

DECISION № 5521 Sofia, 15.10.2020 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 31 panel, in a public session on 20.07.2020 in the following panel: JUDGE: Veselina Zhenavarova with the participation of Secretary Rosalia Radeva, considering case number 2324 on the inventory for 2020 reported by the judge, and to rule took into account the following: The proceedings are under Articles 145-178 of the Administrative Procedure Code (APC), in connection with Article 38, para. .7 of the Personal Data Protection Act (PDPA). It was formed on the complaint of IPH against Decision №PPN-01-538 / 2019 of 19.11.2019. of the Commission for Personal Data Protection, by which on the grounds of Art. metrology, for unfounded. The complaint alleges that the decision of the CPDP was issued in violation of substantive law. It is requested that the disputed decision be revoked and the file returned for reconsideration to the CPDP, with instructions to rule on the establishment of all violations referred to in the complaint of 10.06.2019. and its clarification from 19.11.2019. In court the applicant I. P. H., in person and in a written defense submitted by her, upheld the appeal. Defendant - Commission for Personal Data Protection, etc., is not represented in court. In a written defense presented in the case by his procedural representative jurisk.R. disputes the appeal. Claim for legal fees. The interested party - Bulgarian Institute of Metrology, in court no. through lawyer N. and in a written defense submitted by him in the case, disputes the appeal. He claims the costs incurred in the case. Administrative Court Sofia - city, considering the evidence gathered in the case, separately and in their entirety, taking into account the arguments of the parties, considers the following established by the factual side: 2019, supplemented with an application entry №PPN-01-538 / 15 / from 07.10.2019, submitted by IPH, which states that in the period 01.08.2006-01.08.2018. has held the position of "Head of Department" at the Bulgarian Institute of Metrology / BIM /. After the termination of her employment - with application entry №78-01-63 / 20.08.2020. to BIM she requested to be provided with a certified copy of all documents in her personal file; to be notified of any processing of her personal data; as well as to delete her personal data, the storage of which is not required by law. She points out that, nevertheless, after the termination of her employment, BIM provided her personal data to lawyer BK, of the Law Firm "D. and L. ", of the SGP, of the ACCG, of the CPD; and for her file she points out that she received one only in January 2019, after the court obliged BIM to provide it. According to the applicant, the above BIM had committed violations of the LPPD. After the letter ex. № PPN-01-538 / 2019 / # 3 / 29.07.2019, was notified of the initiated administrative proceedings, in a letter issued №34-00-22-2 / 05.08.2019, BIM indicates that it has provided personal data to the applicant of the ACCG, the CPD and the SGP in fulfillment of her legal obligations; and that there were no circumstances in connection with which an obligation arose to

notify the applicant of the processing of her data. adm.d.100100/2018 according to the inventory of the ACCG and file №545/2018. according to the inventory of the CPD, on complaints from IH against acts and actions of BIM bodies. With a decision under Protocol №37 for held on 18.09.2019. A meeting of the CPDP declared a complaint with №PPN-01-538 / 10.06.2019, filed by IPH, admissible and were constituted as parties the complainant IPH and as a response such - BIM. With letters ex. № PPN-01-538 # 8 / 20.09.2019. and № PPN-01-538 # 10 / 20.09.2019, IH and BIM were notified about the meeting of the CPDP scheduled for the appeal, and they were given the opportunity to get acquainted with the administrative file, to take an opinion on it and to present evidence. As can be seen from Protocol №40 of October 9, 2019. and Minutes №41 / 16.10.2019, in an open meeting of the CPDP, after gathering evidence - ex officio and at the request of the parties, has considered on the merits a complaint with registration №PPN-01-538 / 10.06.2019. At the last meeting the CPDP accepted the complaint of IH against BIM as unfounded; as a result of which the CPDP has ruled the disputed Decision №PPN-01-538 / 2019 of 19.11.2019. The decision was communicated to the applicant on 7 January 2020; as the complaint against him was filed on 21.01.2020, as can be seen from the postmark on the envelope in which it was received by the CPDP. In the thus established factual situation and by conducting a comprehensive examination of the disputed act on the grounds under Article 146 of the APC in connection with its powers under Article 168 of the APC, the court made the following legal conclusions: The appeal is procedurally admissible. It is directed against an individual administrative act within the meaning of Art. 21 of the APC, which is subject to judicial review for legality, according to the explicit provision of Art. 38, para. 7 ZZLD. It was submitted within the preclusive term for contestation by an actively legitimized person - the addressee of the act. In essence, the court took into account the following: The contested in the present proceedings decision №PPN-01-538 / 2019 of 19.11.2019. has been issued by a competent administrative body - CPDP in accordance with the powers granted to it under Art. 38, para. 1 and para. 3 of LPPD and Art. 40, para. 2 of the Rules of Procedure of the Commission for Personal Data Protection and its administration / the Rules /; as adopted by the required majority - with the votes of four of the five members of the administrative body / Art. 9, para. 3 of LPPD /. The administrative act was also issued in the form prescribed by law - a decision stating the reasons - factual and legal grounds, due to which the complaint of IH is considered unfounded and is not respected. The decision was rendered after the parties were given the opportunity to express an opinion and present written evidence - Art. 36 of the APC in connection with Art. 38, para. 2 of the Regulations, as well as after consideration of the appeal on the merits in open session according to art. 40, para. 1 of the Regulations. No violations were committed in the constitution

of the parties. It is no significant violations of the procedural rules have been established during the examination of the administrative file by the CPDP. The present court also finds that the procedural decision was rendered in accordance with the applicable substantive law provisions and the arguments for illegality presented by the appellant in this sense appear to be unfounded. In view of the period in which the violations are alleged to have been committed, the substantive law applicable in this case is both before the amendments adopted following the entry into force of EU Regulation 2016/679 and after the amendments promulgated by the SG. no. 17 of 26 February 2019. It should be borne in mind that the subsequently repealed provisions of the LPPD are identical to those in EU Regulation 2016/679, as the texts of the repealed provisions correspond to the texts of the Regulation. The provision of Art. 2, para. 2, item 1 and item 3 of LPPD / revoked / stipulates that the personal data of natural persons must be processed lawfully and in good faith, as well as be relevant, related to and not exceeding the purposes for which they are processed. In the same way, the principles set out in Art. 5, § 1, b. "A" and b. "C" of EU Regulation 2016/679 / applicable from 25.05.2018 /, regulate that personal data are processed lawfully, in good faith and in a transparent manner with regard to the data subject and appropriate, related to and limited to what is necessary in connection with for the purposes for which they are processed / "minimization of data" /. According to the provision of Article 4, paragraph 1 of LPPD / canceled / processing of personal data is permissible only in cases where there is at least one of the following conditions : 1. the processing is necessary for the fulfillment of a statutory obligation of the personal data controller, 2. the natural person to whom the data relates has given his explicit consent, 3. the processing is necessary for the fulfillment of obligations under a contract under which the natural person the data subject is a party, as well as for actions prior to the conclusion of the contract and taken at his request; what the data refers to; 5. the processing is necessary for the performance of a task, which is carried out in public interest; 6. the processing is necessary for the exercise of powers granted by law to the administrator or to a third party to whom the data are disclosed; 7. the processing is necessary for the realization of the legitimate interests of the personal data controller or of a third party to whom the data are disclosed, except when the interests of the natural person to whom the data relate have priority over these interests. The cited provisions are identical to those provided in Art. 6, § 1 of EU Regulation 2016/679. In the procedural case of the case it is indisputably established that the personal data of IP X. were processed by BIM, constituted as a respondent in the proceedings before the CPDP, in its capacity of "controller of personal data" within the meaning of Art. 3 of LPPD / revoked / and Art. 4, § 7 of EU Regulation 2016/679, which processed personal data / three names, address, health status, "student" status, faculty number, school, dates of exams, grades, certifications,

salary, position held / to H. in the case of their provision in connection with cases initiated at the request of H. against BIM and on a signal submitted for a crime to the SGP. In the course of the administrative proceedings it is indisputably established that the processing of personal data of IH was carried out without her consent and knowledge. the file on which the termination order was issued of the employment relationship of the applicant on whose complaint it was instituted

adm.d.100100/2018 The data were provided to KZDiskr in connection with the formed

before her proceedings on a complaint by I. H. and according to Article 55 of the PfDA. On the lawyer K. and on Law firm "D. and L. ", the data are provided in connection with concluded with

them from the BIM contract for legal assistance in the proceedings before the ACCG and the CPD and according to art. 134 CRB, art. 2 of the Law on Advocacy and art. 17, para 3 and art. 18, para 1 APC.

In connection with the above, the court shares the findings of the CPDP that with respect to the data provided to the ACCG is present in the grounds under Art.

processing is necessary to comply with a legal obligation that applies

to the administrator and art. 9, § 2, item "e", proposed 2 of the ORD - the data are provided

of the court in his capacity as a judicial body on the occasion raised for

resolving a dispute by him in conjunction with Article 152, paragraph 2 of the APC in conjunction with Article 124 of the Law on the civil servant. With regard to the data provided to Attorney K. and Advocacy

company there is a ground under Article 6, § 1, item 7 of the ORD - the processing is

necessary for the purposes of the legitimate interests of the administrator and Article 9, § 2, item "e"

in front of. first of the ORZD / on health data / - in order

establishing, exercising and protecting legal claims in conjunction with Article 124 of the LSA,

respectively Art. 50 ZZDiskr.

With regard to the data provided to SGP in connection with the signal filed against I.

X. for a possible committed document crime, the court shares the conclusion of

CPDP that there is a ground under Art. 6, §1, b.

obligation that applies to the administrator and Article 9, § 2, item "g" of the ORD

/ regarding the health data / - the processing is necessary according to

reasons of important public interest in connection with Article 205 of the PPC.

It is irrelevant for the processing of personal data on the above grounds

the consent and notification of their subject to the extent necessary for

their lawful processing on the alternative ground under Art. 6, § 1, item "a".

On the allegation of a violation under Article 12, item 4, item "b" of the ORD

connection with the refusal of BIM to notify I.H. of her personal data processed, the court

finds that with application entry №78-01-63 / 20.08.2018. /p.132 of the case / and from

12/27/2018 /p.134 of the case /, I.H. does not make an explicit request to be informed about

her personal data processed by BIM, and requests copies of documents.

The applicant requested that they be provided to her pursuant to Article 17 of the LSA

copies of documents / which may contain personal data /, not data about

the personal data processed by BIM, which can be stored outside

her employment record. In under the LPPD one can search for information about processed personal files

data, not documents that are their carriers. This is possibly a reason to

accept the commission of a violation under Article 17 of the LSA / establishment and

the sanctioning of which is not within the competence of the CPDP /, but not under Article 12, item 4,

b. "b" of the ORZD.

In the complaint to the CPDP, on which the administrative proceedings have been instituted,

only the unlawful provision of personal data is alleged, therefore not

the applicant 's allegations in the proceedings should be considered and

for other violations under LPPD.

For the stated reasons the present panel of judges accepts that the filed by I.

X. the action is unfounded and, as such, must be dismissed.

In view of the outcome of the dispute and the statements made by the procedural representatives of the defendant and

the interested party claims to be ordered to pay the costs,

the applicant will have to be ordered to pay such to the CPDP for

legal consulting remuneration according to art. 78, para 8 CPC in conjunction with art. 143, para 4 and

Article 144 of the APC in conjunction with Article 24 of the Ordinance on the payment of legal aid in the amount of per BGN 100; and BIM - for attorney's fees in the amount of BGN 500, which is c the minimum amount under Art. 8, para 3 of the Ordinance on the minimum amounts of attorney's fees.

Led by the above and pursuant to Art. 172, para. 2 of the APC, Administrative Court

Sofia-city, Second Department, 31 members,

RESOLVED:

DISMISSES THE APPEAL of IPH against Decision №PPN-01-538 / 2019 of 19.11.2019.

of the Commission for Personal Data Protection.

ORDERS I.P.H., with PIN- [PIN], to pay to the Commission for Personal Data Protection

court costs in the amount of 100 / hundred / BGN /.

ORDERS IPH, with PIN- [PIN], to pay to the Bulgarian Institute of Metrology

court costs in the amount of BGN 500 / five hundred /.

The decision is subject to cassation appeal before the Supreme Administrative Court in

14 days from its notification to the parties.

JUDGE: