

begining

» Practice » Opinions of the CPLD for 2022

» Opinion of the CPLD regarding the removal of data from an identity document pursuant to Art. 2, para. 3 of the Ordinance on the documents for employment in the civil service Opinion of the CPLD regarding the removal of data from an identity document according to Art. 2, para. 3 of the Ordinance on the documents for holding a civil service

OPINION

ON

COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. No. PNMD-01-25/2022

Sofia, 17.03.2022

REGARDING: Taking data from an identity document according to Art. 2, para. 3 of the Ordinance on the documents for holding a civil service

The Commission for the Protection of Personal Data (CPDP) in composition - chairman: Ventsislav Karadzhov and members: Tsanko Tsolov and Maria Mateva, at its regular meeting held on 03/02/2022, considered a request for an opinion with No. PNMD-01-25/17.02.2022 from non-profit association "Association of Data Protection Officials".

The request asks whether the removal of data from an identity document pursuant to Art. 2, para. 3 of the Ordinance on the documents for holding a civil service (hereinafter referred to as "the Ordinance") includes an action on the copying of the identity document. In addition, the association asks, if "taking" does not mean copying, how will the requirement to present an identity document (identity card/passport) to the application under Art. 2, para. 1 (Appendix No. 1 of the Ordinance).

Legal analysis:

According to Art. 8 of the Law on Civil Servants (Civil Servant Act) for taking up a civil service, a written application for appointment is submitted, to which are attached the necessary documents for the occupation of the relevant position, defined in an ordinance of the Council of Ministers.

Ordinance on the documents for holding a civil service (adopted by PMS No. 314 of 23.11.2011) was adopted on the basis of Art. 8, para. 2 of VAT Law It defines the necessary documents for the appointment of a position designated for occupation by a civil servant (civil service). In Art. 2, para. 1 of the Ordinance, it is indicated that to occupy a civil service, a written application

for appointment must be submitted according to the model according to Annex No. 1 of the same. According to para. 2 of the same article, the following are submitted to the application:

1. identity document;
2. document for educational qualification degree, specialty, qualification, legal capacity, which are required for the position;
3. a document certifying professional experience;
4. medical examination document upon initial employment, as well as when employment is terminated for more than 3 calendar months;
5. (repealed - SG No. 48 of 2018)
6. other documents certifying the fulfillment of the specific requirements for occupying the position;
7. (repealed - SG No. 48 of 2018)
8. a document for used paid annual leave, if in the same year the person worked under another legal relationship. The document is not submitted if the person has worked in the same or another administration and it can be obtained through official means.

According to para. 3 the data from the documents under para. 2, items 1, 2, 3 and 6, mentioned above, are removed and they are returned to their owners.

The rules of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR) apply to the processing of personal data in whole or in part by automatic means, as well as to the processing by other means of personal data that are part of a register with personal data or which are intended to form part of a register of personal data.

According to the legal definition specified in Art. 4, item 2 of the GDPR "processing" of personal data means any operation or set of operations performed with personal data or a set of personal data by automatic or other means such as collection, recording, organization, structuring, storage, adaptation or modification, retrieval, consultation, use, disclosure by transmission, distribution or other way in which data is made available, arrangement or combination, restriction, erasure or destruction. As can be seen from the definition, it does not exhaustively list the operations that can be performed in the processing of personal data.

With the amendment and supplement of the Personal Data Protection Act (PAPA) (SG No. 17 of 2019), the legislator provided that an administrator or personal data processor may copy an identity document, a motor vehicle driving license or a document

for residence only if this is provided for by law (Article 25d of the Labor Code).

The systematic interpretation of the concept of "snapping" as a personal data processing operation should be considered in view of the nature, scope, context and purposes of the specific processing. Traditionally, Bulgarian legislation specifies the actions and operations that can be carried out to implement the so-called "shooting", such as:

- taking of identity according to Art. 170 of the Civil Procedure Code (CPC);
- taking a copy of an official identity document under Art. 53 of the Law on Measures Against Money Laundering (AML);
- taking fingerprints under Art. 71 of the Law on the Ministry of Internal Affairs (MIA), etc.

In the specific case, the Ordinance explicitly states in Art. 2, para. 3, that the relevant documents are "data removed" and the same are returned to their owners, and there is no indication in the provision for copies to be made or for such to be retained/stored by the appointing authority. This necessitates the conclusion that when submitting an application for appointment, the person presents<sup>1</sup> his identity document for the purpose of checking his identification data filled in by him in the application, resp. their reflection in the appointment documentation, without, however, the same being copied and stored by the appointing authority. This conclusion is supported by the permanent practice<sup>2</sup> of the CPLD, according to which the processing of personal data, by collecting and storing a copy of an identity document for the purpose of establishing an employment or service relationship, is inadmissible. This is because, through these operations, the administrator (employer/appointment authority) processes personal data that is not traceable to him (e.g. the photograph and height and eye color data), which in turn constitutes a violation of the processing principles of personal data promulgated in Regulation (EU) 2016/679, and before that in the Directive 95/46/EC repealed by it.

Considering the above, it can be reasonably concluded that the copying or reproduction in any other way of the image of the documents under Art. 2, para. 2, items 1, 2, 3 and 6 of the Ordinance, is inadmissible.

In the context of the present case, it is important to mention the provision of Art. 25k, para. 2 of the Labor Code, according to which, when in the recruitment and selection procedure, the employer or the appointing authority has requested the submission of originals or notarized copies of documents certifying the applicant's physical and mental fitness, the necessary qualification level and experience for the position held, he is obliged to return these documents to the candidate (data subject) who is not approved for appointment, within 6 months from the final completion of the procedure, unless a special law provides otherwise. Here, the fact that the civil servant is appointed according to the special rules and procedures regulated in the ZDSI

and the Ordinance on conducting competitions and selection in the case of mobility of civil servants (NPKPMDS) should also be taken into account, which stipulates that the appointing authority must keep in the archive of the administration, all documents that are related to the conduct of the competition, within the terms determined in accordance with Art. 43 of the Law on the National Archives Fund (Article 5, Paragraph 2 of the National Archives Fund).

For these reasons and on the basis of Art. 58, par. 3, b. "b" of Regulation (EU) 2016/679 in conjunction with Art. 10a, para. 1 of the Personal Data Protection Act and Art. 51, item 2 of the Regulations for the activities of the CPLD and its administration, the Commission for the Protection of Personal Data expresses the following

#### OPINION

The copying or reproduction in any other way of the image of the documents under Art. 2, para. 2, items 1, 2, 3 and 6 of the Ordinance on the documents for employment in the civil service, as well as the storage of their copies, is inadmissible, insofar as in Art. 2, para. 3 of the same clearly states that data is removed from them, not copies, and then the documents are returned to their owners.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

1 Not by chance in Art. 2, para. 2 of the Ordinance, the verb "presents" is used, not "applies".

2 Decisions, mandatory prescriptions and other acts of the CPDP in this sense can be found in the "Practice" section of its official website: <https://www.cdpd.bg>

Download files

Opinion of the CPLD regarding the removal of data from an identity document pursuant to Art. 2, para. 3 of the Ordinance on the documents for holding a civil service

print