

begining

» Practice » Opinions of the CPLD for 2022

» Opinion of the CPLD on the lawful processing of data on persons' labor income for the purposes of determining the amount of the deduction under garnishment imposed on a debtor's pension claim Opinion of the CPLD on the lawful processing of data on the persons' labor income for the purposes of determining the amount of the deduction for a lien imposed on a debtor's claim from a pension

OPINION

ON

COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. No. PNMD-17-37/2022

Sofia, 24.02.2022

REGARDING: Lawful processing of data on individuals' employment income for the purposes of determining the amount of the withholding tax imposed on a debtor's claim from a pension

The Commission for the Protection of Personal Data (CPDP) in composition - chairman: Ventsislav Karadjov and members: Tsanko Tzolov and Maria Mateva, at its regular meeting held on 23.02.2022, considered a request for an opinion with entry No. PNMD-17-37/04.02.2022 by the manager of the National Social Security Institute (NSI), which raises a question regarding the determination of the amount of the deduction for garnishment imposed on the debtor's claim from a pension.

The letter from the NOI states that an inquiry has been made to the Chamber of Private Bailiffs (PBA) about how to proceed in cases where a garnishment is imposed on a pension, but the garnishment notice states that the person also receives employment remuneration , without specifying the amount of the deduction. In the opinion received from KCSI, which they attached to the request, it is said that "the NOI appears to be much more informed than the bailiff and much more competent than the debtor's employer, to determine the sequesterable part of the person's income, insofar as the way to do this is clearly defined in the provision of art. 446, para. 1, item 1, item 2 and item 3 of the Code of Civil Procedure, and the information on the amount of all the debtor's incomes is submitted to the National Income Tax Office every calendar month". The KPSI concludes that in the presence of an instruction from the bailiff that the debtor also receives income for work from another source, the National Tax Agency should determine and transfer the sequesterable part, and in case of doubt about the correct application

of Art. 446 of the Code of Criminal Procedure – to request an instruction from the bailiff, and this instruction will be given with specific parameters of the income received by the person and will be valid until they change, which the NOI should indicate.

The NSI expresses concerns about the procedure described in this way, since the insurance institute is the primary administrator of the pension data, but receives the data on the individuals' insurance income from the National Revenue Agency (NAA), on a legal basis - art. 5, para. 4 in para. 6, ex. last., in the top art. 33, para. 8 of the Social Security Code (SSC), in connection with the performance of the functions assigned to the institute pursuant to Art. 33 of CSR.

The NSI claims that bailiffs are granted access to the registers in the RegiX inter-register exchange environment, including to the Register of Obligated Persons of the NRA / Reference with data on insured persons from declarations submitted under Regulation No. H-13 to the CSR and the data on insurance income contained in the same, as well as to the Register of Pensioners of the National Insurance Institute / Reference for pension income and supplement. Based on this data and in accordance with their powers under the Civil Code, bailiffs can determine the debtor's sequesterable income when imposing a pension garnishment, in cases where the debtor receives a pension and remuneration. The NSI considers that the assignment to determine the amount of sequesterable income in these cases is related to one controller of personal data processing data provided to him by another controller for purposes other than those of processing.

In view of the above, the NSI is asking the CPDP for an opinion on the legal processing of data on the labor income of individuals for the purposes of determining the amount of the deduction for garnishment imposed on the debtor's claim from a pension.

Attached to the request is the opinion of the CSIRO on the same issue.

Legal Analysis:

Part Five of the Code of Civil Procedure (CPC) – "Enforcement Proceedings" governs the procedural rules by which proceedings for enforcement of private claims are developed. In order to initiate enforcement proceedings, there must be a duly established non-fulfilment of a required obligation of the debtor, which in its essence is a legal opportunity for forced satisfaction of the creditor's possessory right to receive his claim. In particular, the determination of the so-called non-sequestrable income within the meaning of Art. 446 and Art. 446a of the Code of Criminal Procedure is an element of the complex factual structure of the proceedings for the enforcement of monetary claims.

In view of the coercive nature of this type of civil proceedings, the high degree of its legal regulation is required, and at each

stage of the procedure the powers, rights and obligations of the participants in it should be clarified in detail, which in turn is an expression of the principle of legal state, declared in art. 4 of the Constitution of the Republic of Bulgaria. In this regard, it is essential to emphasize that the processing of personal data occurs as a result of the implementation of the procedural rules introduced by the Civil Code, which should define it comprehensively and precisely with a view to guaranteeing legal certainty and stability of the executive process.

It is inadmissible that the rules for processing personal data are a prerequisite for determining and applying the procedural rules in the enforcement proceedings. On the contrary, for the processing of personal data to be admissible (which, as a rule, is not a self-serving process), it should be carried out with a certain legitimate purpose. It can be seen from the definition in Art. 4, item 7) of Regulation (EU) 2016/679 "administrator of personal data" means a natural or legal person, public body, agency or other structure that alone or jointly with others determines the purposes and means of processing personal data; where the purposes and means of this processing are determined by Union law or the law of a Member State, the controller or the special criteria for its determination may be established in Union law or in the law of a Member State. In the specific case, the administrators – both the PSI and the National Insurance Agency, have specific obligations with a view to enforcement proceedings, as the purposes and means for the processing of personal data carried out by them derive from the Code of Civil Procedure.

The question posed by NOI is not related to the legality of the processing of specific categories of personal data, but to what the procedural rules are and who is tasked by the procedural law with determining the non-sequestrable income in view of the goals of the executive process. However, resolving this issue is not within the competence of the data protection supervisory authority. Moreover, only after its resolution will it be possible to reflect on the applicable rules and requirements regarding data protection.

The CPLD is a permanent independent supervisory authority that ensures the protection of individuals in the processing of their personal data and the access to such data, as well as the control of compliance with Regulation (EU) 2016/679 and the CPLD (Art. 6 , paragraph 1 of the LLLD).

The consideration and resolution of disputes between individual administrators of personal data or the completion with an opinion of possible gaps in the current legislation, including procedural matters, do not fall within the material competence of the CPLD (arg. art. 51 and art. 55 in conjunction with art. 57 and 58 of Regulation (EU) 2016/679).

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 Personal Data Protection Commission expresses the following

OPINION:

1. The question raised by the NOI regarding the legal action to determine the amount of the deduction for garnishment, imposed on the debtor's claim from a pension, concerns the application of the procedural rules regulating the enforcement process under the Civil Procedure Code (CPC).

2. Only the court is competent to resolve the dispute arising between the NOI and the Chamber of Private Bailiffs regarding the application of these rules in the case.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

[Download files](#)

Opinion of the CPLD on the lawful processing of data on the employment income of individuals for the purposes of determining the amount of the deduction due to a lien imposed on a debtor's claim from a pension

[print](#)