

NATIONAL CENTER FOR DATA PROTECTION
WITH PERSONAL CHARACTER OF THE REPUBLIC OF MOLDOVA

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DECISION no. 73
on the cessation of operations
unauthorized disclosure of personal data
performed by housing fund managers

"10" March 2017

mun. Chisinau

Director of the National Center for Personal Data Protection of
Of the Republic of Moldova, Eduard RĂDUCAN, -

FIND:

In fact,
National Center for Personal Data Protection of the Republic of Moldova
(Center), as a result of receiving a number of complaints and carrying out several checks,
found that among the associations for organizing homeowners - condominiums
and condominium co-owners in the sense of the condominium law in the housing fund
(Associations of owners of privatized housing (APLP): Associations of co - owners in
housing condominium (ACCL) and Housing Construction Cooperatives (CCL) - Associations)
the practice of displaying the lists of members of the association, who are in arrears with the payment of some, persists
communal services, in spaces open to public access, of the block (such as entrance areas
in the stairs of the block, the space around the elevator, etc.). Usually, these lists contain data with
personal data such as at least the names and initials of the members' first names and the amount due,
and often, the apartment number is also indicated.

In law,

In accordance with Art. 5 para. (1) of the Law on data protection with
personal data , the *processing of personal data is carried out with the consent
the subject of personal data* . Alin. (5) of the same article establishes in manner
exhaustively the cases in which the processing of personal data may take place in the absence
the consent of the subject of personal data [...]. Relevant in context
The circumstances of this Decision are as follows:
b) the *fulfilment of an obligation incumbent on the operator according to the law* , [...] *e) the realization of a legitimate interest of the operator or of the third party to whom they are disclosed
personal data, provided that this interest does not harm his or her interests
the fundamental rights and freedoms of the subject of personal data* .

According to art. 29 of the same law, operators and third parties who have access to data with character
personally are obliged to ensure the confidentiality of this data, unless:
a) the processing refers to data made public voluntarily and manifestly by the subject
personal data; b) personal data have been depersonalized. In the same
time, art. 30 of the law stipulates that when processing personal data, the operator is
obliged to take the necessary organizational and technical measures for the protection of personal data

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personally against destruction, alteration, blocking, copying, distribution, and against
other illicit actions, measures to ensure an adequate level of security with regard to
the risks presented by the processing and the nature of the data processed.

Art. 1 of the Condominium Law in the housing fund defines the *association of co-owners in
condominium* as an organization of homeowners who have partnered for
joint management, maintenance and operation of the real estate complex in
condominium.

At the same time, art. 20 of the same law establishes that the realization of the rights of associations, including:
a) to conclude contracts for the management and / or servicing of the common property, which belongs
co - owners' association, with any natural or legal person, regardless of the form of
property, in accordance with the law;
(b) [...].
c) to draw up the annual estimate of income and expenses, including expenses for
exploitation, repair and reconstruction of common property, [...] as well as other expenses
purposes, provided by the present law and by the statute of the association;
d) to establish for each owner the amount of the obligatory payments according to the quota
participation;
e) to execute works and to provide services to the members of the association;
f) to benefit from bank loans in the manner and conditions provided by the legislation. [...].

is conditioned by the observance of the rights and interests of the owners protected by law,
hence implicitly the rights guaranteed by the Law on the protection of personal data.

On the other hand, the Constitutional Court, in its Decision no. 20 of July 20, 2016, a
specified the following:
„55. [...] the existence of some spaces in common property and the impossibility of administration
their individual by all owners imposes the need to establish a structure
organized, as is the association of co-owners in the condominium, to act on behalf of
and for the common interest of all co-owners.

59. ... membership in that association is inherently linked to membership
homeowner

62. ... the person, if he decides to buy a dwelling in a block of flats,
implicitly agrees to enter a community to be managed and owned
common.

65. [...] the obligatory association in the condominium is an efficient solution tool
qualitative of the issues of administration and management of the common property, which is based
clear instruments governing the relations between the co-owners, including the attributions and
mechanisms for carrying out the tasks incumbent on each participant in these reports. "

Thus, since association in a condominium is an inherent obligation of any tenant,
associations also have an increased responsibility for ensuring the rights of tenants.

The Center determined that, starting from the above and by virtue of their duties
return according to the Law of the condominium in the housing fund and the statutes of constitution, the associations have
the legitimate interest in taking steps to obtain the settlement of debts by members
their arrears. Moreover, associations are often in direct contractual relations with
the provider of communal services, under which they also have the obligation to pay in
in their favor the total amount owed by the managed block and, accordingly, reimburses them and
the obligation to settle any debts by collecting them from the tenants.

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On the other hand, the Center found that although the display of the list of arrears could contribute
to a certain extent when accelerating the settlement of debts to municipal service providers
or other services, the achievement of this legitimate aim of the associations can be achieved through others
methods, which would not involve the disclosure in the public space of personal data of
arrears, for example: verbal warning of arrears, submission of letters of
notice by post, by direct submission of letters by members of the bodies
administrative of the associations in the mailboxes within the block, by direct delivery, etc.

It is noted in this regard that there are no legal provisions that would expressly state that
associations should or could use the method of displaying the list in a public space
overdue members in order to obtain the settlement of the debts accumulated by the latter. For example, like this
of provisions are not found neither in the Law of the condominium in the housing fund, nor in the Regulation
on the provision and payment of housing, communal and non - communal services for
the housing fund approved by Government Decision no. 191 of February 19, 2002.

On the other hand, however, the recovery of claims may be effected even in civil proceedings,
by using the available legal levers. In this sense, it was noted that art. 20 para. (1) lit. m)
of the Condominium Law in the housing fund clearly provides the right of associations as in the case
non-execution by the owners / tenants of their obligations regarding the participation in the expenses
to the court for the payment of compulsory payments.

Subsequently, in the light of the above, the processing by display of personal data
concerning the arrears on the payment of communal services or other services contracted by the associations
of owners, in the public space or in a space to which a large number of have access
people, such as the common space within the apartment building, can not be considered a
“necessary” processing, within the meaning of Article 5 para. (5) of the aforementioned law, for compliance
any legal or contractual obligations or to achieve the legitimate interests mentioned
above.

At the same time, the Center found that the display of character data in the public space
personnel such as name / surname, address, amounts owed by the subjects concerned, etc.,
constitutes a serious violation of their fundamental right to privacy,
family and private, enshrined in art. 28 of the Constitution of the Republic of Moldova and, therefore, cannot be
legally framed in the exception provided by art. 5 para. (5) lit. e) of the Law on data protection

personal. Accordingly, performing this processing without consent
subjects of personal data concerned is certainly an infringement of
the provisions of the Law on the protection of personal data.

It will be noted, moreover, that even the situations in which the list displayed by the association contains only
the initials of the tenant's name and surname, accompanied by the home address and the existence / absence
debts, does not comply with the legal provisions in the field of data protection
personally, listed above, as even in these circumstances the subject of character data
staff remains identifiable, and the initials only have the effect of reducing
the number of people who could easily identify him.

In addition, the following were found:

Article 15 para. (4) of the Law on electricity, as well as art. 15 para. (4) of the Law
regarding natural gas, explicitly state that the licensee may disclose the information
and the data it has obtained from the final consumer or third parties and the information relating to
consumption and the payment of invoices issued only after obtaining the written consent of
the final consumer or the third party, with the exceptions provided in art. 7 and 8 of the aforementioned laws or
in other situations established in the Law on the protection of personal data. These provisions,

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reiterates the strictly confidential nature of the information listed, as well as the regime
properly to be processed.

Moreover, according to art. 6 para. (1) of the Law on the cadastre of real estate, the data about
state identification number (IDNP), date of birth and domicile of the natural person, and
about the value of the obligation secured by the mortgage, is issued to the persons who have rights
registered' in Chapter A, B or C of the register of immovable property, their representatives,
as well as notaries, lawyers, financial institutions, service providers
real estate or performs cadastral works, to the persons and authorities indicated in art.6 paragraph (2)
letters b) - i) and art.8 paragraph (3) of the law, to other persons who justify the purpose of data processing with
personal data in accordance with the Law on the Protection of Personal Data.
Thus, including in the light of this provision, the disclosure of data on the person's domicile
is admitted only to a limited number of specific natural or legal persons,
which reaffirms the limited accessibility of this information.

It is therefore inadmissible to disclose such data to an indeterminate number of
recipients / third parties, thus violating the confidentiality regime imposed by art. 29 of the Law
on the protection of personal data, but also the principle of security of the data in question,
within the meaning of art. 30 of the same law. Reaffirming the above, it is important to emphasize that practice
displaying this data at the entrance to the block or other spaces where everyone has access
residents / visitors is not restricted, it creates premises to be used by
people in bad faith, for petty purposes or to be spread to a greater number of
recipients - conditions under which the operator will no longer be able to exercise any control over
the legality of their processing.

It should also be noted that the possible method of deciding the display in the public space
of the personal data of the tenants by the general assembly or other body of
leadership of the association, by a majority vote, is not likely to provide legitimate character
this type of processing of personal data by disclosure, whereas, in the light of those
evoked above, only the express and untainted consent of each data subject covered by
disclosure could substantiate its legality.

In addition, it was found that there could be a wider variety of entities that
perform duties / undertakes activities very similar to those performed by the associations of
co-owners in the condominium and who are directly affected by the findings of this decision. Into the
In this sense, it has been identified that these entities are found in the definition of the term *management of
housing stock* , as set out in point 2 of the Regulation on how to
provision and payment of housing, communal and non-communal services for the approved housing fund
by Government Decision no. 191 of February 19, 2002, namely: *the municipal enterprise
housing fund management, the municipal enterprise of the housing-communal household,
housing construction cooperative, condominium co - owners association, condominium association
owners of privatized housing, other economic agents, on balance or in whose management
there is the housing stock* .

In other words, it was noted that the Law on Housing establishes in art. 8
the tasks of the first level local public administration authorities, including:

f) the transfer of the lands afferent to the residential blocks to the co - owners associations in
condominium within the limits established in the project documentation;

g) administration of the public housing fund by appointing the administrator in the base
competition and contract for a term of not less than one year;

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h) performing the control in the field of administration, operation, use according to
destination and ensuring the integrity of residential buildings, regardless of the form of
property. The control mechanisms and procedures will be set out in a framework regulation
approved by the Government;

k) informing the population about the decisions, plans and actions taken in
that field.

Based on these responsibilities, it is to ask the public administration authorities
first level premises to inform the condominium co-owners associations
the provisions of this Decision, given their direct impact on how
condominium housing administration.

Therefore, in accordance with the provisions of art. 19 para. (1), 20 para. (1) lit. a) and e) of
Law no. 133 of July 8, 2011 on the protection of personal data, as well as of
Chapter II, point 3 letter d) of the Regulation of the Center, approved by Law no. 182 - XVI din
July 10, 2008, - -

HAVE:

1. Cessation of personal data processing operations concerning
arrears on the payment of communal services and / or other payments made by managers
housing funds , by displaying their list in spaces with public access - which is a
violation of the provisions of the Law on the protection of personal data and the principles of
protection, confidentiality and security of personal data.

2. Destruction by the managers of the housing funds of the lists of arrears
communal services and / or other payments displayed so far.

3. Informing, within 30 days, the housing fund managers by
first level local public administration authorities, through the mechanisms at their disposal,
about the content of this decision and the notification of the Center at the end of the process of
information on the measures taken in this regard.

4. Informing the Center by the housing fund managers about the measures
undertaken for the execution of this decision, within 60 days.

5. Publication of this decision in the Official Gazette of the Republic of Moldova and on
the Centre's website.

Eduard RĂDUCAN
Director

1 In this device, the term *management of the housing stock* is used in the sense defined by point 2 para
Regulation on the provision and payment of housing, communal and non-communal services for
housing fund, approved by Government Decision no. 191 of February 19, 2002 and includes undertakings
municipal housing fund management, municipal enterprises of the housing and communal household,
housing construction cooperatives, condominium co-owners associations, condominium associations
privatized housing, other economic agents, on the balance sheet or in the management of which the housing fund is located.