DECISION № 1205 Sofia, February 26, 2018. ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 32 panel, in a public session on 13.02.2018 in the following panel: JUDGE: Maria Nikolova with the participation of Secretary Zornitsa Dimitrova, considering case number 12786 on the inventory for 2017 reported by the judge, and in order to rule took into account the following: The proceedings are under Art. 144-178 APC. It was formed upon a complaint of [company] / BTC EAD / against Decision № Ж-153/2016 of 24.10.2017. of the Commission for Personal Data Protection / CPDP /. The appeal alleges that the impugned decision was issued in violation of substantive and procedural law. It is alleged that the person who referred to the CPD had duly concluded contracts with BTC EAD, in connection with which the company lawfully processed her personal data. BTC EAD has processed data of a client in order to fulfill a contract for which the company did not have data that it is untrue. It is alleged that these are actions performed by specific, unidentified individuals, obviously not performed in accordance with their official duties and instructions given to them by BTC EAD. The company had the consent of the person to process his personal data in connection with other contracts. Considerations are given that with an effective decision of the ACCG, the CPDP was instructed to suspend the proceedings until all the circumstances of the file formed in the Regional Court were clarified. It also states that the person who filed the complaint did not suffer any harmful consequences, as he was not related to the false document drawn up and did not make payments or other actions in connection with it. BTC EAD has suffered direct damages. The sanction was set above the minimum amount on the grounds that the infringement was not the first. He asks the court to annul the contested decision. Defendant - Commission for Personal Data Protection, through his legal representative, disputes the complaint. He asks the court to uphold the administrative act as correct and lawful. He claims that the act was issued in a clarified factual situation. The personal data of the person who filed the complaint have been processed illegally, without his consent and without the existence of grounds for their processing. He claims legal fees. The interested party EIG disputes the appeal. He objected to the applicant company's argument that the operator had processed the personal data as he considered the contract to be valid. She indicates that she has made a frantic effort to fight the administrator over a period of 2 years. He asks the court to dismiss the appeal. Claim expenses according to the submitted list. ADMINISTRATIVE COURT OF S.-GRAD, after discussing the arguments of the parties, assessed the evidence presented in the case separately and in their entirety and examined the disputed act in accordance with the provisions of Art. 168 of the APC, in order to pronounce the following from the factual and legal point of view: An individual administrative act subject to appeal is appealed, according to art. 38, para. 6 of the Personal

Data Protection Act / PDPA /. The appeal was filed by a proper party - the addressee of the act, for which there is a direct and immediate interest in the appeal, in time. From the evidence in the case it is established that the decision of the CPDP was served on the complainant on 27.10.2017, as evidenced by the return receipt presented in the case, and the complaint was filed by mail on 09.11.2017. (visible from the stamp of the attached envelope). In view of this, the court held that the appeal was admissible. Considered on the merits, it is UNFOUNDED for the following reasons: From the evidence presented in the case, the following is established on the factual side. The administrative proceedings have been initiated on a complaint ent. № Ж-153 / 12.04.2016 of E. I. G. to the CPDP against BTC EAD. The complaint alleges that a contract was concluded on behalf of G. № 710126693820012016-36034482, “V. S. M ”, for the purchase of an LG device and the use of a mobile service via a telephone number [PIN]. The contract was concluded on January 20, 2016, at 5:20 p.m., in [settlement], [street]. It is stated that the contract was not concluded by EG or a person authorized by her, as well as that she did not visit on 20.01.2016, nor in the last few years [settlement]. The actual situation, the communication with the employees of the company and the lack of unconditional clarification of the case are described, as there was a contradiction in the facts - whether or not the contract of 20.01.2016 was terminated. and whether there are any obligations under it, emphasizing the illegal access to the data from her profile on www.vivacom.bg and the request to transfer the telephone number [PIN] to her name before that. Attached are a complaint to BTC EAD, complaint № 298019, statements of invoices, contracts concluded with the complainant, responses to the complaint, which indicate that the procedural contract is terminated and there are no unpaid debts and others. With a letter dated 30.05.2016 of BTC EAD was instructed to submit an opinion within 7 days together with the relevant evidence in the case, as well as a certified copy of contract 710126693820012016-36034482. To the reply received by the CPDP that the contract was not signed by a third party, BTC EAD submitted both a procedural contract and a lease agreement dated 20.01.2016, a tripartite agreement for replacement of a party, with which EG was replaced on the other hand - D. K. S .. The Sofia District Prosecutor's Office (SRP) requested information on whether proceedings were being conducted before it in order to clarify whether a document crime had been committed. A response was received from the SRS that on 31.08.2016. prosecutor's file № 17106/2016 according to the list of SRS was sent to the District Prosecutor's Office / RP / - S. on the grounds of Art. 36, para. 1 PPC. In response to a subsequent letter sent, RP - S. indicates that on 13.09.2016. a file was opened № 2290/2016. With the decision of 14.09.2016 Pre-trial proceedings were instituted № 3393M-564/2016. against an unknown perpetrator for a crime under Art. 309, para. 1 of the Penal Code for the fact that on 20.01.2016. in

[settlement] a false private document was drawn up - contract № 710126693820012016-36034482 and he used it to prove that there is a right of the user EIG to access the mobile services of BTC EAD. At the meeting held on October 26, 2016. meeting The CPDP decides on the admissibility of the appeal and constitutes the parties to the proceedings. A draft decision has been proposed to suspend the administrative proceedings on the complaint on the grounds of Art. 54, para. 1, item 5 of the APC until the grounds for this, voted “for” by the present 4 members of the CPDP, are dropped. Pursuant to Art. 38, para. 2 of the LPPD, the CPDP shall rule with Decision № Ж-153/2016. from 28.11.2016, with which complaint № Ж-153 / 12.04.2016. has been declared admissible and the parties to the proceedings have been constituted. Pursuant to Art. 54, para. 1, item 5 of the APC, the proceedings have been suspended until the grounds for suspension cease to exist. On the appeal of E. I. G. against Decision № Ж-153/2016. from 28.11.2016 of the CPDP in the ACCG, an administrative case 399/2017 has been initiated. With Resolution № 2283 / 07.04.2017 according to adm. case № 399/2017 according to the inventory of АССГ Decision № Ж-153 / 2016г. from 28.11.2016 was revoked and the file was returned to the CPDP for resumption of the suspended administrative proceedings in accordance with the mandatory instructions on the interpretation and application of the law. In the reasons of the court act it is stated that the presence of data for a committed crime is a ground for suspension of the proceedings under Art. 54, para. 1, item 3 of the APC. The ruling came into force on 02.05.2017. As can be seen from the letter reg. № P-3438 / 23.05.2017 the file was received by the administrative body for a new ruling on 23.05.2017. With a letter ex. № P-3624 / 31.05.2017 data on the course of the pre-trial proceedings instituted in the case were requested from RP S., and in case of prepared expertise of the signature placed under the disputed contract, the provision of the same was required. With a letter ex. № Ж-153/2016 / 17.08.2017 the same information was again requested from the FP. As can be seen from the letter reg. № P-4140 / 14.06.2017. and letter ent. № Ж-153/33 / 07.09.2017 RP S. has sent to the CPDP a certified copy of the prepared graphological expertise on the case / protocol № 28 / 26.05.2017. of NTL at RU-S. /. The expertise states that the signature placed on the contract with № 36034482 from 20.01.2016, in Appendix № 1 to the contract is not of EIG. As can be seen from Protocol № 46 of 26.07.2017 from a meeting of the CPDP the proceedings were resumed and a meeting was scheduled to consider the complaint on the merits. From the letters presented in the case (pp. 35 - 36 of the case) it is established that the parties have been notified of the scheduled hearing and have been given the opportunity to submit an opinion and present evidence. On 15.08.2017 EG, through her procedural representative, filed an Opinion (entry № Ж-153 / 15.08.2017) on 07.09.2017. An open meeting of the CPDP was held, as evidenced by the minutes presented in the case № 52 / 07.09.2017.

EG's appeal was upheld. A draft decision has been proposed, adopted by three votes in favor. There are no objections or abstentions. On the basis of the decision taken by the Commission at this meeting, a procedural administrative act was issued, by which on the grounds of Art. 10, para. 1, item 7 in connection with Art. 38, para. 2 of the LPPD complaint № Ж-153 / 12.04.2016. has been declared justified by BTC EAD on the grounds of Art. 42, para. 1 of the LPPD, an administrative penalty was imposed - a property sanction in the amount of BGN 20,000 for processing G.'s personal data in violation of Art. 4, para. 1 of the LPPD. In view of the findings of fact, the court finds the following from a legal point of view. The decision was issued by a competent authority. According to Art. 6, para. 1 of the LPPD, the CPDP is an independent state body that protects the persons in the processing of their personal data and in the implementation of access to these data, as well as the control over the observance of this law. The commission performs this function by exercising the powers provided by law specified in Art. 10, para. 1 of LPPD. This administrative body is authorized to consider appeals against acts and actions of the administrators, which violate the rights of natural persons under this law, as well as complaints of third parties in connection with their rights under this law - Art. 10, para. 1, item 7 of the LPPD. When issuing the act, the provision of Art. 59 APC written form. The factual and legal grounds for issuing the act are presented. The facts established by the body are below their respective legal norm. No significant violations of the administrative procedure rules have been committed, which would be grounds for annulment of the act. The requirements of Art. 9, para. 4 of LPPD and Art. 39, para. 1 of the Rules of Procedure of the Commission for Personal Data Protection, the appeal was considered in open court, summoning the parties and gathering evidence, and the decision was taken unanimously by the members of the administrative body, with the required quorum and majority. No violation of substantive law has been committed. According to Art. 2, para. 1 of the LPPD personal data are 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 purpose of the LPPD is to guarantee the inviolability of the person and private life by protecting individuals from illegal processing of related personal data and regulating the right of access to collected and processed such data. The protection of personal data provided by law is not absolute and is subject to restriction in cases expressly provided by law. The provision of Art. 4, para. 1 of the LPPD regulates seven alternative hypotheses in which the processing of personal data is admissible. The processing of personal data is permissible only in cases where at least one of the conditions exhaustively listed in the norm is present. The provision of § 1, item 1 of the LPPD gives a legal definition of the term "processing of personal data", namely any action or set of actions that can be performed on personal data by automatic

or other means, including . and distribution. In this case, the evidence in the case established that BTC EAD had processed personal data of its client in connection with a contract for which it was established that it had not been signed by him. In this connection, the applicant's arguments that he had G.'s personal data were unfounded, as he had other contracts with her. The company was punished because it illegally used (logically through its employees) the personal data of the person to conclude a new contract with him. The fact that the company did not know and that it is a question of illegal actions of employees of the company, in violation of their official duties also does not matter, because the responsibility of legal entities is innocent. According to Art. 4, para. 1, item 3 of the LPPD, the processing is admissible when it is necessary for fulfillment of obligations under a contract to which the natural person to whom the data refers is a party, as well as for actions preceding the conclusion of a contract and taken at his request. The disputable issue in the case is whether there is illegal processing of personal data by a personal data controller who has this data under another legal relationship with the person, but processed this data outside this legal relationship. The applicant alleged that he had processed the data lawfully because he did not know that the new contract was untrue. According to Art. 3, para. 4 of LPPD, the administrator shall ensure the observance of the requirements of art. 2, para. 2. The Court finds that in the present case the applicant has committed an unlawful use of personal data in his possession. It is indisputably established that EG did not sign the contract in connection with which she submitted the complaint to the CPDP. In the information system of the company, however, this contract is kept in the name of EG and sums are charged to it. This leads to the only possible conclusion that the company has not taken the necessary measures to protect the personal data of its client, which has led to their improper processing. The responsibility for this unlawful processing should be borne by the complainant, as he is the one who, as the controller of personal data, should take the necessary measures to protect the personal data at his disposal. That is why the court does not share the arguments set out in the complaint that it was not the company but unidentified individuals who committed the violation not in accordance with their official duties and instructions. It is the responsibility of the data controller to establish appropriate practices to ensure the protection of the personal data of his clients. The argument that the defendant with the entered into force court act in case 399/2017 were given instructions to suspend the proceedings on the grounds of Art. 54, para. 1, item 3 of the APC. After the resumption of the proceedings, there was evidence that the signature on the disputed contract did not belong to the person complaining to the Commission, due to which the proceedings were not properly suspended and the CPDP, in accordance with its powers, issued an act on the merits. The arguments that it was stated in a blanket that a violation of Art. 4 of the LPPD,

without specifying what exactly the processing was. The reasons for the act state that none of the hypotheses of Art. 4, para. 1, items 1-7 of LPPD, from which it follows that the processing is illegal. This conclusion of the administrative body has not been refuted either by the evidence gathered in the course of the administrative proceedings or in the court proceedings. It is incumbent on the complainant to prove that he is processing the data lawfully, ie that any of the legal hypotheses provided for in Art. 4, para. 1, t- 1-7 ZZLD. The complainant did not prove that he had lawfully processed the personal data in accordance with the mandatory rules of the LPPD. When processing personal data of an individual, he should give his consent. In this case, in connection with the processing of personal data under contract № 710126693820012016-36034482 there is no consent of EG. The consent given in connection with others and contracts can not be considered as consent under this contract. Regarding the amount of the imposed property sanction. When the Commission is seised with a complaint from a natural person who claims that his rights under the LPPD have been violated, it shall rule in accordance with Art. 38, para. 2 with solution. According to the powers given by the law in this case, it issues a decision by which it can pronounce in the following sense: a) to give obligatory prescriptions, b) to set a term for elimination of the violation and c) to impose an administrative penalty. According to Art. 42, para. 1 of LPPD for violations under Art. 2, para. 2 and para. 3 and Art. 4, the personal data controller shall be punished with a fine or with a property sanction from BGN 10,000 to BGN 100,000. In this case a sanction in the amount of BGN 20,000 shall be determined. The applicant considers that it should be kept to a minimum. The reasons for the act state that this is not the first violation of the company, due to which the penalty is above the minimum. Although the reasons for the act do not indicate what the other violations are and whether the acts establishing such violations and / or imposed penalties have entered into force, the court finds that in this case the amount of the sanction is not increased. The gravity of the violation is large enough to justify the imposition of a sanction above the minimum. The imposed sanction is at the lower limit (the maximum is BGN 100,000). The admission to conclude a contract for the services provided by the company without a signed contract with the person named as the holder leads to the conclusion that the complainant did not take the necessary measures to protect personal data available to the company. In the light of the foregoing, the action is unfounded and must be dismissed. There are no grounds for revocation within the meaning of Art. 146 supra art. 168 APC. In this outcome of the dispute, the legal consulting remuneration claimed by the defendant should be awarded to him on the grounds of Art. 143, para. 4 of the APC, Art. 78, para. 8 of the Civil Procedure Code, supra art. 144 of the APC and Interpretative Decision № 3 of 13.05.2010 of the SAC on item № 5/2009. Pursuant to the Ordinance on the payment of legal

aid and in view of the legal and factual complexity of the case, holding only one court hearing the same should amount to BGN 100. Pursuant to Art. 143, para. 3 of the APC, the costs claimed by the interested party should be awarded in the amount proven in the case - BGN 1,356.00 agreed and paid remuneration for one lawyer. Thus motivated, Administrative Court Sofia - city, 2nd division - 32nd panel, pursuant to Art. 172, para. 2 APC: RESOLVED: DISMISSES the appeal of [company] against Decision № Ж-153/2016. from 24.10.2017 of the Commission for Personal Data Protection. ORDERS [the company] to pay to the Commission for Personal Data Protection the amount of BGN 100.00 (one hundred) of office expenses. ORDERS [the company] to pay to E. I. G. the amount of BGN 1,356.00 (one thousand three hundred and fifty-six) office expenses. The DECISION is subject to appeal within 14 days of its receipt before the Supreme Administrative Court of the Republic of B. A copy of the decision to be sent to the parties. JUDGE: