 Opinion of the CPLD on deletion of personal data from the court database OPINION OF THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA Reg. No. PNMD – 17-206/2021 Sofia, 29.11.2021 REGARDING: Deletion of personal data from the court database Commission for the Protection of Personal Data (CPDP, Commission) composed of: Chairman: Vencislav Karadjov and members : Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a meeting held on 24.11.2021, considered a file with reg. his data from the court database. Mr. M. claims that as a minor he was sentenced to imprisonment, then graduated in law, not knowing that the sentence would prevent him from some professions for which a law degree is required. It is pointed out that, in particular, the Law on Notaries and Notarial Activities stipulates that persons who have been sentenced to imprisonment, regardless of rehabilitation, cannot be notaries. The same is spelled out in the Law on private bailiffs. The question posed by Mr. M. is the following: after 16 years have passed since the date of rehabilitation, should not the conviction and its consequences be erased regardless of what is provided in another law or decree under Art. 88 a of the Criminal Code (PC), the so-called "absolute rehabilitation" and when a person obtains a criminal record certificate for a competition for a notary or a private bailiff, that he is unconvicted, even though he is currently convicted/rehabilitated. Mr. M. claims that he can take the exam for a lawyer, for a receiver, but he cannot take the exam for a notary and a private bailiff. The question that Mr. M. puts before the CPLD is whether there is a mechanism by which to erase both the rehabilitation and the sentence, after absolute rehabilitation has occurred under Art. 88a of the Criminal Code. Legal analysis: The right to erasure provides individuals with a mechanism to limit the storage of their personal data by a specific controller. The intended effect of the exercise of the right is the suspension of the further possibility of processing the data that identifies the person. Given the conflict that may arise between the interests of a specific natural person in the deletion of data and the interests of the controller or the public interest in their storage, the right to deletion is subject to detailed regulation. The provision of specific grounds on which the right may be exercised and the specific grounds on which its exercise may be refused aims to strike a balance between these opposing interests. Not in all cases of personal data processing, the data subject has the right to request their deletion from the administrator. The right to erasure can be exercised on the grounds specified in Art. 17, par. 1 of GDPR. The data subject should indicate on which of the grounds (one or more) he requests the administrator to delete the personal data related to him: a) the personal data are no longer necessary for the purposes for which they were collected or otherwise processed; b) the data subject withdraws his consent on which the data processing is based pursuant to Article

6(1)(a) or Article 9(2)(a) and there is no other legal basis for the processing; (c) the data subject objects to processing pursuant to Article 21(1) [where processing is based on Article 6(1)(e) (public interest or official authority) or (f) (legitimate interest)], including profiling, and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2) (direct marketing); d) the personal data were processed unlawfully; e) the personal data must be deleted in order to comply with a legal obligation under Union law or the law of a Member State that applies to the controller; f) the personal data were collected in connection with the provision of information society services under Article 8, paragraph 1 (Conditions applicable to a child's consent in relation to information society services). The right to delete data ("the right to be forgotten") is subject to special restrictions provided for in Art. 17, par. 3 of the GDPR. These restrictions derive directly from the Regulation and are an expression of the balanced approach in implementing the powers included in the scope of the right to protect personal data and the fundamental rights of other legal entities, taking into account the public interest in the processing of personal data. Given this, the right, according to the provision of Art. 17, par. 3 of the GDPR, the right to erasure does not apply if the processing is necessary for the following purposes: a) to exercise the right to freedom of expression and the right to information; b) to comply with a legal obligation that requires processing provided for in the law of the Union or the law of the Member State that applies to the controller or for the performance of a task in the public interest or in the exercise of official powers that have been granted to the controller; c) for reasons of public interest in the field of public health and in compliance with the relevant guarantees in accordance with Art. 9 of the General Data Protection Regulation; d) for the purposes of archiving in the public interest, for scientific or historical research or for statistical purposes, insofar as there is a possibility that the right to erasure makes it impossible or seriously hinders the achievement of the objectives of this processing; or e) for the establishment, exercise or defense of legal claims. According to Art. 85, para. 1 of the Criminal Code (PC), rehabilitation cancels the conviction and cancels for the future the consequences that the laws associate with the conviction itself, unless in some respect the law or decree establishes the contrary. Criminal records are drawn up for all convicted persons, including in cases where the convicted person has been released from serving the sentence or has not been punished according to the Criminal Code, or a suspended sentence has been applied, according to the provisions of Ordinance No. 8 of February 26, 2008 on the functions and the organization of the activities of the criminal records bureaus. The provision of Art. 17, para. 1, item 2 of the same expressly states that in the paper and in the electronic criminal record bulletin, additional information is ex officio noted when the person has been rehabilitated. Proceeding from the specifics of the

case, namely the desire of the applicant to appear in a competition for a notary or a private bailiff, attention should be paid to the requirements and conditions for acquiring the legal capacity of a notary and a private bailiff. The Law on Notaries and Notarial Activity regulates the legal status of the notary and the Chamber of Notaries, the organization of notarial activity and notary fees. According to the provisions of Art. 8, para. 1 of the Law on Notaries and Notarial Activities, the legal capacity of a notary can be acquired by an able-bodied natural person up to the age of 60 who is a Bulgarian citizen, a citizen of a member state of the European Union, of a state party to the Agreement on the European Economic Area, or of Swiss Confederation and meets the following requirements: 1. has a university degree in law; 2. has acquired legal capacity under the Judiciary Act; 3. has three years of experience; 4. has not been sentenced to imprisonment for an intentional crime, regardless of being rehabilitated; 5. is not deprived of the legal capacity of a notary; 6. is not deprived of the right to exercise the legal profession or commercial activity; 7. is not in bankruptcy proceedings, is not insolvent or has not been convicted of bankruptcy; 8. is entered in the register of the Chamber of Notaries. The law on private bailiffs regulates the organization and legal status of private bailiffs. The legal capacity of a private bailiff can be acquired by an able-bodied natural person who is a Bulgarian citizen and meets the following requirements (Article 5, Paragraph 4 of the Law on Private Bailiffs): 1. has a higher legal education; 2. has acquired legal capacity under the Judiciary Act; 3. has three years of legal experience; 4. has not been sentenced to imprisonment for an intentional crime of a general nature, regardless of being rehabilitated; 5. is not deprived of the legal capacity of a private bailiff; 6. is not deprived of the right to exercise the legal profession or commercial activity; 7. is not in bankruptcy proceedings, is not a debtor whose rights have not been restored, declared bankrupt, and has not been convicted of bankruptcy; 8. passed the competition for a private bailiff. As can be seen in both the Law on Notaries and Notarial Activities and the Law on Private Bailiffs, an express requirement has been introduced for the acquisition of legal capacity as a notary and private bailiff that the person has not been sentenced to imprisonment for an intentional crime of a general nature, regardless of being rehabilitated. For the sake of completeness, it should be noted that the Law on the Judiciary also introduces such requirements in relation to the elected members of the Supreme Judicial Council (Article 18), jurors (Article 67), judges, prosecutors and the investigators (Arg. Art. 162). Therefore, the data subject cannot invoke the right to erasure (the right "to be forgotten") described in Art. 17 of the General Data Protection Regulation (lex generalis), due to the presence of a legal obligation that requires processing provided for in Union law or Member State law that applies to the controller or for the performance of a task in the public interest or in the exercise of official powers granted to the administrator

(Art. 17, Par. 3, b. "b"), namely the requirements for acquiring legal capacity listed in the Law on Notaries and Notarial Activities and the Law on Private Bailiffs (lex specialis) .For these reasons and on the basis of Art. 58, par. 3, b. "b" of Regulation (EU) 2016/679 amended with Art. 10 a, para. 1 of the Personal Data Protection Act, the Personal Data Protection Commission expressed the following

OPINION:

The administrator of personal data, the Bureau of Criminal Justice, cannot satisfy an individual's request for data deletion ("the right to be forgotten") on the basis of the special restrictions provided for in Art. 17, par. 3, b. "b" of the GDPR, according to which the right to erasure does not apply if the processing is necessary to comply with a legal obligation that requires processing provided for in the law of the Union or the law of the Member State that applies to the controller, namely: in the specific case - the Law on Notaries and Notarial Activities and the Law on Private Bailiffs.

The provisions of Art. 8, para. 1, item 4 of the Law on Notaries and Notarial Activities, as well as Art. 5, para. 4, item 4 of the Law on Private Bailiffs introduces a mandatory requirement upon acquisition of legal capacity as a notary and private bailiff that the person has not been sentenced to imprisonment for an intentional crime of a general nature, regardless of being rehabilitated.

CHAIRMAN:

MEMBERS:

Vencislav Karadjov /p/

Tsanko Tsolov /p/

Maria Mateva /p/

Veselin Tselkov /p/

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