DECISION № 6875 Sofia, 02.12.2020 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 41 panel, in a public session on 19.11.2020 in the following panel: JUDGE: Luiza Hristova with the participation of Secretary Mariana Veleva, considering case number 8745 on the inventory for 2020 reported by the judge, and in order to rule took into account the following: The proceedings are under Art. 145 et seq. Of the APC. It was formed upon a complaint of [company] with headquarters in [settlement] against Decision № PPN-01-523 / 05.08.2020. of the Commission for Personal Data Protection, declaring a complaint by RDD to be well-founded in respect of the complainant, ordered him to comply with the processing of personal data of the person with Article 5, §1, b. "C" of Regulation 2016/679 by making the publication on the website www.pik.bg available without seeing the signature of the person, and imposing a property sanction in the amount of BGN 5,000 for violation of Art. 25h, para 1 of LPPD. The complainant states that the order not to publish the signature of the issuer of the document is not supported by either the law or Regulation 2016/679. The publication of a document without a signature calls into question its authenticity, which contradicts Art. 39-41 of the Constitution of the Republic of Bulgaria. The conclusions of the CPDP contradict decision № 8 of 15.11.2019. of the Constitutional Court under c.d. № 4/19 Therefore, it claims annulment of a decision Decision № PPN-01-523 / 05.08.2020. of the Commission for Personal Data Protection as illegal. Defendant - the Commission for Personal Data Protection, regularly notified through his legal representative, expressed an opinion that the complaint was unfounded. He claims legal fees. The interested party (ZS) - R. D. D., regularly notified, does not appear and represents and does not express an opinion on the complaint. After discussing the arguments of the parties and the evidence accepted in the case, the court in the present panel found the following on the factual side: The proceedings for issuing the disputed act were instituted on appeal from 07.06.2019 for illegal use of his personal data - publication of his handwritten signature under a letter responding to an application for access to public information on the website of the ARC news agency. Attached to the complaint is a printout from the website of the agency dated 05.06.2019, which shows that on 30.05.2019. An article was published, which contains a letter to Ms. M. - editor-in-chief of [company] with a copy to the deputy. the Chief Prosecutor at the VAP AP. The letter was signed by the ZS in her capacity as administrative head of the District Prosecutor of the SRS. By a letter dated 15 July 2019 to the Secretary General of the CPDP, the complainant was informed of the open administrative proceedings and was instructed to send a statement and all relevant evidence. In response from 19.07.2020 [company] states that it has published the response of the Insurance Act without edits and corrections, as it sent it and explicitly wished to be published. The publication of the signature of the Insurance Act is an omission on the part of the

agency, due to the fact that the person himself has not taken measures to protect his personal data. Based on the data thus collected, at a meeting of the CPDP on 13.05.2020. under protocol № 18, item 11 the appeal of R. D. D. was accepted as admissible and its consideration in an open session was scheduled. The parties were notified of the meeting. Two experts from the CPDP on 11.06.2020. have drawn up a report on screen prints prepared from the complainant's website, from which it is evident that the article is still on the website with the indelible signature of the CA under the letter. The file was considered at a meeting of the commission on 16.06.2020. under protocol № 28, item 1 of the agenda, on the basis of which the procedural decision was issued. In it, R.D.D.'s complaint against [company] was accepted as well-founded, as the operator had published the personal data of ZS - two names, signature, position held, which are sufficient for indisputable identification of the person without his consent. The site www.pik.bg, where the data are published, has the character of a social media, to which an unlimited number of people who have visited the site have access. ZS, on the other hand, is a public figure, which increases the public's interest in the information related to him. As a result, the protection of his personal data is lower than the protection of other citizens. Therefore, the processing of data on his name and position is necessary to form an opinion among citizens and their publication on the complainant's website does not violate the rules on personal data protection. However, the publication of the signature exceeds the objectives under Art. 25h, para 1 of LPPD and violates the right to privacy of the person who laid it. The right to the protection of personal data, arising from the right to privacy, takes precedence over the right to freedom of opinion and information, insofar as the latter would not have been infringed if this signature had not been published. Therefore, there is a violation of the principle of minimizing data, regulated in Article 5, § 1, b. "C" of Regulation 2016/679, and Art. 25h, para 1 of LPPD. The Commission has assessed the measures that are applicable to the specific case and has chosen the one under Art. 58, §2, b. "D" and "i" in view of the violation of the principle of accuracy of data of one subject, the existence of other similar violations by the complainant, established by decision № PPN-01-360 / 2019. and decision № PPN-01-1748 / 2019, attached to the case without data for their contestation, show that the complainant does not influence his behavior by the given prescriptions. Therefore, in addition to the prescription to make the publication on its website available without the signature of the Insurance Act being visible, the complainant was also imposed a property sanction in the amount of BGN 5,000. In determining the amount of the sanction, the circumstances under Art. 83, §2 of Regulation 2016/679. The decision was taken by a majority of three members of the CPDP. In the factual situation thus established, the court finds the following from a legal point of view: The appeal is admissible, as filed in time, by a person

entitled to this and against an individual administrative act subject to appeal. As can be seen from the return receipt on page 41 of the case, the impugned decision was served on the applicant on 10.08.2020, and the appeal was filed on 21.08.2020. Considered on the merits, the complaint is unfounded for the following reasons. The disputed administrative act was issued by a competent body - the Commission for Personal Data Protection. The decision was issued in the form prescribed by law, according to Art. 59 of the APC, as it contains the necessary ones specified in para. 2 requisites - name of the body, name of the act, addressee of the act, factual and legal grounds for its issuance, dispositional part, date of issue and signatures. No significant administrative-procedural violations were committed during the issuance of the disputed administrative act. The CPDP has gathered all the necessary evidence in considering the dispute on the merits, according to the provision of Art. 36 of the APC, and has objectively examined all the facts and motivated in detail its conclusions in the contested decision. There is no contradiction between the challenged act and the substantive law. The main conclusion of the Commission is that the personal data of the Insurance Act have been processed by the complainant in violation of Art. 25h, para 1 of LPPD is supported by the evidence presented in the case. According to this provision, the processing of personal data for journalistic purposes, as well as for academic, artistic or literary expression, is lawful when carried out for the exercise of freedom of expression and the right to information, while respecting privacy. In Article 5, §1, b. "C" of the ORD introduced the principle of minimizing data, according to which personal data are appropriate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In this case the complainant has violated this principle as on 30.05.2019. has published on its website a letter signed by the AC, and the signature is visible from the publication. The signature of a person is personal data on which the same can be identified when placed under the name and position of the signatory. Freedom of expression and the right to information can be fully satisfied by announcing the name and position of the person signing the letter. The publication of his signature constitutes a disproportionate interference with his personal life which goes beyond the purpose for which the personal data are processed. The applicant's allegations that the non-publication of the signature calls into question the authenticity of the document are therefore irrelevant. Such suspicion may arise when the original document is not signed at all, and not when it is signed but the signature is not published. In this sense, there is no contradiction between the procedural decision and Art. 39, para 1 of the Constitution, because the same protects the right to free expression and dissemination of opinion, but with the restrictions under para 2 - without prejudice to the rights of others. Freedom of the press and the right to information are not infringed either, because the requested information is published as it is provided and the

names and positions of the person who provided it are sufficient to meet the needs of a democratic society. Therefore, in the specific case the publication of the signature of the Insurance Act is disproportionate to those set out in Art. 25h, para 1 of LPPD purposes. It should be noted that in decision № 8 of 15.11.2019. according to c.d. № 4/19 The CC notes that the issues that arise in practice in relation to the balancing of conflicting fundamental rights are: first - on the nature of the balancing method, and second - on the timing of balancing. Regarding the K. method, the court noted that this was a pragmatic approach in jurisprudence in adjudicating disputes in the field of rights. Based on the argument for the non-absolute nature of rights, this approach ensures that each of the competing interests is recognized on its own - there are no losers and everyone gets what they deserve in certain circumstances.change economic and social needs and ensure minimum "victims" in the whole system of values on which fundamental rights are based. By The nature of balancing is an activity of analysis and evaluation that is performed by chance on a case-by-case basis and is established as an approach of the courts, which are the right forum for resolving conflicts of rights. This is not a rule-making activity to resolve future specific cases of tensions between fundamental rights, suitable to be universally applied in view of a rigid hierarchy of interests and principles. Balancing gives priority to specific interests circumstances and court requirements, which does not establish certain and permanent rules, on the contrary, they are subject to change. About the moment of balancing, the Constitutional Court emphasizes that it is approached only after passing through other, logically next stages of the established in the jurisprudence of the ECtHR and the CJEU and a three - step proportionality analysis applied by national courts the restrictive measure imposed on a fundamental right (proportionality test). Proportionality and balancing represent unity - the last and the most essential phase of the proportionality test as an analytical judgment procedure is balancing in its own sense (stricto sensu). Before discussing the question of the proportionality of a restrictive measure, if necessary reconciliation of fundamental rights in conflict, it is necessary to establish first whether

the measure in question affects the essential content of the law - its "firm

This is the general clause restricting fundamental rights, which

points to the requirement to respect the fundamental / essential content of these rights; and

freedoms in the first place, and only then prescribes that restrictions can be

imposed in compliance with the principle of proportionality and in order to achieve the objectives

indicated by her. In accordance with this logical sequence of assessments of

the restrictive measure in case of a positive answer to the above balancing question is not

necessary. This is because a restrictive measure that calls into question

the law itself, as such, is disproportionate in itself. National

constitutional jurisdictions also refer to the preservation requirement

of the essential content of fundamental rights as a dimension of the rule of law.

In affirming this understanding of the essential content of fundamental rights

The CJEU has an important role, in particular, in the field of the right to privacy

life and protection of personal data. The concept of affecting the essential

content of a fundamental right emphasizes the need for enhanced

attention (strict control) to the intensity of entry into a fundamental right

in the analyzes for proportionality of a restrictive measure introduced by law.

Therefore K. court derives the need for a specific assessment on each individual

case in view of the circumstances, and not on pre-set and unclear principles

criteria. In this regard, the defendant correctly took into account the fact that ZS is a public figure

and the publication of his personal data for journalistic purposes may be

justified in view of the public's right to information. However, this right would not

was violated by publishing the names and position of ZS as the author of the letter,

as the public has clear information that what is stated in the letter is precisely

the opinion of the Insurance Act. The signature is relevant only in the event of a dispute over the authorship of

the document, which in this case has no data to be kept, and it cannot be assumed that with

its publication has struck a balance between the right to information and the right to privacy life. Therefore, it is correctly accepted that there is a violation of Art. 25h, para 1 of 33ЛД. In view of the fact that the infringement continued at the time of taking the procedural decision of the CPDP, the procedural prescription was correctly imposed, which aims to put an end to the violation found. At the same time prescription is the third in a row for such violations established by decisions of the CPDP by April and May 2020, which are not disputed and despite which the complainant continues to commit the same violations. The committee has therefore chosen to imposed a property sanction, taking into account the fact of disclosure of personal data of the Insurance Act of an unlimited number of persons, without taking timely measures for their protection in case of recurrence of violations. The amount of the sanction is in line with the applicant's economic resources and his status as a micro-enterprise according to the financial statement for the realized revenues in 2018, as determined sanction is less than 1% of these revenues according to art. 83, §5, b. "A" of the ORD.

In view of the above, the court accepts that the procedural decision of the Commission for Protection of personal data is lawful and the complaint against him should be rejected as unfounded.

In view of the outcome of the dispute, the claim of the defendant, stated in sz on 19.11.2020, for legal consulting remuneration in the minimum amount of BGN 200.

Led by the above Administrative Court Sofia-city, 41 panel

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And:

DISMISSES the appeal of [company] against Decision № PPN-01-523 / 05.08.2020. on Commission for Personal Data Protection.

ORDERS [the company] to pay to the Commission for Personal Data Protection the amount of

BGN 200 costs of the case.

The decision is subject to appeal before the Supreme Administrative Court within 14 days

deadline from its notification to the parties.

Transcript to be sent to the parties.

JUDGE: