

Home » Practice » Decisions of the CPLD for 2021 » Decision on appeal with reg. No. PPN-01-1062/31.12.2018 Decision on appeal with reg. No. PPN-01-1062/31.12.2018 DECISION no. PPN-01-1062/2018 Sofia, 02.02.2021 The Commission for the Protection of Personal Data ("the Commission"/"KZLD") composed of: Chairman - Ventsislav Karadjov and members - Maria Mateva and Veselin Tselkov, at a regular meeting held on 04.11.2020, 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 Reg. No. PPN-01-1062/31.12.2018, filed by S.I. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The complainant informs that the defendants in the complaint processed her personal data, which became known to them due to the service they perform: junior inspector D.G. - commander of a department in the Sofia prison, senior commissar P.P. - head of the same prison and M.G., performing "head of regime activity" and legal consultant before that. D.G. provided her personal data by compiling a report with false allegations about her and to prove his allegations he provided her three names and occupation to an inmate with which to write a denunciation against her. M.G. has prepared the report and the explanations as a file and sent it to the Sofia Bar Council as a report. P.P., after familiarizing himself with the file, resolved it with an order to send it to the Sofia Bar Association. Mrs. S.I. notes that the three of them gained access to her data due to their official capacities, but used them unlawfully by providing them to third parties - the incarcerated I.P. and the Sofia Bar Council and College, without her knowledge or consent. With these actions, they violated the provision of Art. 5, para. 2, item 4, b. "b" from ZZLD. In view of the above, the applicant asks the Commission to issue a decision to declare the actions of the three civil servants, who violated the provisions of the Labor Code, to be illegal and to impose the maximum sanctions provided for in it, given the guilt of the perpetrators who processed her personal data, acquired through business for personal purposes. At a closed meeting of the CPLD, held on 29/05/2019, the complaint was deemed procedurally inadmissible due to the fact that the complaint was directed against individuals who are not personal data controllers. The decision of the CPLD has been challenged in court. By Decision No. ***1 of 27.11.2019 under the adm.d. No. ****1/2019 of the Sofia City Administrative Court, the appeal against the contested administrative act was rejected. With Resolution No. ***2 dated 28.04.2020 under Adm.d. No. ****2/2020, the first-instance decision was canceled and another was issued instead, which annuls the decision of the CPLD and the file is returned to the CPLD for continuation of the administrative proceedings. The reasons for the return are that there is no obligation to name a defendant in the proceedings before the CPLD. By indicating the official capacity of the persons named in the complaint, the complainant has in fact also indicated the

administrator on whose behalf they acted. In the conditions of the official beginning laid down in the administrative process and in fulfillment of Art. 26 of the APC, the interested organization - Main Directorate "Execution of Penalties" (GDIN) was notified of the initiation of the proceedings. The complaint is directed against actions of employees of the Prison - Sofia. According to Art. 12, para. 3 of the Law on Execution of Sentences and Detention in Pretrial Detention (ZINZS), prisons are territorial offices of the Main Directorate "Execution of Sentences", which in turn is a legal entity of budgetary support (par. 2 of the same article). Therefore, the controller of personal data in this case is GDIN. The GDIN is given the opportunity under Art. 34, para. 3 of the APC for expressing an opinion with relevant evidence on the allegations made in the complaint. A procedural representative of the administrator declares that the claim is unfounded or unproven. In the case under consideration, the State Department of Internal Affairs acted under the terms of Art. 4, para. 1, item 1 of the GDPR, namely the processing of personal data is necessary for the fulfillment of a legally established obligation under Art. 194 of the APC. He believes that the mentioned two signs - three names of the person and her profession - are not sufficient for individualization. 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 and under Art. 30, para. 1 of the Regulations for the Activities of the Commission for the Protection of Personal Data and its Administration (PDKZLDNA, as amended by SG No. 10 of 2016) - there are data on the complainant, the nature of the request, date and signature. The complaint is procedurally admissible - filed within the time limit under § 44, para. 2 of the PPR of the AZLD 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. At a closed meeting of the CPLD held on 08.07.2020, the complaint was declared procedurally admissible. The appellant S.I. was constituted as parties. and respondent General Directorate "Enforcement of Penalties". The parties have been regularly notified of the open meeting scheduled for 23.09.2020 to consider the dispute on its merits. An additional opinion was received from the State Department of Internal Affairs. Attached to it are 5 job descriptions and explanations from His Holiness. I.P. It is indicated that, as can be seen from the job descriptions of the employees, the actions they took are legally established and the same are an expression of the activity they perform. Given the impossibility of appearing for the scheduled meeting and the desire for personal presence, at

the request of the complainant, the examination of the complaint was postponed to 04.11.2020. At the held open meeting, the parties did not appear or represent themselves. With this established, the Commission considered 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 personal data their 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, in particular their right to protection of their personal data. The subject of the complaint under review is an allegation of unlawful processing of the complainant's personal data by providing them to a third party for the purposes of drawing up explanations, as well as their use and transfer for referral to the Supreme Bar Council with a report. As can be seen from the evidence submitted to the complaint, after a visit by Adv. S.I. in the Prison - Sofia on 01.10.2018, documents were prepared regarding an alleged conflict with the complainant - report notes and explanations, which were formatted as a signal and sent to the High Bar Council. The actions carried out by the prison administration constitute the use and disclosure through transmission of personal data, which constitute personal data processing operations within the meaning of Art. 4, item 2 of Regulation 2016/679. In order for the processing to be lawful, the same should be carried out in the presence of any of the conditions for admissibility of the processing under Art. 6, paragraph 1 of Regulation 2016/679. Processing of personal data in the investigated case should be considered through the professional capacity of the complainant - a lawyer. Legal activity is subject to special regulation. In Art. 136, para. 1 of the Law on the Bar (ZAdv.) provides that: "Disciplinary proceedings are initiated by a decision of the Bar Council or the Higher Bar Council upon written communication from state bodies, legal entities or individuals, as well as author publications in the media in which contain sufficient data for a committed disciplinary violation." Therefore, the state authorities (such as the GDIN) are given the legal opportunity to refer in writing to the Supreme Bar Council in case of an alleged disciplinary violation committed by a lawyer. The exercise of the authority granted by law to an administrator-public body is grounds for processing personal data under Art. 6, paragraph 1, letter "e", proposal second of Regulation 2016/679, which is why the processing is lawful and the allegation of violation is unfounded. Providing the three names and professional quality of the applicant to a third person - deprived of liberty, for writing explanations, is unproven and unfounded. As can be seen from the explanations presented by the incarcerated I.P., the latter knows the names of Adv. S.I. by other inmates and not by prison officials, therefore the allegation of providing personal data is unproven. Even assuming that there is provision of personal data, the same is baseless. According to Art. 6, paragraph 4 of Regulation 2016/679, when

processing for purposes other than those for which the personal data were originally collected, the controller to ensure that the processing for other purposes is compatible with the original purpose for which they were collected personal data, inter alia, takes into account: a) any connection between the purposes for which the personal data were collected and the purposes of the intended further processing; b) the context in which the personal data were collected, in particular in relation to the relationship between the data subject and the controller; c) the nature of the personal data, in particular whether special categories of personal data are processed under Article 9 or personal data relating to convictions and offenses are processed under Article 10; d) the possible consequences of the intended further processing for the data subjects; e) the availability of appropriate safeguards, which may include encryption or pseudonymisation. The personal data was initially collected for the purposes of the prison transit regime. They were then processed for the purposes of preparing explanations from a third party in connection with an alleged conflict on the prison grounds, to be presented as evidence when referred to the Supreme Bar Council. On the territory of the prison, the prison administration, according to the ZINZS and the Regulations for the implementation of the ZINZS, organizes the transit regime and monitors the order, which should be observed by outsiders as well. In connection with these powers, the State Department of Internal Affairs and Communications processes personal data on the basis of Art. 6, paragraph 1, letter "e", proposal second of Regulation 2016/679 – to implement the official powers granted to it.

As stated, the legal profession is subject to special regulation. According to Art. 148, para. 1 of ZAdv. "The Supreme Bar Council maintains unified bar registers for lawyers, for junior lawyers, for law firms and for foreign lawyers." Bar registers are public within the meaning of Art. 149, para. 1 of ZAdv. Therefore, the three names and the professional capacity of the applicant are public. In the case under consideration, the same were processed specifically during and on the occasion of her professional activity.

Therefore, even assuming that personal data has been provided, the same is in accordance with the requirements of Art. 6, paragraph 4 of Regulation 2016/679, i.e. is compatible with the original purposes for which the data were collected (to organize and monitor order in the penitentiary). The initial objectives are for the implementation of granted official powers within the meaning of Art. 6, paragraph 1, letter "e", proposal second of Regulation 2016/679, therefore the processing is lawful.

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 reg. No. PPN-01-1062/31.12.2018 filed by S.I. against the General Directorate for Execution of Penalties, 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 of Sofia - city.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Maria Mateva /p/

Veselin Tselkov /p/

[Download files](#)

Decision on appeal with reg. No. PPN-01-1062/31.12.2018

[print](#)