

Decision on appeal with registration № PPN-01-171 / 20.11.2017 DECISION» PPN-01-171 / 2017 Sofia, 28.02.2019 Personal Data Protection Commission (CPDP) composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a meeting held on 19.12.2018, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Regulation / General Regulation), considered on the merits a complaint № PPN-01-171 / 20.11.2017, filed by J.S. and S.S. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint filed by J.S. and S.S. v. G.T., A.G., B.M. and lawyer ***. The applicant, J.S. informs that he is an activist and associate in BSCHIGPDP B. adds that on 18.07.2017 around 11 o'clock in the morning, outside working hours for citizens, at her workplace in the reception of the association "literally invaded" GT, B.M., A.G. and lawyer *** They behaved rudely and insulted her, and after she refused to hand over the documents demanded by them, Mr. G.T. asked her ID to identify herself, threatening to be a police officer. She added that in order not to escalate the case, she called the chairwoman of the association, who advised her to call 112 if necessary. Mrs. J.S. informs that her ID card was not with her and she called her mother - SS to bring it to her at work. She claims that after her mother brought the identity document, a lawyer *** pulled the ID card from the hands of S.S. and, after examining it in detail, handed over the card to GT, with instructions to copy all the personal data contained in it. He added that Mr. G.T. after taking the card, he wrote down the data on a piece of paper, which he put in his pocket. J.S. claims that she did not give her consent, either in writing or orally, to the removal of personal data from her identity card and their processing by a lawyer *** and her accompanying persons. He asks for an investigation into the case. Attached to the complaint is a copy of a complaint to the District Prosecutor's Office - B., filed by RP - Chairman of the BCCHIGPDP association. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case by G.T., A.G., B.M. and lawyer *** written opinions and relevant evidence were required. In response and with a letter reg. № PPN-01-171 # 6 / 01.06.2018 Mr. B.M. disputes as incorrect the allegations made in the complaint. Considers that there is no violation of the LPPD given the fact that it does not process personal data of the complainants and does not have the capacity of controller or processor of personal data. Informs that "at 11 o'clock" on 18.07.2017 together with Mr. AG and Mr. G.T. visited the office of

the association BSCHIGPDP for a meeting with the chairman of the association on the occasion of a dispute between the parties in the amount of BGN 3,600. for reference, they added that they had asked the lady for an identity document to identify herself because she did not wear a badge with names and a photo. He claims that the ID card was provided for reference voluntarily, after which it was returned without any personal data being recorded. In addition, he informed that on the same day after the visit, together with Mr. G.T. and A.G. filed a complaint with the District Prosecutor's Office - B. against the President of the Association. Relevant evidence is attached to the opinion. With identical content and applications it was also deposited by A.G. and G.T. opinion PPN-01-171 # 7 / 04.06.2018. In the course of the proceedings a written opinion PPN-01-171 # 11 / 25.06.2018 was presented by a lawyer *** for unfoundedness of the complaint, which denies the allegations processing of personal data of J.S. and violation of the LPPD. Lawyer *** informs that the visit to the office of BSCHIGPDP was on the occasion and in the performance of her legal profession, in order to protect the rights and legitimate interests of her clients - AG, GT and B.M. and the civil dispute that arose between them and the association in the amount of BGN 3,600. Lawyer *** informed that she had identified herself before the employee J.S. with a lawyer's card, however, Mrs. J.S. refused to give her the file of her trustee, Mr. G.T. He added that Ms. J.S. she did not wear an official badge, so she asked her for an identity document in order to identify herself. Indicates that the mother of Mrs. J.S. brought her ID card and provided it for reference, immediately after which the document was returned. Attached to the opinion is a copy of the Decree of the Appellate Prosecutor's Office - B. with ref. № 402 / 09.05.2018. In the course of the proceedings the applicants were given the opportunity to get acquainted with the evidence gathered in the file, to express an opinion on them, as well as to engage evidence in support of their allegations. In response and with a letter PPN-01-171 # 8 / 14.06.2018 J.S. presents additional evidence, including certified information from J.S. and S.S. regarding the complaint with ent. № 6540/2017 in the District Prosecutor's Office - B., sick list, declaration by B.M. dated 26.04.2017 and notarized power of attorney № *** dated 05.01.2017 according to the list of notary A.Sh. In issuing the decision, the Commission shall take into account the change in the legal framework in the field of personal data protection in the period from the processing of personal data to the ruling on the merits of the request addressed to the administrative body. Recognizes the fact that from 25.05.2018 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies (Regulation), which has direct effect. In the absence of an express provision, it considers that existing relationships which are not pending and concern legal facts and the

consequences arising from them before the application of the Regulation should be assessed according to the substantive law in force at the time of their occurrence. In the specific case, such are the material provisions set out in the LPPD in view of the fact that the legal facts and legal consequences related to the processing of data concern a one-time action performed on 18.07.2017, ie. before the application of the General Regulation, and in addition it should be borne in mind that the applicable substantive provisions of Art. 1, para. 9 and Art. 4, para. 1 of LPPD corresponds to the provisions of 2, paragraph 2, letter "c" and Art. 6 (1) of the Regulation and do not contradict them. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the Personal Data Protection Act and Regulation (EU) 2016 / 679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In order to exercise its powers, the Commission must be properly seised. The appeal shall contain the obligatory requisites, specified in the provision of art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration (PDKZLDNA), namely: there are data about the complainants, the nature of the request, date and signatures, in view of which it is regular. The appeal is partially admissible. According to Art. 27, para. 2 of the Administrative Procedure Code (APC), the administrative body checks the prerequisites for admissibility of the request with which it is seised. The preconditions are cumulatively listed, the presence of a prerequisite from the category of negative or the absence of positive / and such is a condition for inadmissibility of the request. The legislator links the assessment of the admissibility of the request with the existence of a legal interest of the applicant / complainant. In this connection, it is necessary to conclude that the complaint is procedurally inadmissible in respect of the complainant S.S. ., therefore for the latter there is no legal interest in filing the appeal, which according to the argument of Art. 27, para. 2, item 5 of the APC is a mandatory procedural prerequisite for its admissibility. with professional or commercial activity. In this regard and by argument of Art. 1, para. 9 of LPPD, respectively Art. 2, § 2, letter "c" of the General Regulation for Personal Data Protection, the complaint is procedurally inadmissible in its part directed against G.T., A.G. and B.M. - natural persons who do not have the quality of administrators or processors of the personal data of the complainant J.S. The complaint in its part filed by J.S. against a lawyer *** from BAC is admissible - submitted to a competent authority within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest against a competent party lawyer *** - administrator of personal data within the meaning of Art. 3, para. 1 of LPPD and Art. 4, para. 7 of the EU General Regulation 2016/679. It concerned the unlawful

processing of the applicant's personal data contained in her identity card by "removing personal data" from her identity document. For the stated reasons, at a meeting of the Commission held on 17.10.2018 the complaint was accepted as partially admissible and as parties in the proceedings were constituted: complainant - J.S. and respondent - lawyer ***. An open hearing has been scheduled to consider the merits of the complaint, of which the parties have been regularly informed. The parties were informed about the distribution of the burden of proof in the process and the opportunity to engage additional evidence in support of their allegations. At an open meeting held on November 28, 2018, the complaint was submitted for consideration on the merits. The applicant was regularly informed - she did not appear and did not represent herself. Submits electronically two applications PPN-01-171 # 20 / 28.11.2018 and PPN-01-171 # 21 / 28.11.2018 with identical content, for postponement of the meeting due to inability to attend for personal reasons. Evidential requests were made in 8 points. The respondent - lawyer *** - was regularly notified, appeared in person and disputed the complaint. She asks the Commission to disregard the applicant's request to adjourn the hearing. Lawyer *** claims that the explanations given by the complainant in the case before different institutions are contradictory and differently interpreted by Ms. S. and in this regard presents and adopts extracts from court records from NCH 310/2018 on the list of BRS . At the request of the respondent, the Commission allowed the collection of oral evidence and, after removing their identity, questioned witnesses A.G. and G.T. regarding the facts and circumstances set out in the complaint and fully credits their testimony as logical, consistent and consistent. The Commission disregarded, as irrelevant to the subject matter of the dispute, the applicant's request for admission to questioning as a witness for R.S. - manager of the BCHIGPDP, given the fact that she was not an eyewitness to the circumstances related to the processing of the complainant's personal data. Apart from that, the facts which the applicant wishes to prove by the interrogation of Ms RS are irrelevant to the dispute, namely those relating to her physical, mental and emotional condition after the incident. For the same reasons, the request for admission of "technical expertise of a recording with the voice of a lawyer *** of what happened to him a day minutes later, when Ms. RS came" was disregarded as irrelevant to the dispute. , subject of the complaint before the CPDP. The Commission also disregarded the request for admission to the examination of witnesses who were not individualized in the two applications submitted by the applicant, the same as "the witnesses whose written information I enclose to you". Given the fact that the applications are not accompanied by evidence, including written information, the individualization of these persons is objectively impossible, moreover, the applications do not specify the facts and circumstances for which they will be questioned. An alternative request to accept their testimony was also disregarded,

arguing that it had not yet been submitted to the Commission. It should be noted that the Commission did not file and mentioned in the applications of Ms. J.S. "Record disk" and evidence of the applicant's father's illness. The Commission disregards, as irrelevant to the subject matter of the dispute and the requests for collection of written evidence, namely the civil contract concluded between the complainant and BSCHIGPDP and her entire file, as well as a complaint filed by the complainant to the District Prosecutor's Office B. with ent. № ***, together with the entire prosecutor's file to her. The Commission also disregarded the applicant's request to appoint a lawyer and to make such a request to the SAC, in view of the fact that the provisions of Art. 22, para 1 of the Legal Aid Act prerequisites for this. Advocacy, reserve counsel or representation of the parties are not necessarily provided in the proceedings under the LPPD. Representation is in the general order provided in the APC - Art. 18 and CPC - Art. 32, and the participation of a representative of the country by power of attorney is not mandatory. It should be noted that the request for the appointment of such a defender should be made personally by the person in need of one under the PPA, presenting to the NLAB evidence that the country has no funds. In view of the fact that the applications of Ms. S. do not indicate that she does not have the means to pay attorney's fees, it is necessary to conclude that the other prerequisites under Art. 22 of the PPA for the provision of legal aid. The Commission finds the applicant's request for admission to the interrogation of S.S. admissible and in view of the fact that she was an eyewitness to the facts and circumstances alleged in the complaint, subject to the proceedings, allowed her to be questioned under the regime of bringing the applicant to the next meeting of the Commission. In this regard, and in view of the equality of the parties in the proceedings for the collection of oral evidence, the Commission scheduled an open meeting on 19.12.2018 to consider the complaint on the merits, of which the parties were regularly notified. At a meeting of the CPDP held on 19.12.2018, the complaint was considered on the merits. The respondent - regularly notified, appeared in person and disputed the complaint. She asks the Commission to disregard it as unfounded. Presents detailed written notes on the merits of the dispute. The applicant appeared at the hearing later and upheld the appeal. Witness S.S. also appeared at the hearing. - the applicant's mother, who, after being removed from her identity, was questioned about the facts and circumstances set out in the complaint, the subject of the proceedings, namely the removal of data from the applicant's identity card. Despite the relationship between the applicant and witness S.S., the Commission credited the allegations made by Ms S.S. the testimony of the witness on the subject of the complaint, as logical, consistent and consistent. In his capacity of 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 Administrative Procedure Code, requiring the existence of established facts, given the written evidence gathered and the allegations made by the parties, the Commission considers that considered on the merits complaint № PPN-01-171 / 20.11.2018 is unfounded in the part directed against the lawyer ***. The parties do not dispute that the applicant J.S. is an activist and associate in BSCHIGPDP with UIC ***** with headquarters and address ****. It is also not disputable, and from the oral evidence collected in the file it was established that on 18.07.2017 the address of the association was visited by GT, B.M. and A.G. and lawyer ***, on the occasion of a civil dispute between the association and individuals for reimbursement of an amount of BGN 3,600 to AG, transferred to the account of the association, but not used (according to the individuals) under purpose - to repay part of the obligation of GT As can be seen from the evidence gathered in the file, in particular Decree of 08.05.2018 of the Appellate Prosecutor's Office - B. and attached written information from J.S. and S.S. is the presence of created between J.S. and G.T. conflict situation caused by the refusal of the employee to present documents contained in the association and concerning the dispute between the parties. The allegations of the parties and the subsequent actions taken by them, including those for referral to the Ministry of Interior and the Prosecutor's Office, as well as the ruling of the Appellate Prosecutor's Office - B., testify to strained relations between the association, including the employee - J.S. one country and G.T. and A.G. - on the other hand, as well as doubts and lack of trust on the part of Mr. G.T. and Mr. A.G. in the actions of the association - its chairman and employees. It is undisputed that during the visit to the company's office on 18 July 2018, the identity document - the applicant's identity card was presented to a lawyer *** for reference on the identity of the person and then returned to Ms. S. No evidence was involved, and there were no allegations that the lawyer *** had processed the personal data contained in the applicant's identity document within the meaning of §1, item 1 of the Additional Provisions of the LPPD (the norm in force at the date of the alleged violation). . According to the cited provision, "Processing of personal data" means any action or set of actions that can be performed on personal data by automatic or other means, such as collecting, recording, organizing, storing, adapting or modifying, restoring, consulting, use, disclosure by transmission, distribution, provision, updating or combination, blocking, deletion or destruction, however, the evidence gathered in the file did not establish that the lawyer acted automatically or non-automatically *** in relation to those contained in In the present case, the complaint alleges that Ms S. did not consent to the "removal" of personal data from the identity document, nor consent to their written or oral processing by a lawyer ***. However, the alleged lawyer *** has not processed the personal data contained in the document. From the oral evidence gathered in the file, it was established that lawyer *** took the identity card of the person

only for reference, without taking / recording data from it. Moreover, the complaint alleges that it was not a lawyer *** but a third party G.T. - is the one who wrote down on a sheet of data from Ms S.'s identity card, after which he "took them in his pocket" according to the applicant's data and Ms. S.'s testimony; that lawyer ***, did not record data from the applicant's identity card, nor was it provided to her by Mr G.T. In this connection, and for the sake of completeness only, it should be noted that the applicant's allegations concerning the recording of personal data on her identity card by Mr G.T. are disputed by lawyer ***, G.T., A.G. and BM From the evidence gathered in the file it is not established a violation committed on 18.07.2017 by a lawyer *** regarding the processing of personal data contained in the identity card of the applicant, and the fact whether the document was seized for the committed reference with or without the consent of the person is outside the competence of the Commission, although evidence in the file indicates the voluntary nature of the provision of the identity document. Guided by the above and on the grounds of Art. 38, para. 2, in connection with art. 10, para. 1, item 7 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679 of the European Parliament, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. On the grounds of art. 27, para. 2, item 5 of the APC in connection with Art. 38, para. 1 of the LPPD accepts the complaint № PPN-01-171 / 20.11.2017 as procedurally inadmissible in respect of the complainant SS, given the lack of legal interest of the person and terminates the administrative proceedings in respect of this part of the complaint.
2. On the grounds of art. 27, para. 2, item 6 of the APC in connection with Art. 1, para. 9 of LPPD, respectively Art. 2, § 2, letter "c" of the General Regulation on Personal Data Protection considers the complaint to be procedurally inadmissible in its part against G.T., A.G. and B.M. and terminate the proceedings instituted in respect of this part of the application.
3. Disregards, as unfounded, the complaint PPN-01-171 / 20.11.2017 in the remaining part directed against lawyer *** from BAC.

The decision is subject to appeal within 14 days of its service through the Commission for Personal Data Protection before the Administrative Court Sofia - city.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov

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