

RESOLUTION № 460 13.11.2020 VIMETO, Stara Zagora N A N A R O D A Stara Zagora Administrative Court, Third Panel, in a public court hearing on October 27, 2000, composed of: JUDGE: IRENA YANKOVA under Secretary Minka Petkova and with the participation of a prosecutor, considering the administrative case № 320 reported by Judge IRENA YANKOVA on the inventory for 2020, in order to rule on the following: The proceedings are under Art. 145 et seq. Of the Administrative Procedure Code / APC / in connection with Art. 38, para. 6 of the Personal Data Protection Act / PDPA /. It was formed upon a complaint of Ecoenergy OOD, with registered office and address of management in the city of Stara Zagora, through its attorney in the case. E.N. against Decision № PPN-01396/2018 of 14.04.2020 of the Commission for Personal Data Protection / CPDP; Commission. Disputes the conclusion of the commission that the processing of personal data of Z.Zh. has not been performed in fulfillment of a normatively established obligation of the personal data controller. According to the company, the interests of Z.Zh., as an affected person, did not take precedence, as he did not want to intervene as a partner in the case of his deceased father, and the entry of the circumstance of deleting a partner due to his death was in the advantage of Ecoenergy Ltd. At the hearing the applicant was represented by a lawyer. N., who upheld what was stated in the appeal and claimed annulment of the decision. Defendant - The Commission for Personal Data Protection, regularly summoned, is not represented, but in the submitted written statement he argues that the disputed administrative act is lawful, issued by a competent authority in compliance with administrative procedural rules and proper application of substantive law. Z.Zh.V., regularly summoned, appeared in person and took an opinion on the unfoundedness of the complaint filed by the company. The proceedings were instituted on a complaint received by the CPDP with ent. № PPN-01-3963 / 01.08.2018 / I. 17 of the case / by Z.Z.V. against Ecoenergy OOD for illegal use of his personal data outside the purpose for which he presented a certificate of heirs to the company and illegal dissemination of personal data - to enter a new circumstance on the company's account in the Commercial Register. The CPDP notified by letter V. about the initiated administrative proceedings on 30.08.2018 and obliged him to specify the alleged violation, to indicate what is his relationship with the respondent company and on what occasion there was a need to use his personal data. V. complied with the instructions of the commission. He argues in his application of 14.09.2018 that when submitting an application for entry in the Commercial Register by "Ecoenergy" Ltd. was attached to the documents certificate of heirs, containing his personal data - names, PIN, address. According to Z.V. by this action the representative of the company has published for illegal purposes his personal data contained in the document. With a letter dated October 1, 2018, the CPDP notified Ecoenergy OOD about V.'s complaint and

the initiated administrative proceedings on it. It gave the company the opportunity to express its views on it and to submit the relevant documents. In his written statement, the representative of Ecoenergy OOD admits that according to the applications submitted by him on 29.05.2018 in the Registration Agency, new circumstances have been requested on the company's account, including termination of membership due to death of the partner Zhelyo Tonev V., and that as evidence are attached to the application and a certificate of heirs of the deceased partner. The applicant also did not dispute the fact that Z. Z. had not consented to the use of the certificate before the Commercial Register. With a decision from a meeting, objectified in the minutes № 51 / 18.12.2019 / l. 24-31 of the case /, the appeal is declared admissible, the parties in the proceedings have been constituted and consideration of the dispute on the merits is scheduled for 12.02.2020 from 13:00. With a letter ex. № PPN-01-396-11 / 20.01.2020, ref. № PPN-01-396-12 / 20.01.2020 g / l. 33-34 of the case / the constituted parties were notified of the hearing scheduled for 12.02.2020 and were given the opportunity to get acquainted with the materials in the administrative file. Pursuant to the opportunity given to them to get acquainted with the materials in the file, the parties have sent their written statements and have made their evidentiary requests. 40-45 of the case / the dispute was considered on the merits, as the complaint of Z.Z.V. against Ecoenergy OOD was declared justified and it was proposed to impose an administrative penalty - a fine in the amount of BGN 5,000 on the grounds of Article 58, §2, letter "i" for violation of Article 5 §1, letters "a "And" b "of EU Regulation 2016/679. With the Decision under item I, 7. of the Protocol № 6 / 12.02.2020 / l. 40-45 of the case / the dispute was considered on the merits, as the complaint of Z.Z.V. against Ecoenergy OOD was declared justified and it was proposed to impose an administrative penalty - a fine in the amount of BGN 5,000 on the grounds of Article 58, §2, letter "i" for violation of Article 5 §1, letters "a "And" b "of EU Regulation 2016/679. With the disputed act - Decision № PPN-01-396 / 2018 of 14.04.2020, the Commission for Personal Data Protection has accepted as a well-founded complaint with registration № PPN-01386 / 04.06.2018, filed by Z. J.V. and on the grounds of Art. 38, para. 2 and art. 83, §5, letter "a" in connection with art. 58, §2, letter "i" of EU Regulation 2016/679, an administrative penalty was imposed on Ecoenergy OOD - a property sanction in the amount of BGN 5,000 / five thousand / for processing the personal data of the complainant in violation of Art. 5, §1, letter "a" and "b" of the Regulation. Decision № PPN-01-396 / 2018 of 14.04.2020 was sent as an appendix to notification letters to the participants in the proceedings - with ref. № PPN-01-39619 / 15.04.2020, ref. H № PPN-01-396-20 / 15.04.2020. Given the facts thus established, the Administrative Court of Stara Zagora reached the following legal conclusions:

The appeal is procedurally admissible as filed by the addressee of the act adversely affected, and in the presence of legal

interest from challenge. Decision № PPN-01396/2018 of 14.04.2020 was sent to the company on 21.04.2020. Considered on the merits, the complaint is UNFOUNDED. In the first place, the contested decision represents the IAA within the meaning of Art. 21, para. 1 of the APC, insofar as there is an explicit statement of intent of the CPDP, which directly affects the rights, freedoms and / or legitimate interests of "Ecoenergy" Ltd. Upon referral under Art. 38, para. 1 of LPPD in connection with Art. 28, para. 1, item 1, art. 29, para 1 and art. 36 et seq. Of the Rules of Procedure of the CPDP and its administration / PDKZLDNA; Regulations; issued on the grounds of art. 9, para. 2 of LPPD / proceedings are initiated before the CPDP, the results of which are objectified in the decision under Art. 38, para. 2 of LPPD in connection with Art. 39, para. 2 of the PDKZLDNA. According to Art. 6, para. 1 of s.z. competent to rule on the procedure administrative body is the CPDP "an independent state body that protects persons in the processing of their personal data and in accessing these data, as well as control over compliance with this law." Pursuant to Art. 9, para. 4 in connection with para. 3 of LPPD the decisions of the commission are taken by a majority of the total number of its members / art. 7, para. 1 of LPPD - chairman and members; Art. 4, para. 1 of the Rules / during an open meeting. The same should be signed by all members who participated in the voting, and the special norm of art. 12 of the Regulations, regulating the validity of the decision, when it can be taken in absentia, if the chairman and all members of the commission agree and sign it. As can be seen from Minutes № 6 / 12.02.2020, the last meeting was attended by V.K., C.C., M.M. and VC. The latter signed the contested decision, taken by the required majority. In view of this, the court considers that the act was issued by a competent authority and there is no ground for revocation under Art. 146, item 1 of the APC. Secondly, the court finds that due to the lack of an explicit provision in the LPPD regarding the form and content of the decision, Art. 59 of the APC. The disputed IAA contains the requisites under Art. 59, para. 2 of the APC, namely: name of the body that issued it - CPDP; name of the act - decision; addressee of the act - "Ecoenergy" Ltd., Stara Zagora, in its capacity of respondent under Art. 38, para. 1 of LPPD; factual and legal grounds for its issuance; dispositional part, which declares a well-founded appeal with registration № PPN-01396 / 04.06.2018, filed by Z.Zh.V. and on the grounds of Art. 38, para. 2 and on the grounds of Art. 83, §5, letter "a" in connection with Art. thousands / BGN for the fact that in his capacity of personal data controller he has violated the provision of art. 5, §1, letter "a" and "b" of the Regulation; before which body and within what term it can be appealed; date of issue -14.04.2020; signature of the persons who participated in the proceedings, indicating the position held - chairman and members of the CPDP. Since the CPDP is a collective body according to Art. 7, para. 1 of LPPD in connection with Art. 4, para. 1 of the Rules, the act must contain the

signatures of the persons who participated in the vote, which circumstance is evident from Minutes № 6 / 12.02.2020. In view of this, the court finds that the statutory form of the contested Decision № PPN-01-396 / 2018 of 14.04.2020, therefore - there are no grounds for its revocation within the meaning of Art. 168, para. 1 in connection with Art. 146, item 2 of the APC. Thirdly, the court held that there were no significant violations of the administrative-procedural rules, a prerequisite for revocation of the decision on the grounds of Art. 168, para. 1 in connection with Art. 146, item 3 of the APC. The proceedings have been instituted lawfully in accordance with the provision of Art. 38, para. 1 of LPPD in connection with Art. 28, para. 1, item 1, art. 29, para. 1 and Art. 36 et seq. Of the Regulations on the basis of a complaint with ent. № PPN-396 / 04.06.2018 by Z.Zh.V. against Ecoenergy OOD, Stara Zagora With a letter ex. № PPN-01-396 / 01.10.2018, the Commission has notified Ecoenergy OOD about the initiated proceedings, giving it the opportunity to express an opinion on the allegations set out in the complaint, incl. and other relevant evidence to the dispute. 11, para. 2 of the Rules, insofar as they are indicated: the date and place of the meeting, the present members of the commission and employees of the administration, the adopted agenda, the statements made on it and the decisions taken. All participants in the proceedings were given the opportunity to express their opinions, to get acquainted with the documents attached to the file, as well as to provide the necessary evidence for their theses. Therefore - in forming its legal conclusions, the CPDP has collected and verified the evidence in accordance with Art. 34 - art. 40 of the APC, and did not restrict any of the parties to present considerations in support of their position. The notification letters sent in the course of the procedure are accompanied by return receipts, on which the recipients - parties to the file, have put a date and signature of receipt. The principle of art. 8 of the APC, namely all persons interested in the outcome of the administrative proceedings have equal procedural opportunities to participate in them in defense of their rights and legitimate interests. Decision № PPN-01-396 / 2018 of 14.04.2020, taken by the required majority and signed by the persons participating in the voting on 12.02.2020 was not issued in case of significant violation of the administrative procedure rules. The court finds that the precondition for annulment of the attacked IAA within the meaning of Art. 168, para. 1 in connection with Art. 146, item 3 of the APC. Fourthly, the court found that there was illegality of the decision within the meaning of Art. 168, para. 1 in connection with Art. 146, item 4 of the APC - contradiction with the substantive provisions of the law, in connection with which the legal conclusion sets out the following arguments: The parties do not dispute the fact that Ecoenergy Ltd. register of a new circumstance - termination of the membership of the deceased partner Zhelyo Tonev V. certificate of heirs, in which the name of Z.Zh.V. with three names, PIN and permanent address without the consent of the

person. According to the company's thesis, their action is lawful and was performed in fulfillment of their obligations under Article 21, item 11 of the Ordinance on keeping, storage and access to the Commercial Register and the Register of Non-Profit Legal Entities, which obliges them to termination of membership due to the death of a partner to attach to his application an act of death of the partner. Definition of "personal data" is given in Art. 4, § 1 of Regulation (EU) 2016/679, according to which the norm is any information related to an identified natural person or a person who can be identified ("data subject"); an identifiable natural person is a person who can be identified directly or indirectly, in particular by an identifier such as name, identification number, location data, online identifier or one or more features specific to the physical, physiological, the genetic, mental, intellectual, economic, cultural or social identity of that individual. Processing of personal data within the meaning of the Regulation (Article 4, § 2) means any operation or set of operations carried out with personal data or a set of personal data by automatic or other means such as collecting, recording, organizing, structuring, storing, adapting or modifying, retrieving, consulting, using, disclosing, transmitting, distributing or otherwise making the data available, arranging or combining, restricting, deleting or destroying it. The legislator has imperatively established the admissible hypotheses for processing personal data of individuals in the provision of Art. 4, para. 1, vol. 1-vol. 7 of LPPD, respectively Art. 6, § 1 of EU Regulation 679/2016, as the implementation of any of the hypotheses of item 1-item 7, respectively letter "a" to "e" is a sufficient ground for the existence of lawful processing of personal data. According to Article 6, § 1 of the Regulation, the processing of personal data is lawful only if one of the following conditions is applicable: a / the data subject has consented to the processing of data for one or more specific purposes, b / the processing is necessary for the performance of a contract to which the data subject is a party or for taking steps at the request of the data subject prior to the conclusion of the contract, c / processing is necessary to comply with a legal obligation to the data controller, d / processing is necessary to protect the vital interests of the data subject or other natural person, e / processing is necessary for the performance of a task in the public interest or in the exercise of official powers conferred on the controller, e / processing is necessary for the purposes of legitimate interests of the administrator or of a third party, unless such interests take precedence over the interests and fundamental rights and freedoms of the subject and data. In accordance with the law, the CPDP has accepted that the data have been processed illegally without the knowledge and consent of Z.Zh. and in the absence of contractual relations between it and Ecoenergy OOD. The processing was not performed in fulfillment of a normatively established obligation of the personal data controller. It is true that Ecoenergy Ltd. has an obligation to announce in the Commercial Register the termination of membership due to the death of a

partner, presenting the death certificate of the partner, and not a certificate of his heirs. The applicant should have obtained this document under the Civil Registration Act. The company has the opportunity to initiate proceedings for acceptance of the inheritance under Art. 51 of the Law, within which the court ex officio collects data on the heirs of the deceased natural person, which become available to the person concerned, such as the company in this case. In addition, conducting such proceedings would outline in a stable way the circle of heirs, together with their will to accept or reject the inheritance. The rights of the company are not limited in any way in the proceedings concerning entry in the Commercial Register, within which, the applicant has the procedural opportunity to obtain a court certificate under the Civil Procedure Code to establish the fact of death and heirs of the debtor - in this way the prerequisites of art. 106, para 1, item 3 of the Civil Procedure Code. Finally, there is even a possibility for the applicant, after establishing the heirs in a possible proceeding under Art. 51 of the Law, to obtain, in the person of his representative with a notarized power of attorney from the legal heirs, in order to provide a transcript of the extract from the death certificate. The Commercial Register does not enter the names of the deceased partner's heirs, in view of which the provision for publication of a certificate of heirs is illegal, as the interests of the data subject take precedence over the interests of the data controller. In violation of the principle under Art. 5, item 1 letter «b»

«Ecoenergy» Ltd. has attached to its application for publication of data in the Commercial Register the certificate of heirs of the deceased partner, which she obtained in connection with a commercial dispute, therefore in accordance with the law. The CPDP has applied the measure under Art. 58, §2, letter «d» of Regulation EU679 / 2016 and has obliged Ecoenergy OOD to take action to delete the certificate of heirs from the company's account. With regard to the imposed sanction in the amount of BGN 5,000, it is lawful. According to Art. 38, para 3 of LPPD CPDP may impose an administrative penalty in accordance with Art. 83 of Regulation (EU) 2016/679. According to the argument of Art. 83, §1 of the Regulation, the CPDP has the power to impose administrative penalties for violations of this Regulation referred to in paragraphs 4, 5 and 6 of the Regulation.

Depending on the circumstances of each case, administrative penalties of a "fine" or "pecuniary sanction" shall be imposed in addition to, or in place of, the measures referred to in Article 58 (2) (a) to (h) and (j). According to Art. 83, §2 of the Regulation, when deciding whether to impose an administrative penalty "fine" or "pecuniary sanction" and determine its amount, in each case the elements referred to in letters "a" to "k" shall be duly considered of this provision. The CPDP should assess the nature, gravity and duration of the violation. In determining the sanction, the CPDP has correctly taken into account, as a mitigating circumstance, that the violation is first for "Ecoenergy" Ltd. and that it concerns a violation of the rights of an

individual. The fact that the company is a micro-enterprise within the meaning of the Small and Medium Enterprises Act with assets reflected in the last published report for 2017 in the amount of BGN 338,000 was reported. The full name, PIN and address have been publicly available for a long time. In compliance with the principle of proportionality and proportionality, the CPDP has imposed an administrative penalty "property sanction" below the average amount specified in Art. 83, §5, letter "a" of EU Regulation 2016/679. In view of the above, it was unequivocally established that there is no precondition for revocation of the IAA, according to Art. 168, para. 1 in connection with Art. 146, item 4 of the APC - violation of the substantive legal provisions of the law.

For the above reasons, the court considers that the appeal is unfounded, and Decision № PPN-01-396 / 2018 of 14.04.2020 of the Commission for Personal Protection data, as a correct and lawful act should be confirmed.

We are guided by the above motives and on the grounds of art. 172, para 4, proposal two of APC, Stara Zagora Administrative Court

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And:

DISMISSES DISPUTE of Ecoenergy OOD, UIC 833018825, with registered office and address of management Stara Zagora, filed through his attorney under the case of attorney E.N. against Decision № PPN-01-396 / 2018 of 14.04.2020 of the Commission for protection of personal data.

The decision is subject to appeal in cassation before the Supreme Court administrative court within 14 days of its notification to the parties.

JUDGE: