DECISION № 4632 Sofia, 17.08.2020 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 41 panel, in a public session on 30.07.2020 in the following panel: JUDGE: Luiza Hristova with the participation of Secretary Mariana Veleva, considering case number 5107 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 on the complaint of the political party "Attack" against Decision № PPN-01-1793 / 11.05.2020. of the Commission for Personal Data Protection, declaring a complaint by MVC to be well-founded with regard to the complainant, and imposing a pecuniary sanction in the amount of BGN 10,000 for violation of Article 6, § 1 of 2016/679. The complaint claims that the disputed decision was rendered in case of significant violations of the rules of administrative procedure - the decision was signed with OM by one of the members of the commission regarding the amount of the sanction. It is determined in contradiction with the current wording of Art. 42, para 1 of LPPD, which does not provide for a minimum of BGN 10,000. In addition, the gravity of the violation was not taken into account, and the sanction was formally determined without reasons for determining its amount. It is also claimed that the procedural decision is illegal due to lack of reasons why Art. 58 of Regulation 2016/679 and how the sanction was considered to be the most appropriate measure. The Commission erred in relying on the same circumstance in determining both the type of measure to be taken and the amount of the sanction. The mitigating circumstances were not taken into account - it is a violation related to data of one person, no damage occurred, the violation was quickly remedied, occurred inadvertently to an employee of the administrator without purpose. The mentioned previous decisions of the CPDP for violations of the LPPD are not related to the procedural one. In addition, the deadline for the CPDP to rule has not been met, the factual situation has not been clarified - the date of commission and which specific action constitutes a violation, the decision is unfounded. The lack of violation of Regulation 2016/679 is pointed out as a violation of substantive law, as as a participant in elections the party has an obligation under Art. 124, para 4 of the Electoral Code to process the personal data of the persons, who are authorized to represent it on the election day. Therefore, there is a hypothesis of Article 6, §1, b. "C" of the Regulation. It is requested to annul the procedural decision and alternatively - to reduce the imposed sanction. Expenses are claimed. Detailed considerations are set out in the written defense on the merits of the dispute. The defendant, the Commission for Personal Data Protection, through its legal representative and in a written statement dated 28.07.2020, disputed the appeal and asked for the decision to be upheld. He claims legal fees. He objected to the excessiveness of the lawyer's fees of the applicant's attorney. The interested party M. V. Ts., Regularly summoned, did not appear and did not

express an opinion on the complaint. After assessing the evidence gathered in the case, in connection with the arguments and considerations of the parties, the Administrative Court Sofia - city, considers the following established by the factual party: The interested party MVC. in which she claims that without her consent she was included in the list of authorized representatives of the Ataka party under № 55, and her personal data were used illegally during the 2019 local elections. Attached to the complaint is file ent. № 4093/2019 according to the list of RP - Ya., which ended with a refusal to initiate criminal proceedings. Attached is a letter from MEC Ya., Stating that the personal data of the complainant, appearing in the list of authorized representatives of PP Ataka, were provided to MEC J. on 24.10.2019. by KP. The list is published on the website of the MEC J. in compliance with the requirements for personal data protection. With a decision from a meeting of the MEC on 02.11.2019 the complainant was deleted from the public register of MEC J. list of authorized representatives of PP Ataka. Attached is the list itself, which shows that the applicant is under № 55 in the list, where she appears with name and PIN, as well as a power of attorney number. Explanations were taken from KP, who stated that she had prepared the list, but there is no information on how the people to be included in it were selected. An explanation was taken from SS, who had submitted the applicant for inclusion on the list because they had jointly participated in the European elections as representatives of the Democratic Bulgaria Party, and in this case the party had not been registered. As a result, an error was inadvertently made in the use of data from previous elections. With a decision under protocol № 4 from 29.01.2020. of the CPDP the appeal was accepted as admissible and was scheduled for consideration. The parties have been notified and given the opportunity to present evidence. PP —Ataka— presented an up-to-date Instruction for processing personal data and their protection from illegal forms of processing, signed by the chairman of the party. In addition, a Privacy Policy has been implemented for Ataka employees and an Action Plan in the event of personal data breaches. On held on 11.03.2020. meeting of the CPDP, the complaint was considered on the merits, for which a protocol was drawn up № 10. The protocol objectifies the opinion of the lawyer of PP "Attack" that there is no written consent of the complainant to be included in the list of authorized representatives. After a discussion by the members of the commission, it decided with 4 votes "for" to respect the complaint and with 3 votes "for" and one against to impose a sanction on PP "Attack" in the amount of BGN 10,000. Based on the above, the contested decision of the Commission for Personal Data Protection was issued. It is accepted that Ataka is a controller of personal data, which it processes for the purpose of registration and participation in elections of the respective subject. In this case, the party is registered to participate in the local elections in 2019, for which it submitted to the MEC J. a list of authorized representatives,

in which it appears under № 55 M. Ts. The processing of personal data is expressed in their provision to the MEC I ... It is considered indisputable that this happened without the consent of the person. The existence of other grounds under Article 6, § 1 of Regulation 2016/679 for processing of these data has not been established. The Commission considered that the nature of the violation, its gravity and the circumstances under which it was committed make the corrective measures under Art. 58, §2, b. "A" - "h" and "j", therefore a property sanction should be imposed for its implementation. This measure was also chosen because it is effective, dissuasive and proportionate to the protection of the legitimate public interest. As a mitigating circumstance it was reported that the rights of one person were violated and that the controller introduced rules for processing personal data and their protection from illegal forms of processing, and as an aggravating - that the violation became known after the victim approached the CPDP and suspended after he also approached the MEC Ya .; personal data for PINs have been processed, personal data affect political affiliation; the violation is not the first, as PP “Ataka” has been sanctioned for an identical violation with an effective decision № Ж-792/2016. and decision № P-755 from 02.09.2015, as well as decision № PPN-01-433 from 14.04.2020. and decision № PPN-01-461 of 14.04.2019. Therefore, the amount of the sanction of BGN 10,000 has been set, which is below the average minimum of the sanction provided in the regulation for this violation. One of the members of the commission signed the decision with the OM on the amount of the sanction, which he considers to be excessive. The procedural decision was communicated to the applicant on 14.05.2020, and the appeal against him was filed on 01.06.2020, ie. within the term according to §13 of the TFP to the Law for amendment and supplement of the Health Act, (SG, issue 44 of 2020, in force from 14.05.2020). It is admissible as filed by a person, the addressee of the act, which directly and negatively affects him. Considered on the merits, the complaint is partially well-founded for the following reasons. According to the obligation of the court under Art. 168, para. 1 of the APC, the legality of the challenged administrative act should be checked on all grounds under Art. 146 APC. In this regard, the current panel of judges found that the contested decision was issued by a competent authority - the Commission for Personal Data Protection - within the powers granted to it under Art. 38, para. 3 ZZLD. Under this provision, the Commission is empowered to deal with complaints concerning violations of the rights of individuals under Regulation (EU) 2016/679. According to the powers given by the law in this case, the CPDP shall issue a decision and may apply the measures under Art. 58, paragraph 2, letters "a" - "h" and "j" of Regulation (EU) 2016/679 or under Art. 80, para. 1, items 3, 4 and 5 and in addition to these measures or instead to impose an administrative penalty in accordance with Art. 83 of Regulation (EU) 2016/679, as well as under Chapter Nine. The provision does not

provide a deadline for the commission to rule, but only a deadline for informing the complainant about the progress of the complaint. The applicant's allegations that the Commission ruled after the time-limit are therefore unfounded. Moreover, even the term under Art. 38, para 2 of LPPD to be accepted as a term for ruling on the appeal, the same has an instructive character and its violation does not constitute a violation of the administrative-procedural rules. Insofar as it was the complainant who submitted to the CEC a list of the party's authorized representatives who are authorized to represent it on election day, the court held that Ataka as the controller of personal data was the addressee of the obligations under Regulation (EU) 2016 / 679 and LPPD. This conclusion is also confirmed by Art. 124, para 4 of the Electoral Code, according to which the list shall be signed and submitted by the election day to the regional, respectively municipal election commissions in the respective constituency by the party representative or the coalition representatives or bypersons expressly authorized by them. The district, respectively the municipal polls
commissions publish the list on their website in compliance with the requirements for
protection of personal data. The list contains the names, the unique civil number and
number and date of the person's power of attorney. The specified use of personal data
of the representatives included in this list in order to exercise the right to
presence in the polling station on election day is the processing of personal
data within the meaning of Article 4, § 2 of Regulation 2016/679. The action is clearly stated,
which constitutes the processing - collection, recording, organization in a list and
disclosure by handing over to MEC Ya .. Apparently the violation was completed with
the submission of the list on 24.10.2019, which is also indicated in the contested decision.
The applicant's arguments that the processing of personal
data has become legal. It is not disputed in the case that the person did not give
consent to this, due to which the hypothesis of art. 6, §1, b. "A" of the Regulation
2016/679. However, the ground under b. "E" to which it refers
the applicant. The processing was not necessary for the observance of art. 124, para 4 of
IC, because this norm creates an obligation for the participant in the elections who wants to
there are representatives in the sections on election day, to submit a list of their data. This

does not mean that everyone can be included in the list, but only those who are
expressed a desire to be present as a representative of this particular party. Not from anywhere
there is an obligation to include M. Ts. in the list, even if she has stated it
desire to be included in it. This is because the party itself decides which of
those who wished to include, and those who did not. Therefore, it is not specified
grounds for processing the personal data of Ts. The other grounds in art. 6, §1 of
the regulation is not considered by the court insofar as neither the parties claim nor apply it
evidence of their existence. Therefore, the CPDP has rightly accepted that it is justified
complaint by MVC in respect of the applicant.
The contested decision imposed a pecuniary sanction on the applicant
established violation of Art. 6, §1 of the Regulation. According to Art. 58, §2 of the Regulation
The Commission has corrective powers that are necessary in the event of
committing a violation or if it has already been committed. In this case, these are relevant
on b. "B" and "i" of the provision. Deciding which measure to apply is a matter of
appropriateness, such as the application of b. "And" is motivated by efficiency and
disciplinary effect. Regarding the amount of punishment, it is not true
the allegation that the gravity of the infringement was not complied with. On the contrary, they are in the decision
mitigating and aggravating circumstances are indicated, which proves that the sanction is
individualized. The question is whether this has been done correctly in accordance with Art. 83,
§2 of the Regulation. The amount of the sanction should be taken into account
the nature, severity and duration of the violation - about 10 days, the scope and
the purpose of the respective processing - data on PIN and connection with political
commitment; the number of affected entities - one and the lack of data on caused
harm; committing the violation of negligence of a party employee; the lack
of actions taken by the controller or processor for
mitigation of the consequences of data processing; accepted by the administrator

technical and organizational measures for personal data protection; presence of related

previous breaches committed by the controller or processor,

established by decision № G-792/2016. of the CPDP, which entered into force on June 27, 2019;

Decision № PPN-01-433 / 2019, communicated to PP "Attack" on 21.04.2020. no data yes

has been appealed; Decision № PPN — 01-461 / 2019. from 14.04.2020, reported to the PP

"Attack" on April 21, 2020. without data to be appealed; the way the violation is

became known to the supervisory authority without notifying the administrator

the violation. In these circumstances, the commission has accepted that after the imposed until

currently sanctions of the complainant for similar violations in the amount of BGN 10,000. on

the first decision and BGN 2,000. the next two have not provided the necessary deterrent

effect, it should again impose a sanction of a high amount of BGN 10,000. The court finds

that the amount of the same is not determined correctly. The administrative body has given

the greatest weight in the assessment of previous similar violations. The regulation

however, it requires that these violations be related, ie. to be in touch with

the process. Such a connection in this case is not established, like previous violations

concern other elections. In addition, one of them is in the action of the previous one

provision of art. 42, para 1 of LPPD, when the minimum amount of the sanction was

10000lv. Now there is no such minimum, as the commission has already applied sanctions of more

2000lv. The fact that the decisions imposed by them have not been challenged suggests that

the applicant uncritically accepts the findings of his illegality

actions and the fine imposed on him is not problematic to pay. Thus

indeed, the amount of the sanction for the procedural violation should be

elevated to have a disciplining and dissuasive effect in the future, and to make

the complainant to exercise effective control over the processing of personal data

under real fear of severe punishment. At the same time it is not necessary to

be too high not to make it difficult to bear the costs of

the party and the need to finance its participation in various types of elections.

Therefore, the court finds a sufficient sanction of BGN 8,000.

In the light of the foregoing, the procedural decision should be amended as follows

lower amount of the imposed property sanction. The rest is the same

should be confirmed.

In view of this outcome of the dispute and in view of the claims for the award of

expenses, on the grounds of art. 143 of the APC in connection with Art. 7, para. 1, item 4 of the Ordinance on

the minimum amount of attorneys' fees in favor of the applicant

costs for state fee in the amount of BGN 10 should be awarded.

in proportion to the part of the action upheld. In favor of the defendant

owes legal fees in the amount of BGN 200 proportionally

of the rejected part of the appeal.

In view of the above and on the grounds of Art. 172, para. 2 of the APC, Administrative Court

Sofia - city, Second Department, 41 composition

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W I:

AMENDMENTS Decision № PPN-01-1793 / 11.05.2020. of the Commission for the Protection of

personal data IN THE PART concerning the imposed property sanction of

Ataka political party in the amount of BGN 10,000 on the grounds of Article 83, § 5, b.

"A" of EU Regulation 2016/679 for violation of Art. 6, §1 of the same regulation,

by reducing its amount to BGN 8,000 (eight thousand).

DISMISSES the appeal of the Ataka political party against Decision „„

PPN-01-1793 / 11.05.2020 of the Commission for Personal Data Protection in

the rest as unfounded.

ORDERS the Commission for Personal Data Protection to pay the Political

Ataka party court costs in the amount of BGN 8

ORDERS the Ataka Political Party to pay the Commission for the Protection of

personal data court costs in the amount of BGN 160.

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

14 days from its notification to the parties.

JUDGE: