

DECISION № 129 Sofia, 07.01.2019 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 48 panel, in a public session on 03.12.2018 in the following panel: JUDGE: Kalina Petsova with the participation of Secretary Evgenia Stoichkova, considering case number 3507 on the inventory for 2018 reported by the judge, and in order to rule took into account the following: .2017 of the Commission for Personal Data Protection, which upheld the complaints of E. D. P.-A., A. P. S. and P. M. P., due to which and on the grounds of Art. 42, para 1 of LPPD in connection with art. 320, para 3 of the IC, a fine in the amount of BGN 10,500 has been imposed on the person for violation of Art. 4, para 1, item 2 of LPPD. The appeal seeks annulment of the decision, for the following reasons: Considers that the CPDP has gone beyond its powers, as it was seised with a complaint against the Initiative Committee, as a political entity against her as an individual. A decision was issued committing the administrative penal liability of T., without any available complaints against her and without complying with ZANN. She considers that the principles of the administrative process have not been observed, as the person was not informed about the initiated proceedings, but learned about the same only by issuing the act, which violated her right to defense. She was deprived of her right under Art. 34 of the APC for acquaintance with the file and engagement of an opinion and evidence. Art. 35 of the APC, as not all relevant facts in the case have been clarified. An alleged violation was alleged, but there was a lack of clarity about the specific act that committed it, incl. date of performance and description of objective and subjective features. The decision accepted that a violation of Art. 4, para. 1, item 2 of LPPD, due to the fact that the processing of personal data was carried out without the consent of individuals, as this conclusion is based on expertise of NICC-Ministry of Interior - Center for Expert Forensic Research, establishing that signatures - objects of expertise they are not laid down by the respective persons on whose behalf they come. It was established that the examination was carried out on the basis of a copy of the minutes and not on the original. Considers that the processing of personal data is permissible even under only one of the prerequisites specified in items 1-7 of Art. 4 of the LPPD. In this sense, it finds that the processing of personal data of persons is provided to the IC by a person who introduced himself for them, in view of which it was carried out in accordance with items 1, 6 and 7 of Art. 4 of the LPPD. Finds that if this provision is made without the consent of the persons, it is a violation of the person who introduced himself for them and used their personal data. It finds that there is no verification by the authority in this regard. He finds that the members of the Electoral Commission have no legal obligation to verify the identity of the persons who enter the list of voters supporting the Electoral Code, as the law does not prescribe the same to identify themselves with an identity document. The only legal obligation for the members of the SEC was to be present

at the signing, without being able to verify their identity. In this regard, they have an obligation to certify that the signatures have been placed before them and are responsible for the subsequent processing of the personal data provided for the purpose for which they were provided. He finds that there is also insignificance of the harmful consequences of the act, in case it is considered that it commits a violation. The applicant did not appear at the court hearing, she was represented by lawyer V., who upheld the appeal of the grounds stated on the same grounds. Submit detailed written notes. The defendant, the Commission for Personal Data Protection, is represented by Jurk P. with a regular power of attorney. He disputes the appeal and asks for the decision of the CPDP to be confirmed. Submits written notes. The interested party EA appeared in person and challenged the appeal. The other interested parties do not appear and are not represented. The court, based on the data in the case, the opinions of the parties and in view of the law, finds the following: of the Commission for Personal Data Protection. Considered on the merits, the same is unfounded in view of the following: The facts establish the following: Complaints have been filed with the CPDP, as follows: G-49 of 07.10.2016. by E. D. P.-A., G-533 dated 10.10.2016. by V. G. S., G-657 of 22.10.2016 from A. P. S. and G-683 from 31.10.2016 by P. M. P., united in one joint proceeding. The general statement is that there is illegal processing of personal data of individuals by including them in a list of persons supporting the IC RA in an information and awareness campaign on the national referendum on 06.11.2016, and this processing is established after a reference on the Internet on the CEC website. The applicants declare that they have not expressed support for the said initiative committee of the IC, signing with their own handwriting, three names and PIN in the list of Art. 320, para 2 in connection with art. 13, para 1 of the Electoral Code in connection with art. 16 and § 2 of the TFP of the Law for the direct participation of citizens in the state power and the local self-government / ZPUGDVMS /. It was accepted that there was a violation of the LPPD due to the processing of personal data of the complainants without their consent and knowledge. The CPDP, in compliance with the procedures prescribed by the PDKZLDNA, united the four complaints in one file, held the relevant open meeting and issued a decision with reasons and operative part, in which it adopted the following opinion. It is accepted that the appeals are admissible as containing the obligatory requisites under Art. 30, para 1 of PDKZLDNA, in the presence of legal interest under art. 38, para 1 of LPPD and against a competent party - personal data controller. In the last connection, arguments have been developed that the IC should be equated to a personal data controller, according to Arg. of Directive 95/46 / EC. It is accepted that on the basis of the legal fiction introduced by the IC, the Initiative Committee, in view of the powers actually granted to it for processing personal data, is the controller of the data provided by law to collect, store and

process for the purposes of the election process. It is accepted that the subject of the complaints is the processing, through actions for collection, organization in lists and use of personal data of the complainants, without their knowledge and consent, for the purposes of registration of the IC indicated in the complaints for participation in of the national referendum from 06.11.2016 On the merits of the dispute the CPDP has accepted the following: The complaint of VS was accepted as unfounded due to the refusal of the person to participate in the administrative proceedings by providing comparative material for handwriting examination reasonable. It is stated that according to Art. 2, para 1 of LPPD personal data are any information relating to the natural person, which is identified or can be identified directly or indirectly by identification number or by one or more specific features. According to §1, item 1 of the Additional Provisions of the LPPD, the collection, organization and use of personal data of individuals constitute actions for processing personal data. It is stated that the norm of Art. 16 of the Law on Public Procurement and Information stipulates that the IC is applied for conducting an informational and explanatory campaign, guaranteeing equal opportunities for presenting different opinions on the subject of the referendum. Pursuant to §2 of the TFP of the ZUPGDVMS, the IC is applied for all issues not regulated by law. The EC regulates the process of registration of the Initiative Committee in the CEC, as in Art. 320 in connection with Art. 153, para 1 of the Electoral Code it is stated that a list of voters who support the registration of the Electoral Code shall be submitted to the CEC together with the documents under Art. 318, para 1, items 2 and 3 of the Code. The list contains the name, PIN and signature of each person who supported the registration. It is evident from Decision 3623-HP of 26.09.2016. of the CEC, as an appendix to the application for registration of the EC on the issues of the National Referendum of 06.11.2016, represented by R. M., that a list containing the three names, PIN and signature of not less than 2500 voters was presented, supporting the registration of the EC, submitted to a member of the EC - Appendix № 40 of the papers for holding a National Referendum. The personal data of the applicant E. D. P.-A., A. P. S. and P. M. P. are present on page 200, line 1954, respectively; p.38, line 362 and p. 174, line 1696 from the list of voters, as on each of the mentioned pages there is a declaration by CT - a member of the Electoral Commission, certifying that the signatures of the voters are placed in front of it. It was concluded that the personal data of the said persons were processed by Ms. T. It is stated that with Art. 320, para 3, proposition 2 of the Electoral Code, the legislator has introduced an obligation for the signatures of the persons supporting the participation in the election of independent candidates to be placed before a member of the Electoral Code, who certifies the indicated facts. The same obligation has been introduced as far as the participation of the IC in the information and explanatory campaigns on the issues of NF / art. 320, para 2 in connection with

153, para 1 of the IC in conjunction with § 16, para 2 of the TFP of ZPUGDVMS. In view of these considerations, the CPDP has concluded that T. is the obligated subject - processor of the personal data of the persons included in the list. She also stated that the suspension order was irrelevant, as it concerned the completion of an act at the time of consideration of the complaints in the CPDP. It is accepted that the expertise accepted in the file proves that it is about illegal processing of personal data of persons - without their knowledge and consent, and for the proven 3 cases the person should be punished by imposing a property sanction, determining the amount, taking into account the circumstances that the violation is the first in a row, but it concerns a violation of the processing of personal data of more than one person, in view of which it is above the minimum set by law - BGN 10,500. finds the following: The present panel of the court finds the decision to be correct, as ruled by

the competent authority, in the appropriate form, with a full examination of the relevant facts and circumstances, and with proper application of substantive law.

According to Art. 6, para. 1 of the Personal Data Protection Act / PDPA /, the CPDP is independent a state body that protects persons when processing them

personal data and in the access to such data, as well as the control of compliance with this law. The commission performs this function by exercising it powers granted by law specified in Art. 10, para. 1 of the LPPD. In this sense,

The Commission is the competent body to examine a complaint submitted to it in in connection with allegations of infringements of personal data protection rights.

The decision was rendered in the form prescribed by law, containing reasons and next of them dispositive.

The procedure for engaging opinions and including relevant ones has been followed evidence.

The thesis of the complaint for violation of the procedure, which led to nullity, is not shared of the act due to incorrect identification of the subject of the violation. Should be

It is noted that the CPDP acts ex officio to clarify relevant facts

and circumstances. The body was approached with 4 complaints, as in the four attached under

the case, the facts and circumstances related to the illegal processing of the personal data of the persons - complainants in the course of the registration of IC RM before CEC. The specification of the subject of the violation is within the competence of the body with in view of the evidence gathered in the file. There is a detailed analysis in the reasons of the decision as to why there is legal personality on the part of The Initiative Committee under the LPPD, as well as its members - bearers specific responsibility for the processing of personal data, as the court shares the assessment made. It is in the course of the file and in view of the collected evidence, the authority - having determined the subject and scope of the violation - is made an assessment of the subject of liability. It should be noted that such a subject is not specifically mentioned in the complaints, and it is specified by means of the very subject of the infringement - unlawful processing for a specific purpose. S in view of this, the argument from the complaint that the body should have been considered unfounded terminate the case against IC and form a new one against T .. Her responsibility derives from her capacity as a member of the IC, as a person to whom she is assigned the lawful processing of the personal data of the persons on the list for which it is established infringement, as correctly assessed by the authority. It is not established and the alleged violation of failing to notify the person of the file. On the contrary, from the letter attached to the case № P-4869 / 04.07.2017 from the CPDP, addressed to T., /p.28 in the case / it is evident that the person, namely on the grounds of art. 26, para 1 of the APC has been notified for the circumstances established in the course of the file relating to the referral of the accusation of her actions as a member of the IC and was provided to her opportunity to get acquainted with the file and express an opinion and present evidence.

The court finds that the substantive law has been correctly applied, taking into account the following:

The Authority has gathered evidence from the CEC regarding the alleged violation - unlawful processing of personal data of specified persons through their inclusion in the relevant lists regarding the specific IC. The same has assigned preparation of handwriting expertise, which has established the relevant circumstances, that the signatures are not on the persons indicated in the list. The preparation of expertise based on copies of the protocols, which is treated as a violation, is not acquitted in the course of the proceedings. From the appointed and accepted as competent and an impartial forensic examination of the case found that indeed the three the signatures of the complainants before the CPDP and interested parties in the court proceedings were not filed by them, nor did they write the three your names and PIN. Therefore, the inclusion of the same in the lists represents illegal processing of their personal data. The violation is expressed in improper processing, as the same, without their knowledge and consent for used for the purpose of registration of the respective IC before the CEC. Responsibility in the procedural case was assigned to a member of IC T. T., due to the following. Art. 320, para 2 of IR, applicable to arg. of §2 of the TFP of ZPUGDVMS prescribes that the signatures of the persons from the list for the Initiative Committee are placed before a member of the IC, for which the same person owes certification, and for the purpose of the file and the case it is proved that T. has signed her signature certifying these facts, incl. and on these three faces. It is the latter that constitutes the executive act in violation of the processing of their personal data, despite the allegation in the complaint that it is missing clarity. The allegation that the person does not have the authority to request documents for identity, therefore the responsibility should be borne by the persons who are signed on behalf of others is not shared. The law, assigning responsibility under verification of the signatures of the persons on the list a certain person from the IC, assigns to him the certification of their personal

data and their lawful use. Lack of right to certify the relevant

persons on the list by that person invalidates the obligation provided by

the law the person to confirm their identity and signatures before him.

The law should be interpreted logically, as in the presence of an obligation to

verification of the signatures of the persons on the list, it follows that the responsibility of

the person to whom this is assigned includes the full identification of the same and

certification of the provided personal data, for the purpose of which is paragraph 3 of the norm,

equating the person of a data controller. Therefore, the court did not

accepts the thesis that the person was deprived of the opportunity to request identification from

the persons included in the list when affixing their signatures, as the latter would

excluded at all the obligation to certify signatures and to be responsible

for this by re-signing this fact by the person concerned.

The thesis of going beyond the powers of the CPDP by imposing is not shared either

of fine. On the contrary, in the Commission's power to impose appropriate fines,

pursuant to Art. 42, para 1 of LPPD, for the violations referred to in the norm, which in Art

the case was perceived as a violation of Art. 4, para 1, item 2 of LPPD, explicitly

specified in the act.

The amount of the imposed fine is determined rather than provided by law

at least, the body has stated reasonable reasons for this, incl. and

the fact that it is a violation of the personal data of more than one

person to be shared by the court.

Guided by the above and on the grounds of Art. 172, para 2, last APC, the court

HAS DECIDED AS FOLLOWS:

DISMISSES the appeal of CDT against Decision №Ж-495-4 / 09.11.2017. on

Commission for Personal Data Protection.

The decision in this part is subject to appeal in cassation before the SAC

within 14 days of its service on the parties.

Copies of the decision to be sent to the parties.

JUDGE: