

Home »Practice» Decisions of the CPDP for 2018 »Decision on appeal with registration № Ж-453 / 05.10.2016 Decision on appeal with registration № Ж-453 / 05.10.2016 DECISION № Ж-453 / 2016 Sofia, 12.02.2018 The Commission for Personal Data Protection composed of: Tsanko Tsolov, Tsvetelin Sofroniev and Maria Mateva at a regular meeting held on 20.12.2017, pursuant to Art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA), considered on the merits a complaint № Ж-453 / 05.10.2016, filed by J.S.S. The Commission for Personal Data Protection was approached with a complaint filed by J.S.S., alleging illegal processing of personal data by including them in the list of persons supporting the registration of the Initiative Committee (IC), represented by C MS, for participating in the awareness-raising campaign on the national referendum held on 6 November 2016. The complainant stated that he had not expressed his support for the said initiative committee by signing, three names and a unique civil number. in the list under Art. 320, para. 2 in conjunction with Art. 153, para. 1 of the Electoral Code (EC) in conjunction with Art. 16 and § 2 of the TFP of the Law on the Direct Participation of Citizens in State Power and Local Self-Government (ZPUGDVMS). In this connection and in view of the declared in the complaint lack of knowledge and consent for the processing of his personal data, the complainant informed about a violation of his rights under LPPD, committed by the IC, represented by S.M.S. and address the Commission with a request to take the necessary actions, within the competence granted to it by the LPPD. Attached to the complaint is a screen printout of the results of an inspection by a single civil number on the website of the Central Election Commission (CEC). In view of the administrative process involved in the administrative process, the CEC requested and provided relevant evidence in the course of the administrative proceedings, namely a certified copy of the list of voters supporting the initiative committee for registration in the awareness campaign on the national referendum. registration of the initiative committee and Decision № 3619-HP of 26 September 2016 of the Central Election Commission for its registration. With the assistance of the bodies of the Ministry of the Interior, actions were taken to collect comparative material from the applicant in order to prepare an expertise of the signature. The complainant provided comparative material for research, and the results of the expertise are objectified in the Protocol for expertise № 2017 / DOK-094 of NICC - Ministry of Interior, Center for Forensic Research. In order to clarify the case from a legal and factual point of view, the CEC requested the same in response and by letter G-428/16. /#9/27.10.2017 presents a certified copy of pages 12 and 51 of the list of voters supporting the registration of an initiative committee, represented by S.M.S., to participate in the national referendum on 06.11.2016. As can be seen from the evidence presented by the CEC, Committee, the personal data were entered - three names, a unique civil number and the address of the complainant, Mr.

J.S.S. On this page is a declaration of S.E.M. - a member of the initiative committee, by which it certifies that the signatures of the voters have been placed before it. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing these data, as well as control over compliance with the LPPD. In order to exercise its powers, the Commission must be properly seised. Complaint № G-453 / 05.10.2016 contains the obligatory requisites, specified in Art. 30, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, namely: there are data about the complainant, the nature of the request, date and signature, in view of which the complaint is regular. The appeal is procedurally admissible, filed within the term under Art. 38, para. 1 of LPPD by a natural person with a legal interest and against a competent party - personal data controller. According to the legal definition (Article 3 of the LPPD), a personal data controller is a natural or legal person, as well as a body of state power or local self-government, which alone or together with another person determines the purposes and means of personal data processing. who processes personal data, the type of which, the purposes and means of processing are determined by law. In analyzing this legal definition under Art. 3 of the LPPD states that it is not exhaustive. According to Art. 2 p. D of Directive 95/46 EU of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46 / EU), the controller is or a legal entity, state body, agency or other body that alone or jointly with others determines the purposes and means of the processing of personal data. According to §1a of the Additional Provisions of the LPPD, the provisions of Directive 95/46 / EU were introduced by this law. In view of this, despite the fact that the initiative committee formally does not meet the definition of personal data controller under Art. 3 of the LPPD, in practice falls entirely within the concept of personal data controller, according to the Directive, the application of which is introduced directly by the additional provisions of the LPPD. According to Art. 320, para. 2 in conjunction with Art. 153, para. 1 of the Electoral Code (EC) in conjunction with Art. 16 and § 2 of the TFP of the Law on Direct Participation of Citizens in State Power and Local Self-Government Initiative Committees shall submit to the Central Election Commission a List of Voters Supporting the Registration of the Initiative Committee in the National Referendum on November 6, 2016. It is taken into account that the determining criterion of whether an entity is obliged under the LPPD is not so much the formal quality of the person, but the fact that he actually processes personal data, the type, purposes and means of which are determined by law. the subject is obliged to process the personal data in order to create the necessary legal consequences provided for in the special law. Based on this legal fiction in the IC, by virtue of the legal norm,

the initiative committee as a subject is the administrator of these data and maintains a register of personal data within the meaning of the LPPD. The Electoral Code (in connection with the norm of Article 16 of the Law on Public Procurement) explicitly states that the personal data of voters are processed by the specific political entity to achieve normatively established goals - registration and / or participation in elections in compliance with LPPD. The opposite would mean from the scope of the law, resp. from its control mechanism, to exclude persons who do not formally fall within the circle of subjects under Art. 3 of LPPD, but which process personal data outside the exceptions from the scope of the law. In this case there is a legal entity (initiative committee), determined by virtue of a special law - the Electoral Code, for which by virtue of the legal norm arises a statutory obligation to process personal data, the type of which, purposes and means of processing are determined by the same law. Within the meaning of Art. 3, para. 2, assoc. second of the LPPD in this case the special law - the Electoral Code, introduces the specific criteria for the processing of personal data of a specific group of individuals by a separate entity. Additionally, the law and the Central Election Commission with the approved and promulgated ballot papers for the respective type of election explicitly regulate that the processing of personal data (handwritten signature, names and PINs) of voters in the form of collection and submission for registration is on behalf and for registration purposes. of the initiative committee in the respective referendum. The subject of the complaint is the processing, by collecting, organizing in lists and using the personal data of the complainant without his knowledge and consent for the purposes of registration of the initiative committee for participation in the information campaign on the national referendum in 2016. The complaint was referred to a competent body to rule, namely the CPDP, which according to its powers referred to in Art. 10, para. 1, item 7 of the LPPD considers complaints against acts and actions of the personal data controllers, which violate the rights of individuals under the LPPD. In accordance with the Rules of Procedure of the Commission for Personal Data Protection and its administration at regular meetings of the Commission the complaint was accepted as admissible and as parties to the proceedings were constituted - complainant - J.S.S. and respondent parties - S.M.S. - Representative and Chairman of the Initiative Committee and S.E.M. - Member of the initiative committee. With a decision from a meeting of the Commission held on 15.11.2017, the complaint is scheduled for consideration on the merits on 20.12.2017 at 13:00, a meeting of which the parties are regularly notified and informed about the opportunity to familiarize themselves with those collected in the file evidence and in particular with a protocol for performed expertise, to express an opinion, to make evidentiary requests or objections. In the course of the proceedings S.S. filed a statement of inadmissibility, respectively unfoundedness of the appeal with allegations that the appeal

was filed after the preclusive deadlines, as well as that what was pointed out by Mr. J.S.S. the violation was not committed by her. Asks the Commission to disregard the complaint. As an 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 of the complaint № G-453 / 05.10.2016 is justified. In Art. 2, para. 1 of the LPPD gives a legal definition of the concept of personal data, according to which personal data is any information relating to a natural person who is identified or can be identified directly or indirectly by identification number or by one or more specific features. The three names, the unique civil number and the signature of the natural person undoubtedly have the character of personal data within the meaning of the law. 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. The norm of art. 16 of the Law on Public Procurement and Information stipulates that the Electoral Code is applied for conducting an informational and explanatory campaign, guaranteeing equal opportunities for presenting the different opinions on the subject of the referendum. In addition, in accordance with the provision of § 2 of the TFP of the Law on Local Self-Government, the relevant provisions of the Electoral Code apply to all issues not regulated by law regarding the holding of a national and local referendum. The Electoral Code regulates the process of registration of an initiative committee in the Central Election Commission, 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 initiative committee shall be submitted to the Central Election Commission together with the documents under Art. 318, para. 1, items 2 and 3 of the Code. In turn, the list contains the name, unique civil number and signature of each person who supported the registration. As can be seen from Decision № 3619-HP of 26 September 2016 of the Central Election Commission, as Annex № 6 to the Application for registration of the initiative committee on the issues of the national referendum on 6 November 2016, represented by S.M.S. a list containing the three names, the unique civil number, a permanent address in the country and the handwritten signature of at least 2,500 voters supporting the registration of the initiative committee before a member of the initiative committee - Annex № 40 of the production papers in a national referendum. The personal data of the complainant are present on page 12 of the List of Voters Supporting the Initiative Committee for Registration in the Awareness Campaign on the National Referendum held in 2016. In this case, the evidence gathered in the administrative file and in particular the results of the expertise is indisputable that the signature placed on page

12, line 111 in the list of voters supporting the registration of the Initiative Committee for participation in the awareness campaign was not made by the complainant, therefore there is no consent to the processing of personal data for purposes of the registration, the others specified in Art. 4, para. 1 of the LPPD prerequisites for admissibility of processing. In this connection, it must be concluded that the complainant's allegations that his personal data were processed without his consent for the purpose of registering the political entity to participate in the awareness-raising campaign for the 2016 national referendum are well-founded. On the same page which contained the applicant's personal data, a declaration of S.E.M. - a member of the initiative committee, by which the latter certifies that the signatures of the voters have been placed before it. That is, it follows that the personal data of the complainant were processed by S.E.M., PIN \*\*\*\*\*, with permanent address \*\*\*\*\*, appearing under № 2 in the Application for registration of the initiative committee. In Art. 320, para. 3 of the Electoral Code (EC), proposal two, a legal fiction is introduced, equating the member of the initiative committee to a personal data controller within the meaning of Art. 3, para. 2 of the LPPD. In addition, the member of the initiative committee is responsible as the controller of personal data. With the norm of art. 320, para. 2 of the Electoral Code, the legislator has introduced an obligation that the signatures of the persons supporting the participation in the selection of independent candidates be placed before a member of the initiative committee, who certifies the facts by signing under the relevant page of the list. The same obligation under Art. 320, para. 2 in conjunction with Art. 153, para. 1 of the IC in conjunction with Art. 16 and § 2 of the TFP of ZPUGDVMS the participation of the initiative committees in the information and explanatory campaign on the issues of the national referendum has been introduced to the fullest extent. In view of the above, the administrative and criminal liability for non-compliance with the LPPD processing of personal data of the complainant without a condition for admissibility of processing (Article 4, paragraph 1 LPPD) should be borne by the person in whose patrimony the legislator has provided the obligation to signing by the voter. As the established specific violation has been completed with the act of its commission and is irremovable, due to the fact that the lists art. 320, para. 2 in conjunction with Art. 153, para. 1 of the IC in conjunction with Art. 16 and § 2 of the TFP of ZPUGDVMS have been submitted to the CEC and the CEC has ruled on the request of the initiative committee to be allowed to participate in the awareness campaign on the national referendum held in 2016, giving a deadline for removal of the violation appears irrelevant. It, as a coercive administrative measure, is applicable in a case in which the commission of the respective violation continues or the same is remediable. In the present case, however, this is impossible. The Commission for Personal Data Protection has the power to issue a mandatory prescription to the controller of

personal data, but it concerns situations in which the controller has not fulfilled its obligation, which omission can be remedied by performing the missed actions and objectifying the required by law conduct. Undoubtedly, in view of the definite results of the above-mentioned expertise, the fact of the violation of the provision of Art. 4, para 1, item 2 of LPPD. Even the eventual deletion from the lists provided to the CEC would not remedy the violation committed by the respective administrator, as the collection, organization and use of the complainant's personal data without his knowledge and consent was completed for the purposes of the registration. , for which they were used, in violation of the law, the personal data of the said person has been obtained. The same is not removable. Only the property sanction, as a measure of administrative coercion, is the most appropriate and effective measure to protect the legitimate public interest. It should be noted that in addition to a purely sanction measure, a reaction of the state to the violation of the statutory rules, the property sanction also has a disciplinary effect, in view of the non-commission of the same violation in the future. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided by the LPPD and arising from his subject of activity, human and economic resources. The Commission took into account the purpose of the penalty, which should have a deterrent and warning function and not create economic difficulties for the person who committed the offense. In this regard, and given the fact that the rights of one person have been violated and the violation is first for the controller of personal data, he considers that the amount of the imposed administrative penalty should be at least provided by law for the violation. Guided by the above, based on Art. 10, para. 1, item 7, in connection with Art. 38, para. 2 of the Personal Data Protection Act, the Commission for Personal Data Protection, DECIDES: 1. Declares a well-founded complaint G-453 / 05.10.2016, filed by J.S.S. 2. On the grounds of art. 42, para. 1 of LPPD in connection with Art. 320, para. 3 of the IC imposes on S.E.M. with PIN \*\*\*\*\* and permanent address \*\*\*\*\* - a fine in the amount of BGN 10,000 (ten thousand levs) for violation of Art. 4, para. 1, item 2 of the LPPD. 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. After the entry into force of the decision, the amount of the imposed penalty to be paid in cash at the box office of the Commission for Personal Data Protection, located in Sofia, Blvd. "Prof. Tsvetan Lazarov "№ 2 or transferred by bank transfer: BNB Bank - Central Office IB AN: BG18BNBG96613000158601 BIC BNBGBGSD Commission for Personal Data Protection, BULSTAT 130961721 If within the statutory period for voluntary payment it is not made, the file of the National Revenue Agency for compulsory collection of the receivable on the grounds and by the order of the Tax-Insurance Procedure Code. 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. MEMBERS: Tsanko Tsolov / p /

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