

Home » Practice » Decisions of the CPLD for 2022 » Decision on appeals PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020, PPN- 01-580/12.08.2020 and PPN-01-581/12.08.2020. Decision on complaints PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020, PPN-01-580/12.08.2020. and PPN-01-581/12.08.2020. DECISION No. PPN-01-557/2020 Sofia, 05/05/2022 The Commission for the Protection of Personal Data (PCPD) composed of: Chairman: Vencislav Karadjov and members: Tsanko Tsolov and Veselin Tselkov at a meeting held on 02/02/2022 d., 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 complaints PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020, PPN-01-580/ 12.08.2020 and PPN-01-581/12.08.2020 submitted respectively by N.B., A.L., Z.V., B.G. and V.I. Administrative proceedings are in accordance with Art. 38 of the Personal Data Protection Act (PAPA). The Commission for the Protection of Personal Data has been referred with complaints No. PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020, PPN-01-580/12.08.2020 and PPN-01-581/12.08.2020 submitted respectively by N.B., A.L., Z.V., B.G. and V.I. with identical allegations presented, namely for illegal processing of personal data by their neighbor R.M., in the hypothesis of video surveillance carried out by means of cameras mounted on the facade of his house, located in the town of N. The complainants claim that within the scope of video surveillance public places fall - streets and other people's properties. They believe that their rights under the GDPR and GDPR have been violated to the extent that they were monitored and recorded without their consent. They ask the commission to investigate the case, dismantle the cameras and sanction Mr. R.M. for the offense committed. No evidence was attached to the complaints. According to the principles of equality of the parties in the proceedings and truthfulness, R.M. has been notified of the filed appeals, and has been given the opportunity to submit a written statement and relevant evidence. In response, an opinion was expressed about the unfoundedness of the complaints, with arguments that the processing of personal data by means of video surveillance is lawful - necessary for the purposes of the legitimate interests of his family, namely the protection of his property and yard, as far as he and his wife are agricultural producers and grows year-round agricultural produce for the market in his yard. He claims that the installed three video surveillance cameras "are aimed at the yard space and the fence walls" of his property, and the same were installed after an encroachment on the property by the appellants N.B. and A.L. Disputes claims that cameras are targeting and filming public places and other people's property. In

support of his claims, he attached a copy of the Certificate of Registration in the Official Registry for Photosanitary Control No. BG-SML 0280 and the Registration Card for a Farmer issued by the Ministry of Agriculture, Food and Forestry, Notification to the Police Station - Zlatograd with entry No. 3710002662/17/08/2020, outgoing image from the three cameras and image of the location of a camera placed by N.B. In order to clarify the case from a factual point of view, an inspection was carried out on the subject of the complaints, the results of which are objectified in Constitutive act PPN-02-507/22.10.2021, with annexes to it, including the Constitutive protocol of 23.06.2021 d., graphical representations of the location and range of the cameras and a completed questionnaire. The on-site inspection was opened on 23.06.2021 at the address: town of N., in the presence of R.M. The inspection found the following: At the address indicated in the complaints, there is a regulated land property according to the plan of the city of N. with a built residential building - a house with 3 (three) floors along with an attic and a basement, secondary buildings and a yard. The property has 2 (two) entrances from the west and from the north side. The house was built adjacent to the property of one of the applicants - N.B. The video surveillance system was built on the site, consisting of a total of 4 (four) video surveillance cameras - 3 (three) dome cameras model HAC-HDW 1200MT and 1 (one) IP PTZ camera with an installed memory card (CD). recording device (video recorder) model XVR5104C-TX, equipped with hard disk model HDD WD Purple with a capacity of 1 TB (terabyte) and other embedded components (cables, chargers, electrical boxes, connectors, etc.). The video recorder is located in an isolated room with controlled access in the residence of R.M. and is connected to a TV. The video surveillance system is connected to a local computer network built in the residence of R.M. Attached to the statement of findings is the Acceptance-Transmission Protocol Reg. No. 079-T/28.07.2020, containing a technical description of the built video surveillance system. The video surveillance system was built in July 2020 by the company "A.T. OOD, EIK: *****". The basis for the video surveillance is a preventive security activity for the family, home and property of R.M. Video frames are recorded on the hard disk in the video recorder and in the memory card installed in the PTZ camera for a period of about 40 (forty) days, after which the recordings are automatically deleted in the order of their arrival. Access to the built-in video surveillance system, including maintenance and settings, the output image from video cameras in real time and recordings with video frames on the hard disk in the recorder and memory card, is carried out only by R.M., including remotely - by means of specialized software installed on his mobile phone, after entering identification attributes - username and password, status and known to the same. The company "A.T. OOD, which built the video surveillance system, has no rights to uncontrolled access to it. Spatial location and shooting range of the video cameras:

Camera 1 is installed under the terrace on the north side of R.M.'s house, it is aimed at and films the shed of his house, adjacent parts of the public road to the street, the parking lot in front of the house, the approach to the property of the applicant N.B., as well as parts of neighboring properties and buildings therein. Camera 2 is mounted on a shed next to the front door on the west side of the house, is aimed at and captures a public road to a street, the driveway and entrance to RM's property, and the space under the shed on his property. Camera 3 is mounted under the terrace on the south side of RM's house, it is aimed at and captures the southern part of his property with greenhouses, adjacent parts of the street and parts of the river. Camera 4 is mounted above the terrace on the north side of RM's house, it is aimed at and captures the shed of his house, adjacent parts of the public road to the street, the car park in front of the house, the approach to the property of the applicant NB, as well as parts of neighboring properties and buildings therein. The camera has the ability to automatically rotate and change the shooting range. The video cameras cover public areas and parts of neighboring properties. There is no transmission and recording of snapshots and video frames from the image to a remote device (FTP/Cloud server, E-mail or other data storage location). The video surveillance system allows identification of individuals. The administrator has taken technical and organizational measures to protect the data, consisting of control of physical access to the equipment and identification by entering a user name and password to access the system. There are 2 (two) information signs warning about the video surveillance of the site, and they are located at the two entrances from the west and from the north side of the property. On behalf of R.M. no documents were provided (rules, procedure, instruction or others) regulating the processing of personal data of natural persons through the thus constructed video surveillance system. 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 monitoring compliance with the GDPR and the GDPR. In order to exercise its powers, the commission must be validly referred. Complaints PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020, PPN-01-580/12.08.2020 and PPN -01-581/12.08.2020 contain the required details, namely: there are data on the complainants, the nature of the request, date and signatures, a passively legitimized party is indicated, therefore they are regular. The complaints have an identical subject - unlawful processing of the personal data of the complainants by R.M., in the hypothesis of video surveillance carried out by means of cameras installed on the facade of his house, located in the town of N., within the scope of which public places and foreign properties fall . Complaints are procedurally admissible, filed within the period under Art. 38 of the Labor Code by individuals with a legal interest against an individual R.M. - administrator of personal data within the meaning of Art. 4,

para. 7 EU Regulation 2016/679, as far as it is claimed, and an inspection by the CPLD found that the latter itself determines the purposes and means of processing personal data through video surveillance. Referred body competent to make a decision - 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, considers complaints against acts and actions of personal data controllers, which violate the rights of data subjects related to the processing of personal data, being not available the 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. There are the prerequisites of art. 32 of the APC on the unification and consideration of complaints in one general administrative proceeding, in view of the fact that the rights and obligations of the parties derive from the same factual situation, were filed against the same person and are under the competence of the same administrative body - CPLD. For the above 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 17.11.2021, the complaints were accepted as admissible and were combined for consideration in one administrative proceeding. The following are constituted as parties to the proceedings: applicants - N.B., A.L., Z.V., B.G. and V.I. and respondent, passively legitimized party – R.M. An open hearing has been scheduled for consideration of the appeals on the merits on 02.02.2022 at 1:00 p.m. The parties have been notified of an official inspection carried out in the case, a certified copy of the findings of the inspection has been sent to them for review and opinion. At the commission meeting held on 02.02.2022, the complaints were considered in substance. The parties - regularly notified, do not appear or represent themselves at the meeting before the commission. 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 considering the evidence collected and the allegations made, the commission accepts that the substantively examined complaints PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020, PPN-01-580/12.08.2020 and PPN-01-581/12.08.2020 are well founded. The subject of the complaints are allegations of unlawful processing of personal data by the defendant R.M., in the hypothesis of video surveillance carried out by means of cameras installed on the facade of his house, located in the city of N., within the scope of which public places and foreign properties fall .

According to the legal concept, video surveillance is a technical form of processing and storage of personal data within the period stipulated by the law, carried out in compliance with the requirements for the protection of personal data, including filming of persons in a guarded object and recording of the data obtained. The information contained in surveillance videos about the natural person as a whole - image, daily habits, behavioral reactions and social contacts - fall within the scope of the concept of personal data, since the person can be identified in an indisputable way. The collection and storage of personal data is a form of processing within the meaning of Art. 4, § 1, item 2 of Regulation (EU) 2016/679 and as such should be carried out in compliance with the provisions of the GDPR and the Regulation.

It is not in dispute between the parties, and from the evidence gathered in the case file it was established that the parties are neighbors, live in separate real estate in the city of N., and the defendant's house was built on a shield with the property of one of the appellants - N.B. It is also not in dispute that there are greenhouses on the defendant's property, and that Mr. R.M. and his wife are farmers and in their yard they grow agricultural produce for the market all year round.

It was established that there was a video surveillance system built in the defendant's property for the purpose of preventive security of the family, home and property of R.M. The system allows identification of natural persons.

The defendant's property is covered by video surveillance. Contrary to the claims of Mr. R.M. however, the CPLD inspection found that areas outside the administrator's property were also monitored, including public places - parts of street **, street *** and the river, the approach to the property of the applicant N.B., as well as parts of other neighboring properties and buildings in them, without the knowledge and consent of the data subjects subject to video surveillance. In the course of the administrative proceedings, no evidence was gathered that would lead to a conclusion on the application of the norm of Art. 6, § 1, b. "e" of Regulation (EU) 679/2016. Insofar as the defendant, in an opinion, justifies the placement of the cameras for security purposes, it should be noted that in reality his right is to install a video surveillance system to protect his property and property through which to process personal data of the persons entering his property, in the conditions of information through the signs placed in the property for the video surveillance being carried out. However, the preventive goal claimed by him for data processing by means of video surveillance with a scope including properties owned by others, as well as public areas, as stated in CA PPN-02-507/2021, cannot be achieved, in this regard the processing of personal data data subjects' use of public places and their own properties is excessive, thereby violating the provisions of art. 5, § 1, b. "c" of the GDPR principle of "reducing data to a minimum". The operation of processing personal data, expressed in video recording by means of these

cameras, leads to the possibility for the administrator not only to identify the persons living and visiting a property - someone else's property, and public places, but also to draw conclusions about their daily habits and contacts, as well as to store this information without having received express informed consent for this, without having a legal basis or an overriding interest, without the processing of the data being appropriate and limited to what is necessary in connection with the protection of his property.

Given the nature and type of the detected violation and the fact that the same has not been suspended, and also that the affected personal data are not sensitive within the meaning of the law and there is no evidence of damage caused by the processing, the commission considers it expedient, proportionate and effective to impose a corrective measure under Art. 58, § 2, letter "d" of Regulation EU 2016/679, finding that the same will achieve the purpose of the law - it will stop the violation and restore the established legal order regarding the processing of personal data. The remaining measures for under Art. 58, § 1, letters "a", "b", "c", "e", "f", "g", "h" and "j" of the GDPR are inapplicable and inexpedient due to the nature of the violation and the circumstance, that at the time of pronouncement the same has not been suspended. The Commission finds that insofar as the violation is the first, the imposition of a fine on the administrator would be excessive and in violation of the principle of proportionality under Art. 6 of the APC, according to which "when the administrative act affects rights or creates obligations for citizens, those measures are applied that are more favorable to them, if the goal of the law is achieved in this way." However, it should be noted, that the non-fulfilment of the commission's order, within the specified period, is accompanied by a sanction for non-fulfilment in view of its effectiveness and the possibility of an additional sanctioning mechanism for verification and control of the implementation. The goal is to achieve general prevention and proportionate and lawful processing of personal data. Thus, the orders are effective, as they are attached to the corresponding sanctions in case of non-fulfilment, and the legislator provides that in case of non-compliance with an effective order of the supervisory authority, an administrative penalty of "fine" or "property penalty" will be imposed under Art. 83, paragraph 6 of Regulation 2016/679 in amounts up to EUR 20,000,000.

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. Announces complaints PPN-01-557/03.08.2020, PPN-01-558/03.08.2020, PPN-01-579/12.08.2020,

PPN-01-580/12.08.2020 . and PPN-01-581/12.08.2020, submitted respectively by N.B., A.L., Z.V., B.G. and V.I. against R.M. for reasonable.

2. Based on Art. 58, § 2, letter "d" and for violation of Art. 5, § 1, letter "c" of Regulation (EU) 2016/679 issued an order to the administrator R.M. to stop filming other people's properties and public areas, by redirecting or repositioning the cameras in such a way that only Mr. R.M.'s property falls within their scope, and if it is impossible to dismantle them.

3. Deadline for implementation of the order - one month from the entry into force of the decision, after which to notify the commission of the implementation by presenting the relevant evidence.

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 - Smolyan.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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