice for exchanging documents. RS B. indicate that the content of the request for termination of secondment, apart from the two names and the position held, does not contain any other information. It concerns judges who are public figures and whose names are generally known. From the Committee on Professional Ethics of the SJC, the CPLD received an inquiry regarding the status of the file. An answer to the inquiry was provided and information was requested as to how the request for secondment of judges was received in the SJC. The SJC states that the request from RS B. was made through the system for inter-departmental exchange. Regarding the regularity and admissibility of the complaint, the CPLD finds the following: In order to exercise its powers, the Commission should be validly referred. The considered complaint complies with the regularity requirements under Art. 29 of the APC, Art. 38a, 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 complainants; 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 data subjects 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. CPLD finds that in this case, Art. 55, paragraph 3 of Regulation 2016/679, according to which: "The supervisory authorities are not competent to supervise the processing activities carried out by the courts in the performance of their judicial functions. "The filed complaint challenges the processing of personal data, which is of a purely organizational nature, as well as the exercise of rights by a data subject. Since the allegations of committed violations do not relate to the judicial functions of the administrator, the CPLD is competent to consider the case, and not the Inspectorate at the SJC pursuant to Art. 17 in connection with Art. 38b of the Labor Code. The prerequisites for admissibility are also present under Art. 27, para. 2 of the APC. At a meeting of the Commission held on 17.03.2021, the complaint was declared

procedurally admissible and the following were constituted as parties to the administrative proceedings: complainants - A.I., G.T. and G.Ya., and the defendant - District Court B. The parties are regularly notified of the meeting of the Commission scheduled for 19.05.2021 to consider the merits of the appeal. RS B. submitted an additional statement. The administrative head of the court points out that the request to terminate the secondment of the applicants contains data that is public and available to any entity that wishes to process it and use it for public purposes. The same contains only data that was collected, processed and provided to the SJC pursuant to the ZSV, which was provided to the SJC in strict compliance with the rules of the established system for inter-departmental exchange. On 17.05.21, a request was received from one of the complainants (A.I.) to postpone the consideration of the merits of the complaint, due to his official commitment - scheduled open meetings in the General Assembly B., for which he is the reporter. A schedule for 19.05.2021 has also been presented. The following evidentiary requests have been made: 1. To request the Chief Director of DG Security to provide a video surveillance recording of the space in Courthouse B., pointing to the office of the president of the court, as well as for the space around the courthouse from the outside in all points subject to video surveillance, for the date 21.05.2020 between 08.30 a.m. and 1.00 p.m. 2. To be requested by the Chief Director of DG "Security" as well as by the SJC, to provide a video surveillance recording of the area at the entrance of the SJC and the space in front of the front office (office ground floor) of the SJC, for the date 05/21/2020 between 09:30 a.m. and 3:00 p.m. 3. To be requested by the chairman of the RS - B. a copy of the delivery book, also called the log of outgoing correspondence, for the date 20.05.2021 and the date 21.05.2020; 4. To be requested by the SJC a copy of the delivery book, also called the log of incoming correspondence, for the date 05/21/2020; 5. To be requested from the SJC a reference as to whether a request was received on 21.05.2020 ex. No. 234/21.05.2020 according to the inventory of RS – B. in original, whether this request was received and by e-mail, in which a reference should be made to reflect when the original of this request was filed in the registry of the SJC, in what order the request arrived - by mail with a letter with a return receipt, by a courier of an authorized courier service or by a private courier, as well as being reflected in the reference, whether there is a postal envelope and what is marked on the envelope as an incoming number; 6. That the postal envelope received on 21.05.2020 containing the request ex. No. 234/21.05.2020 according to the inventory of RS – B.; 7. To be requested from the SJC a reference, what does the system for interdepartmental exchange include - apart from sending correspondence by fax and e-mail, what other methods does it include. At the held open session, the appellants did not appear, did not represent themselves. A procedural representative appears for the defendant. Objected to the request for

adjournment of the substantive examination. It indicates that the procedural letter, which is the subject of the complaint, was sent by email to a designated address, which was specified in the communication between the RS B. and the Supreme Court, when it comes to the relevant files under the ZSV. This is the usual practice. In essence, it supports the presented arguments and considers the appeal unfounded. CPDP leaves the request for postponing consideration of the merits of the appeal without respect. As indicated by the representative of the defendant, there are three applicants in this case, only one of them requested a postponement, and there is no evidence that the others were prevented from participating. In addition, there is no evidence that a procedural representative of the appellant who requested the postponement was also prevented from participating in the CPLD meeting. To the extent that attendance at a CPDP meeting is not mandatory, there are no grounds for postponing it. The AI-made evidentiary requests are also disregarded. CPLD finds that the necessary information and evidence have been gathered to clarify the disputed fact - how was the request to terminate the secondment sent to the SJC. In support of RS B.'s claim that the request was sent by e-mail, electronic records of the e-mail were presented. In order to confirm this fact, information was requested from a third party not participating and not interested in the proceedings - the addressee of the request - the Supreme Judicial Council. The SJC also states that the request was received through the internal departmental system. Since all the collected evidence points unequivocally to one conclusion – that the request was sent by the court to the SJC through an internal departmental way, and not through a third party external to the court, it is not necessary to collect additional evidence. In addition to the above, requiring video camera recordings would hardly lead to the establishment of facts in the file, as a very good resolution is needed to establish what document is being transferred. For the other issues, information has already been requested from the SJC on the case. With this established, the Commission examined the complaint on its merits, accepting it as unfounded based on the following:

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 fundamental rights and freedoms of natural persons, and in particular their right to protection of personal data.

On the factual side, it is not disputed that the administrative head of RS B. sent to the Judicial College of the SJC a request to terminate the secondment of judges from 21.05.2020, among which are the appellants.

From a legal point of view, there is no dispute that the processing of personal data for the purposes of sending a request to

terminate a secondment is lawful on the basis of Art. 6, paragraph 1, letter "e", proposal second by Regulation 2016/679 – for the exercise of official powers conferred on the controller. According to Art. 65 of the Civil Code, all courts are legal entities of budgetary support and are represented by the administrative head or another designated person. According to Art. 30, para. 5, item 18 of the ZSV, the judicial collegium terminates the secondment of a judge to another body of judicial power than the one in which he holds the corresponding judicial position by state, when during the secondment there are violations of the conditions and order provided for in this law, or if necessary for staffing, the work of the judicial authority from which the judge is seconded. On the basis of these provisions, the representative of the court requested the personnel authority of the judiciary to terminate the secondment.

Two allegations of committed violations by RS B are derived from the complaint.

The first allegation of violation is whether a request to terminate an order for the posting of judges from RS B. to OS B., containing personal data of the applicants, filed on 21.05.2020 in the SJC was made by a natural or legal person who is not a duly appointed court clerk or a licensed postal operator.

Given the fact that the request itself was made on a valid basis, in this case it is claimed that the court did not take the necessary technical and organizational measures to ensure an appropriate level of personal data security, as the request containing personal data was sent through a third party to the court, a person who is not also a licensed postal operator, thereby allowing unauthorized processing - access to the data by this third party.

As stated, from the submitted electronic records of sending the request for termination of secondment by e-mail and from the reference requested by the SJC, it is established that the request for termination of secondment was sent through the internal departmental system. In this sense, the claim of the applicants that their personal data became available to a third party is unfounded.

In addition to the above, the request for posting only contains the names and titles of the applicants. As indicated by RS B., the applicants are public figures and this amount of personal data (names and positions held) is published many times – in minutes of court hearings, in minutes of the SJC, on the court's website, which is why they do not enjoy increased protection . The second allegation of violation is that on 31.07.2020, Judge Ivanov made a request to the chairman of RS B., with a view to realizing his right to information and realizing the protection of his personal data, given the information that the request to terminate the secondment is handed over to a natural person to deposit it in the SJC. There was no response to the request.

Indeed, Art. 15 of Regulation 2016/679 provides the data subject with the possibility to make a request to the personal data controller and to obtain the information provided for in the said article.

Attached to the file is the request of A.I. with entrance No. 554/31.07.2020 according to the inventory of RS B. The request to the court is formulated as follows: "Please give me a reference with which postal operator the request was sent to the SJC. If a postal operator was not used, please provide an answer by which means the request was sent to the SJC."

From the cited request, as well as from the entire application, it is in no way possible to reach the conclusion that a right related to the processing of personal data under Regulation 2016/679 and the GDPR is being exercised. Therefore, the same is not subject to substantive consideration by the CPLD and the supervisory authority cannot engage the responsibility of the administrator in accordance with Regulation 2016/679 and the CPLD.

Thus motivated and based on Art. 38, para. 3 of the Personal Data Protection Act, the Commission for the Protection of Personal Data

RESOLVE:

Announces complaint No. PPN-01-74/25.01.2021 filed by A.I., G.T. and G.Ya. against the District Court B., for being 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 B.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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