Decision on appeal with registration № PPN-01-159 / 14.11.2017 DECISION» PPN-01-159 / 2017 Sofia, 03.09.2019 Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on 29.05.2019, on the grounds of Art. 10, para. 1 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), considered on the merits a complaint № PPN-01-159 / 14.11.2017 filed by ID The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection has been seised with a complaint filed by ID, in which allegations are made for illegal processing of his personal data by a telecommunications operator (TO) for concluded without his knowledge and consent contracts for services of On 16 August 2017 and 21 August 2017, the complainant informed that on 2 November 2017 he had been notified by telephone by a representative of a financial institution (FI) that he had liquid and due liabilities to T.O. in the amount of BGN 258, which he must pay. He adds that on this occasion the next day he visited the office of a mobile operator and found that his personal data were used for contracts concluded on 16.08.2017 and on 21.08.2017 with the company, which he is adamant that he did not conclude , and that the signatures under the contracts are not his. He asserted that his personal data had been misused and misused for the purposes of those contracts. Informs that the contracts specify an address different from the one on his identity document and to which he was never registered, and that one of the contracts contains data from an identity document - ID card expired in 2014, and also that in some of the appendices to the contracts another name of the subscriber is mentioned - J. and Dk. The complainant asked the Commission to investigate the case and informed that the case had been referred to the RPD - GD, where a file was filed URI **** Relevant evidence was attached to the complaint. 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 T.O. a written statement is required. In response, the company expressed an opinion that the complaint was unfounded, with relevant evidence attached to it. They claim that the complainant is a subscriber of a company and a party to the following contracts: 1. a contract concluded on 14.07.2017 for fixed and mobile services and additional packages and Annex № 1 to it regarding the handover protocol for purchased devices; 2. a contract concluded on 16.08.2017 for mobile services and additional packages and Annex № 2 to it

regarding the handover protocol for purchased devices; and 3. a contract concluded on 21.08.2017 for fixed and additional package and appendix № 3 to it regarding the handover protocol for the purchased device. They add that due to the refusal of the subscriber to install the requested TV service, which is part of a bundled service - fixed internet via mobile network, satellite TV and mobile service, the contract of 14.07.2017 for the bundled service was terminated in respect of TV the service. They indicate that under the contract concluded between the parties on 21.08.2017 an installation was carried out at the address ******. They claim that in connection with the contracts the applicant has liquid and due liabilities to the company in the amount of BGN 1,130.22 reflected in issued by TO invoices № ** 1, № ** 2, № ** 3, № ** 4, № ** 5 from 2017 and invoices № ** 1, № ** 2, № ** 3, № ** 4 , № ** 5, № ** 6, № ** 7, № ** 8, № ** 9, № ** 10 and № ** 11 of 2018. Inform that for the purposes of debt collection personal data of the complainant were provided to FI, and the relations between the companies were settled by a contract for collection of receivables concluded on 13.11.2013. D. information on the case file and data on its progress was requested. In response, the Regional Department informed about the file URI № *****, ent. № *** according to the inventory of the District Prosecutor's Office GD, which is being investigated in connection with a file filed by ID complaint for concluded contracts with T.O. on behalf of the plaintiff. A certified copy of the expert report № *** has been provided from the latter. At a meeting of the Commission held on March 14, 2018, the complaint was accepted as regular and procedurally admissible, as filed within the statutory period by a natural person with a legal interest against a competent party - personal data controller. The following parties have been constituted as parties in the proceedings: complainant - ID, respondent party - TO and interested party - F.I. Ltd. An open hearing was scheduled to consider the complaint on the merits on 04.04.2018, and the complainant was informed about the evidence gathered in the file and the opportunity to get acquainted with them and express an opinion, present new evidence and / or make requests for evidence. The respondent party was also informed about the opportunity to get acquainted with the information provided by the District Prosecutor's Office - G.D. certified copy of expert report № *** for performed graphic examination of relevant documents. As can be seen from protocol PPN-01-159 # 18 / 30.03.2018, the procedural representative of the company got acquainted with the evidence collected in the file and in particular with the expert report. F.I. expresses a written opinion that the complaint is unfounded. They claim that on the basis of a contract concluded on 13.11.2013 between T.O. if I. receivables collection agreement T.O. has provided the personal data of the complainant for collection of unpaid in time liquid and due liabilities, in connection with which the contacts made with the complainant by F.I. Inform that they do not have documents concerning the emergence, change and termination of contractual

relations between TO and his subscriber and add that at the request of the assignor - T.O. "The processing of the case has been terminated". In the course of the proceedings TO was provided relevant evidence in the case, including correspondence with RUP-G.D. concerning the service contracts concluded on 16.08.2017 and 21.08.2017.As can be seen from the attached letter ex. were concluded by an employee of NK - sales representative of TO In connection with the established new circumstances in the case as a party to the proceedings was constituted NK and the latter were required written opinion and evidence. of handwriting expertise regarding the service contract concluded on 21.08.2017 and the annexes thereto, and the complainant was given the opportunity, which he did not take advantage of, to present material for its preparation. An open meeting was scheduled and the parties were regularly notified. In view of the above on 03.04.2019 a meeting was opened by allegations by a representative of NK that the procedural contracts were concluded not by NK, but by a third party F., a company with which NK has commercial relations, through an employee of the company VS, the Commission constitutes as a respondent in the proceedings and F. A new open meeting is scheduled to consider the complaint on the merits for 29.05.2019, of which the parties are regularly notified. An opinion and relevant evidence were requested from F., but no such evidence was involved. In the course of the proceedings by NK presented uncertified copy of employment contract № *** on the list of F., concluded between the company and VS, order № **** for its termination, job description and subcontract, concluded on 15.04.2016. between NK and F. At a meeting of the CPDP held on May 29, 2019, the complaint was submitted for consideration on the merits. The applicant - regularly informed, did not appear, did not represent himself. F. - regularly notified, not represented. F.I. - regularly notified, not represented. T.O. - regularly notified, represented by MP, with a power of attorney for the file and A.D. - executive director of the company, who dispute the complaint. Present and the Commission accepts, as relevant to the subject matter of the dispute, a certified copy of: Instructions for working with sensitive information of TO EP.PC.ER.01. WI.01; Fraud prevention policy EP.EM.ER.01. P0.01; List of attendees of the GDPR training held on March 1, 2019 and their obligations related to concluded with TO partnership agreement; Excerpt from Instruction № 1 to the procedure for concluding a contract with individuals and General Terms and Conditions; Data processing contract concluded between T.O. and N.K. on 25.05.2018 ; Appendix № 1 to the Framework Agreement for the provision of services dated 14.04.2016. They do not point to other evidence, they have no requests for evidence. NK - regularly notified, represented by E.B. - a manager of the company, who claims to be familiar with the evidence gathered in the file, does not point to new evidence and has no requests for evidence. The procedural representative of T.O. maintains the view that the complaint

concerning the mobile operator is unfounded. In addition, he points out that it was only in the present proceedings that the company was informed that N.K. uses a subcontractor to conclude contracts for provided by T.O. services. He claims that the re-authorization is in violation of the contract concluded between the parties and without the written permission of T.O. Considers that the responsibility of the operator should not be committed, as long as the personal data are not collected by him, and the procedural contracts are presented to the company by NK and they are formally correct - they contain the mandatory details and the company had reason to believe that they are valid. He claims that the company has created all necessary technical and organizational measures and conditions for lawful processing of personal data and asks the Commission to leave the complaint without respect. At the meeting, the manager of NK confirms that the procedural contracts were concluded by NK, the latter using subcontractor F. from whose employee the contracts were signed. He does not deny that there is no written permission, respectively consent from T.O. for re-authorization. He claims that there was no reason for the company to consider them invalid insofar as they contain all the details. 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 factual facts, given the written evidence gathered and the allegations made by the parties, the Commission considers that considered on the merits complaint PPN-01-157 / 14.11.2017 is partially justified. In issuing the decision, the change in the legal framework in the field of personal data protection and the fact that from 25.05.2018 applies 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 and the fact that from 02.03.2019 in force Act amending and supplementing the Personal Data Protection Act. Account is also taken of the fact that Regulation (EU) 2016/679 has direct effect, and 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 written in the LPPD in the wording before 02.03.2019, in view of the fact that the legal facts and legal consequences related to the processing - data collection and conclusion of procedural contracts was made on 16.08.2017. is also the fact that the provision of Art. 23, para. 1 and Art. 4, para. 1 of LPPD (revoked, but effective as of the date of processing) corresponds to the provision of Art. 25, § 1 and Art. 6, § 1 of the Regulation and do not contradict them, as both provisions impose an obligation for lawful processing of personal data in the presence of a condition for admissibility of processing and technical and organizational measures for data protection.

The subject of the complaint are the allegations of Mr. ID for illegal processing of his personal data for concluded on 16.08.2017 and 21.08.2017, without his knowledge and consent, contracts for services provided by TO From the evidence gathered in the file, the existence of a contract on the inventory of TO, concluded on 16.08.2017 for the provision of mobile services and additional packages, Annex № 1 to it for SIM cards *** and *** * and device with ****** with price package "******", Additional appendix to Annex № 1 of the contract for additional package "********", Additional appendix to Appendix 1 for use of additional package "*****", Appendix № 3 to the contract, as well as the Handover Protocol for the purchased terminal device Tablet Pixi 4.7 and Tablet Pixi 4.8. 2017 for the provision of mobile services, Annex № 1 to it regarding SIM cards *** and **** and requested Internet package "*****", Addendum to Annex № 1 to the contract on activation of an additional TV package, , **** ", Appendix № 3 and Acceptance transfer protocol for purchased terminal device model ***. The existence of a contract is not disputable. or between the parties T.O. and ID, concluded on 14.07.2017, which is not the subject of the complaint. It is evident from the content of the procedural contracts and the annexes to them that they contain information about the applicant in volume - three names and a unique civil number, which has the character of personal data, given that it can be undisputedly individualized. Placed under the contracts of 16.08.2017 and 21.08.2017. and the attached signatures for the subscriber are disputed by the complainant Mr. ID, and the conclusion of the expert report on the case № ***, according to the list of RPD - G.D. is categorical that the signatures executed in the places "Place for signing the subscriber" in the contract concluded with TO on 16.08.2017 and the appendices to it have not been made by the person ID From the evidence gathered in the file and presented by the manager of NK and by the procedural representative of T.O. allegations were found that the contracts were concluded by NK, and it should be noted that all were concluded in **** and signed by employee "For the seller" VS Indirect evidence of the latter is contained in presented on the file acceptance-transfer protocol from 21.08.2017 for purchased terminal equipment, which states that it was signed in the store of NK in ****. Exposed by NK allegations that the contract was concluded by a subcontractor of the company, namely F. and in particular by V.S. employee of the company are not supported by the evidence presented in the file. In the contracts and the appendices to them an employee with initials VS is indicated, which cannot be definitively established, only on the basis of this information whether it is VS, moreover that when comparing the signature placed under the employment contract the person and the signatures placed by VS under the procedural contract for services do not establish similarities. In connection with the above, the Commission finds it indisputably established that the personal data of the complainant were processed by NK, in the case of collection and use, for the conclusion of the contract of

16.08.2017 and its annexes, without the knowledge and consent of the applicant and without a valid contractual relationship. The processing is not performed in fulfillment of a statutory obligation of the personal data controller, is not necessary to protect the life and health of the individual, nor to perform a task in the public interest or to exercise powers granted to the controller by law, as and to realize the legitimate interests of the administrator, which should take precedence over the interests of the individual. In this regard, it must be concluded that the data were processed by NK without the presence of a condition for admissibility of the processing in violation of Art. 4, para. 1 of the LPPD (repealed) and the rights of the person referring to the CPDP have been violated. The above conclusion cannot be shared with regard to the service contract concluded on 21.08.2017 and its annexes, given the fact that the file lacks evidence to support the allegations of Mr. ID, the same disputed by the defendants parties, for unlawful processing of his personal data for the purposes of the contract. The applicant was given the opportunity to submit comparative material for the preparation of an expert examination of the contract, which he did not benefit from, in view of which the Commission unanimously accepted the complaint in this part as unfounded as unproven. Undoubtedly, from the evidence gathered in the case file, it was established that the applicant's data had also been processed by T.O. in connection with the collection of obligations arising from the contract, for the purposes of which it is kept by T.O. The Commission finds that although the data contained in the contract were collected not by TO but by NK, for TO has not been dropped, but on the contrary there is an obligation arising from Art. 23, para. 1 of LPPD (revoked), respectively after 25.05.2018 obligation under Art. 25, § 1 of the Regulation, to take the necessary technical and organizational measures for their protection from illegal processing by TO The file contains instructions and measures for data protection written by the operator, which in this case the Commission considers that they have not been implemented and are only formal, insofar as they have not been complied with with regard to the procedural contract. In support of this conclusion is the fact that on page 1 of the contract it is stated that it was concluded with TO, and the column "partner of TO" is not filled. According to the clarifications, it is filled in "in case the contract is signed in a store of the partner network", as established by the evidence gathered in this case. Apart from that, there is no evidence in the file, such as acceptance protocols or other evidence of when and how the contract was handed over to T.O. Last but not least, in the contract and the appendices to it, there are discrepancies in the name of the subscriber, which have not been ascertained by TO, namely in the first page it is indicated as ID, on the second and third page I .J., The same indicated in the appendices, as I.Dk., and it should be noted that on page two, after item 6, of the contract there is no signature of the subscriber, ie. the contract does not contain all the details,

and the ones contained are contradictory and inaccurate. These discrepancies were not found by T.O. and despite notification by the applicant, as evidenced by a letter from T.O. to Mr. I.D. on the occasion of a complaint with ent. № ***, the company has not taken organizational measures to stop the illegal processing or at least to investigate the case. In this connection, the Commission, by a majority of three votes, accepted that T.O. there is a violation of Art. 23, para. 1 of LPPD (repealed), respectively Art. 25, § 1 of the Regulation, insofar as the processing continues after 25.05.2018, namely unprocessed technical and organizational measures in connection with the processing of personal data by the company under a contract dated 16.08.2017. Disagree with the latter Tsvetelin Sofroniev and Vesselin Tselkov - members of the Commission voted with a special opinion, believing that the complaint is unfounded in relation to TO In view of the nature and type of the established violations, the Commission finds that the corrective measures under Art. 58, § 2, letter "a", "b", "c", "d", "e", "e", "g", "h" and "j" of the Regulation are inapplicable and inappropriate in this case, having regard to the gravity of the infringements and the fact that they have been completed, they have also caused damage to the applicant. In this regard, it finds it appropriate, proportionate and dissuasive to impose a corrective measure under Art. 58, § 2, letter “i” of the Regulation, namely the imposition of property sanctions on NK and TO, considering that they will have a precautionary effect and will contribute to compliance with the established legal order. Apart from a purely sanction measure, a reaction of the state to the violation of the normatively established rules, the property sanction also has a disciplinary effect. The administrator is obliged to know the law and comply with its requirements, arising from its subject of activity, human and economic resources.The Commission, taking into account the purpose of the punishment, its nature and severity, the public relations it affects and the categories of personal data affected by it, determines that it is proportional to what was done by N.K. violation, sanction in the amount of BGN 10,000 - an amount well below the average minimum provided in the Regulation for this violation, the same provided as a minimum in the norm of Art. 42, para. 1 of LPPD (repealed) for violation of Art. 4, para. 1 (repealed) of the same law.

In determining the amount of the sanction and in accordance with the conditions under Art. 83, para. 2 of the Regulation, the Commission considered that it was a violation of the rights of one person, and the sanctioned company is a small enterprise within the meaning of the law and the violation is first for him and he helped to reveal the facts and circumstances of administrative proceedings. As aggravating circumstances in determining the amount of the sanction, the Commission took into account that the violation was completed by the act of its commission and is irreparable, and the same became known to the CPDP as a result of its referral by the victim. As an aggravating circumstance was taken into account the fact that the

processed personal data in the amount of three names and a single civil number and the same were used to create financial and contractual ties of the person. The circumstances under Art. 83, para. 2, letter "b" and "i" of the Regulation are irrelevant insofar as it concerns a personal data controller - a legal entity that does not form a fault, and at the time of the violation approved codes of conduct, respectively approved certification mechanisms are not introduced.

With regard to T.O. The Commission finds that the sanction imposed for violation of Art. 23, para. 1 of LPPD (repealed), respectively Art. 25, § 1 of the Regulation should amount to BGN 2,000, the latter being found to be proportional to the gravity of the infringement.

In determining the amount of the sanction of a mobile operator and in accordance with the conditions under Art. 83, para. 2 of the Regulation, the Commission took into account that it was a violation of the rights of one person, as the company assisted in disclosing the facts and circumstances in the administrative proceedings. As aggravating circumstances in determining the amount of the sanction, the Commission took into account that the violation was completed by the act of its commission and is irreparable, and the same became known to the CPDP as a result of its referral by the victim and passive behavior of the company. An aggravating circumstance is the fact that the processed personal files were used to create financial and contractual obligations of the person, as well as the fact that the violation is not the first for the administrator. The circumstances under Art. 83, para. 2, letter "b" and "i" of the Regulation are irrelevant insofar as it concerns a personal data controller - a legal entity that does not form a fault, and at the time of the violation approved codes of conduct, respectively approved certification mechanisms are not introduced.

Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection,

HAS DECIDED AS FOLLOWS:

1. Dismisses as unfounded and unproven the complaint № PPN-01-159 / 14.11.2017 in the part concerning the allegations of illegal processing of personal data of Mr. ID in connection with the contract for mobile services concluded on 21.08.2017.

2. Declares the complaint in its remaining part concerning the contract concluded on 16.08.2017 and its annexes, as well-founded in respect of NK

3. On the grounds of art. 83, § 5, letter “a”, in connection with Art. 58, § 2, letter “i” of EU Regulation 679/2016 imposes on NK with UIC *****, with registered office and address of management *****, in his capacity of controller of personal data, property sanction in the amount of BGN 10,000 (ten thousand levs) for processing the personal data of the complainant in violation of

Art. 4, para. 1 of LPPD (repealed), respectively Art. 6, § 1, of EU Regulation 2016/679.

4. By a majority of three votes and with the dissenting views expressed by Mr Tsvetelin Sofroniev and Mr Veselin Tselkov, the Commission also declared the complaint concerning the telecommunications operator to be well-founded.

5. In the conditions of item 4 and on the grounds of art. 83, § 4, letter “a”, in connection with Art. 58, § 2, letter “i” of EU Regulation 679/2016 imposes a property sanction on the telecommunications operator with UIC *****, with registered office and address of management *****, in its capacity of controller of personal data in the amount of BGN 2,000 (two thousand levs) for violation of Art. 23, para. 1 of LPPD (repealed), respectively Art. 25, § 1 of EU Regulation 2016/679.

After the entry into force of the decision, the amount of the imposed penalties to be transferred by bank transfer:

Bank of the BNB - Central Office, IBAN: BG18BNBG96613000158601, BIC BNBGBGSD

Commission for Personal Data Protection, BULSTAT 130961721

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.

THE CHAIRMAN:

MEMBERS:

Ventsislav Karadzhov

Tsanko Tsolov

O.M. Tsvetelin Sofroniev / p /

Maria Mateva / p /

O.M. Veselin Tselkov / p /

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