

Home » Practice » Opinions of the CPLD for 2022 » Opinion of the CPLD on the legality of the processing of personal data by means of video recording in the conduct of oral exams for competitions for initial appointment in the judicial authorities Opinion of the CPD on the lawfulness of the processing of personal data by video recording during the conduct of the oral exams for the competitions for initial appointment in the bodies of the judiciary OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA reg. No. PNMD-01-27/2022 Sofia, 04/06/2022 REGARDING: Lawfulness of the processing of personal data by means of a video recording during the conduct of the oral examinations for the competitions for initial appointment in the bodies of the judiciary The Commission for the Protection of Personal Data (CPPD) in composition - members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at its regular meeting held on 30.03.2022, reviewed a letter with No. PNMD-01-27/08.03.2022 by the Deputy Chairman of the Commission on Attestation and Competitions of the Judicial College of the Supreme Judicial Council (SJC). It requests an opinion regarding the legality of the processing of personal data by means of video recording during the conduct of the oral exams for the competitions for initial appointment in the bodies of the judiciary. The request was dictated by a discussion on the development of a draft amendment to Ordinance No. 1 of February 9, 2017 on the competitions for magistrates and on the election of administrative heads in the bodies of the judiciary, which is issued by the SJC on the basis of Art. 194 of the Law on the Judiciary (JSV). In this regard, the CPLD was sent an extract from Minutes No. 9 of a meeting of the Committee on Attestation and Competitions of the Judicial College of the SJC, held on 28.02.2022, from which it is clear that a decision was made to send an inquiry to the supervisory authority on this matter. Legal analysis: Video surveillance is an activity related to the collection and preservation of image or audiovisual data about persons falling into a monitored area, who are subject to direct or indirect identification based on their appearance or other specific characteristics. An essential element of this activity is that the identity of persons can be established on the basis of this data, and it also creates the possibility of processing data regarding the presence and behavior of persons in the respective area. According to recital (40) of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR), in order for the processing to be lawful, personal data should be processed on the basis of one of the grounds specified in Art. 6, par. 1 and/or Art. 9, par. 2 of the GDPR. With regard to the processing of personal data necessary to comply with a statutory obligation, to perform a task in the public interest or in the exercise of official powers granted to the controller of personal data, national provisions should be in place to further specify the order to apply the GDPR rules. On the other hand, any processing of personal data should comply with the principles declared in Art. 5 of the GDPR, according to which the processing must be

lawful and in good faith (Article 5, par. 1, b. a) of the GDPR). In addition, it should be clear to individuals how personal data relating to them are collected, used, consulted, provided or otherwise processed, as well as to what extent the data processing is or will be carried out. The principle of transparency (art. 5, par. 1, b. a) of the GDPR) requires that any information and communication in connection with the processing of these personal data be easily accessible and understandable and that clear and unambiguous wording be used. This principle applies in particular to the information that natural persons (data subjects) receive for the identification of the controller and the purposes of the processing, and to the additional information guaranteeing the fair and transparent processing of the data in relation to the natural persons concerned and their right to receive confirmation and notification of the content of their personal data being processed. Individuals should be informed about the risks, rules, guarantees and rights related to the processing of their personal data, as well as about the ways in which they can exercise them. In particular, the specific purposes (art. 5, par. 1, b. b) of the GDPR) for which the personal data are processed, should be clear and legal and determined at the time of their collection. As a general rule, personal data should be adequate, relevant and limited to what is necessary for the purposes (Art. 5, Par. 1, b. c) of the GDPR) for which they are processed. This requires, in particular, to ensure that the period (Art. 5, Par. 1, b. e) of the GDPR) for which they are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing cannot be sufficiently achieved by other means. In order to ensure that the period of their storage is not longer than necessary for which they are processed, the administrator must establish relevant periods for their deletion, as well as perform a periodic review of the same. The administrator shall take all reasonable measures to ensure that inaccurate personal data (Art. 5, Par. 1, b. d) of the GDPR) are corrected or deleted. Personal data should be processed in a way that guarantees an appropriate degree of security and confidentiality (Art. 5, par. 1, b. f) of the GDPR), including to prevent unauthorized access to them and to equipment for their processing or to preventing their use. Cumulative compliance with the above-mentioned principles should be proven by the controller (the so-called "accountability" principle provided for in Article 5, paragraph 2 of the GDPR). The administrator implements appropriate technical and organizational measures to ensure and be able to demonstrate that the processing is carried out in accordance with the GDPR, taking into account the nature, scope, context and purposes of the processing, as well as the risks of varying probability and severity for the rights and freedoms of natural persons (responsibility of the controller under Article 24 of the GDPR). In order for the introduced measures to be adequate and to correspond to the basic principles, they should be reviewed and, if necessary, updated by the administrator. It is a principle that the purposes

and means of processing personal data are determined either by the administrator or derive from EU law or national legislation (arg. art. 4, item 7) of the GDPR). When creating new regulations introducing video recording of oral examinations for initial appointment to the judiciary, the SJC should clearly define the purpose(s) of the processing of personal data in question. In its capacity as an administrator - a public body, the SJC could process personal data through video recording during the conduct of oral exams, only under the conditions of Art. 6, par. 1, b. c) or b. e) from the GDPR, namely: the processing is necessary for compliance with a legal obligation that applies to the controller; or the processing is necessary for the performance of a task in the public interest or in the exercise of official powers that have been granted to the controller. According to Art. 6, par. 3 of the GDPR, the specified grounds should be established in the law of the Union or our national legislation. In accordance with the practice of the Court of the European Union and the European Court of Human Rights, these grounds must be clear and precise, and their application predictable for the persons to whom they apply (arg. Rec. 41 of the GDPR). Taking into account this principled position, for each of the stated reasons specific provisions are required to be introduced to adapt the application of GDPR requirements in relation to the following main elements concerning the processing of personal data: the general conditions that determine the legality of the processing by the administrator ( the purposes of the processing for which the personal data is intended, as well as the legal basis for this); the categories of data to be processed; the categories of data subjects affected by the processing; processing operations and procedures and their consequences; the persons/bodies to whom the personal data may be disclosed and the purposes for which they are disclosed; limitations on purposes of disclosure; the storage period; awareness of data subjects (Article 13 and/or Article 14 of GDPR) and transparency of processing (Article 12 of GDPR); measures to guarantee the rights and freedoms of the data subjects concerned. Therefore, the introduction of video recording during the conduct of the oral exams for the competitions for initial appointment in the bodies of the judiciary, necessitates the regulation of the above-mentioned elements with the amendment and supplement of Ordinance No. 1 of February 9, 2017 for the competitions for magistrates and for selection of administrative heads in the judicial authorities. For the sake of completeness of the exposition, it should also be taken into account the fact that video recording, which also includes sound recording, affects to a higher degree the sphere of personal privacy of the data subject. In this sense, if sound recording is also envisaged, this should be explicitly stated in the provisions of Ordinance No. 1, providing appropriate additional guarantees to protect the rights of the affected data subjects. In the context of the present request for an opinion, it is important to note that the CPDP ruled on a similar case related to the admissibility of the

introduction of video recording in the conduct of the examinations for the national external assessments, and as a result the Minister of Education and Science accepted specific norms that are objectified in Ordinance No. 11 of September 1, 2016 for evaluating the results of students' training. For these reasons and on the basis of Art. 58, par. 3, b. b) from 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 Supreme Judicial Council may introduce provisions in Ordinance No. 1 of 9 February 2017 for the competitions for magistrates and for the selection of administrative heads in the bodies of the judiciary, which will regulate the making of video recording in the conduct of the oral exams for the competitions for initial appointment in the judicial authorities, taking into account the requirements of Regulation (EU) 2016/679 and the Personal Data Protection Act.

#### MEMBERS:

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

[Download files](#)

Opinion of the CPLD on the legality of the processing of personal data by means of video recording during the conduct of the oral exams for the competitions for initial appointment in the bodies of the judiciary

[print](#)