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DECISION № PPN-01-71 / 2018 Sofia, 24.07.2019 The Commission for Personal Data Protection (CPDP) in composition: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on April 10, 2019, pursuant to Art. 10, para. 1 of the Personal Data Protection Act, respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Regulation / General Regulation), considered on the merits complaints № PPN-01-71 / 06.02.2018 and PPN-01-84 / 12.02.2018 filed by P.D. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). The Commission for Personal Data Protection was seised with a complaint filed by PD, alleging allegations of unlawful processing of personal data. The complainant informed that on 01.12.2017 she submitted a signal to the National Social Security Institute for inspection for the period from the beginning of 2016 to the end of 2017 regarding illegal access to her data stored in the NSSI files by an employee of the institute, and namely IT to the position of Head of the Department "POBGV", Directorate "KPK" at the TD of the National Social Security Institute - Sofia city. She added that in response received on 09.01.2018 she was informed of a violation of the said official, who without proven official necessity or consent received access to her personal data in the "Information on PIN or LNC-all notifications submitted." The complainant considers that there has been a violation of her rights under the LPPD and illegal access to her personal data stored in the NSSI related to registered employment contracts, sick leave and insurance. Asks the Commission to investigate the case regarding access to her personal data stored in the NSSI for the period 01.01.2016 until the date of referral to the Commission, as well as verification of the measures taken by the NSSI to prevent unauthorized access to personal data by NSSI employees without proven need. The complaint was filed electronically and filed with № PPN-01-7106.02.2018, and subsequently filed by mail and filed with reg. № PPN-01-84 / 12.02.2018 on the list of the Commission. Relevant evidence is attached. In the conditions of the official principle laid down in the administrative process and the obligation of the administrative body for official collection of evidence and clarification of the actual facts relevant to the case, the NSSI has requested a written opinion. In response, an opinion was expressed Reg. № PPN-01-71 # 1 / 19.03.2018, with relevant evidence attached to it, including a reference for access to personal data of the complainant in the period from 01.01.2016 to 04.12. 2017 The NSSI informs that from an inspection carried out in the case it was established that in the period 01.01.2016

to 01.12.2017 two requests were made for access to the registers of the NSSI, containing personal data of the complainant, namely made "If proven necessary reference" on 19.05.2016 by S.B. - Senior Insurance Expert in the Control Sector, Cash Benefits for Temporary Disability Department in the TD of the National Social Security Institute - Sofia, and a reference made on 29.11.2016 by I.T. - Head of Department POBGV in TD of NSSI - Sofia. For the latter, they point out that the inspection and the explanations given to the employee in the case did not establish that the reference and access to personal data of the applicant were in the performance of the official duties of Ms. IT They claim that the NSSI processes the personal data of individuals lawfully in accordance with the provisions of the LPPD and issued on the basis of Art. 23, para. 4 of the LPPD Ordinance and Instruction № 14 / 23.07.2013 on the measures and means for protection of personal data processed by the NSSI. The Commission for Personal Data Protection is an independent state body that protects individuals in the processing of personal data and in accessing such data, as well as monitoring compliance with the LPPD and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data Complaints contain the required details specified in the provision of Art. 30, para. 1 of the PDKZLDNA - there are data about the complainant, the nature of the request, date and signature, in view of which they are regular. They have been filed within the term under § 44, para. 2 of the Transitional and Final Provisions of the LPPD by a natural person with a legal interest. They have as their subject illegal access by employees of the National Social Security Institute in the period 01.01.2016 - 05.02.2018 to the personal data of the complainant processed by the National Social Security Institute. The complaint was referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD / respectively Art. 55, § 1 of Regulation (EU) 2016/679, considers complaints against acts and actions of personal data controllers, which violate the rights of individuals related to the processing of personal data, as there are no exceptions under Art. 2, § 2, letter "c" and "d" and Art. 55, § 1 of Regulation (EU) 2016/679 given the fact that the case does not concern processing activities performed by a natural person in the course of purely personal or domestic activities or activities performed by courts in the exercise of their judicial functions. The presence of a personal data controller is an absolute procedural prerequisite for the admissibility of the complaint. In the specific case the complaint is directed against the NSSI, which in view of the evidence gathered in the file and the statements made by the parties undoubtedly has the capacity of controller of personal data in respect of the complainant according to the definition given in Art. 4, § 7 of the Regulation, respectively Art. 3 of the LPPD. For the stated reasons and in view of the lack of prerequisites from the category of

negative under Art. 27, para. 2 of the APC, at a meeting of the Commission held on 02.05.2018 complaints PPN-01-71 / 06.02.2018 and PPN-01-84 / 12.02.2018 were declared admissible, united for consideration in one general administrative proceedings with parties: applicant - P.D. and respondent - NSSI, in its capacity of personal data controller. An open meeting has been scheduled to consider the complaint on the merits for June 20, 2018, of which the parties have been regularly notified. In order to clarify the case on the legal and factual side of the personal data controller, additional evidence was required, namely: log files for access from 04.12.2017 to 05.02.2018 access to personal data of the complainant processed by the NSSI, and information on whether the personal data of the complainant stored by the NSSI were otherwise accessible. A certified copy of the job descriptions of the employees who accessed the personal data of the complainant in the period 01.01.2016 - 05.02.2018 and written explanations on the case by I.T. - NSSI employee. In response, the CPDP received a cover letter reg. PPN-01-84 # 2 / 06.06.2018, without enclosing the evidence described in it, the same relevant to the dispute. With a letter ex. № PPN-01-84 # 3 / 12.06.2018 the respondent was informed of the fact that the documents described in the letter were not sent to the Commission and was informed that they should be filed in the file within three days. In response and with an accompanying letter PPN-01-84 # 5 / 19.06.2018, the NSSI provided a certified copy of job descriptions of the employees who accessed the personal data of the complainant in the period 01.01.2016 - 05.02.2018 and written explanations on the case by I.T. - Head of the Cash Unemployment Benefits and Guaranteed Receivables Department, Short-Term Payments and Control Directorate, Territorial Division of the National Social Security Institute - Sofia. A reference was also presented for the access to the personal data of the complainant, processed by the NSSI, carried out in the period 04.12.2017 - 05.02.2018. At an open meeting of the Commission held on June 20, 2018, the complaint was submitted for consideration on the merits. In view of the requests made by the complainant on the evidence, namely the collection of additional evidence and the request for information from the NSSI, the examination of the complaint on the merits was postponed. In the course of the proceedings the respondent expressed an opinion on the control over the use of the NSSI information files and databases, containing personal data of the persons, the criteria for access to the information and the "consistency of the system". Given the evidence presented by the parties with a decision of a meeting of the commission held on 13.02.2019, the complaint is scheduled for consideration on the merits on 10.04.2019, of which the parties are regularly notified. They were given the opportunity to get acquainted with the evidence gathered in the file, which the applicant had taken advantage of, as evidenced by the protocol № PPN-01-71 # 14 / 04.04.2019 and a letter ref. № PPN-01-71 # 15 / 05.04.2019. At a meeting of the CPDP

held on 10.04.2019, the complaints were submitted for consideration on the merits. The applicant - regularly notified, appeared in person and through lawyer D.Ch., with a power of attorney for the file. The respondent - regularly notified, is represented by legal counsel A. The parties do not present new evidence, have no evidentiary requests, reject the possibility of concluding an agreement, maintaining the views expressed in the proceedings. As an administrative body and in connection with the need for establishing the truth of the case, as a basic principle in the administrative proceedings, according to Art. 7 of the Code of Administrative Procedure, requiring the existence of established facts, given the written evidence gathered and the allegations made by the parties, the Commission accepts that considered on the merits of complaints PPN-01-71 / 06.02.2018 and PPN-01-84 / February 12, 2018 are justified. The decision took into account the change in the legal framework in the field of personal data protection that occurred in the period from the filing of the complaint until its consideration and the fact that from 25.05.2018 Regulation (EU) 2016/679 of the European Parliament applies. Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the fact that the Law amending the Law on Amendments to the Law on Personal Data has been in force since 02.03.2019 protection of personal data. Account is also taken of the fact that Regulation (EU) 2016/679 has direct effect, and legal facts and the consequences arising from them before the application of the Regulation should be assessed according to the substantive law in force at the time of their occurrence. In the specific case such are the material provisions written in the LPPD in the wording before 02.03.2019, in view of the fact that the legal facts and legal consequences related to data processing concern the period 01.01.2016 - 05.02.2018. that the provision of Art. 23, para. 1 of LPPD corresponds to the provision of art. 25, para. 1 of the Regulation and does not contradict it. In Art. 23, para. 1 of LPPD (repealed), but applicable at the time of processing provides the obligation of the controller to take the necessary technical and organizational measures to protect data from accidental or illegal destruction, or accidental loss, from unauthorized access, modification or distribution, as and from other illegal forms of processing. In accordance with Art. 142, para. 1 of the APC - in the applicable at the moment of consideration of the complaint on the merits and ruling of the commission art. 25 (1) of Regulation 2016/679 provides that the administrator shall implement, both at the time of determining the means of processing and at the time of processing, appropriate technical and organizational measures to ensure the protection of the rights of the subjects of data. According to the legal definition of Art. 4, para. 1 of EU Regulation 2016/6779, respectively Art. 2, para. 1 of LPPD (repealed) the data contained in the NSSI database for individuals undoubtedly have the quality of personal data, and access to data is an action for their processing and

should be carried out in accordance with the provisions in the field of personal data protection - LPPD and EU Regulation 2016/679 when the personal data controller - NSSI takes the necessary technical and organizational measures to protect data from accidental or unlawful destruction, accidental loss or unauthorized access, alteration or dissemination, as well as other illegal forms of processing. It is not disputed between the parties that the complainant's personal data are stored in the NSSI's electronic database, and from the evidence gathered in the file it is indisputably established that they were accessible by NSSI employees in the period 01.01.2016 - 05.02.2018 three times . No other access to the applicant's personal data was established, and there were no specific allegations of such information on dates other than those indicated. By means of an identifier used - a unique civil number of the complainant, data were accessed electronically on 19.05.2016 and 06.12.2017 by S.B. - Senior Insurance Expert in the Control Sector, Department of Cash Benefits for Temporary Disability in the TD of the National Social Security Institute - Sofia, by username ***. On 29.11.2016 through reference "7-references for PIN - all submitted notifications" the data are available from IT - to the position of head of the POBGV department in the TD of the National Social Security Institute - Sofia, by username ****. For the last access, the administrator cannot justify a proven official need for a reference. Arguments for this are also missing in the explanations given to the employee in the case. The latter and the official inspection did not establish that the applicant's reference and access to personal data were in fulfillment of Ms. IT's official duties, for which, according to the applicant, there was not an official but a personal reason for access. to the data related to the relationship of Mrs. I.T. with the applicant's ex-husband. The allegations of the National Social Security Institute that the personal data of the complainant have been processed - accessed lawfully in accordance with the provisions of the LPPD and issued on the grounds of Art. 23, para. 4 of the LPPD Ordinance and Instruction № 14 / 23.07.2013 on the measures and means for protection of personal data processed by the NSSI. According to the Instruction № 14 / 23.07.2013 adopted and submitted by the NSSI on the measures and means for protection of personal data processed by the NSSI (applicable as of the date of processing), the NSSI employees have access to the registers containing personal data by the employees in the performance of their assigned specific official duties, which in this case are definitely not available for the employee of the National Social Security Institute I.T. with regard to the complainant, given the content of the explanations given by her, as well as the lack of evidence involved by the NSSI in the opposite direction. In view of the evidence gathered in the file, it must be concluded that the personal data controller has not taken the necessary technical and organizational measures to protect the complainant's personal data from unauthorized access, or that such measures are clearly insufficient,

given the NSSI registers. the personal data of the complainant were accessed without proven official necessity by an employee of the National Social Security Institute, without this being related to the official duties of Ms. IT The lack of measures by the NSSI, including preventive and current control, regarding the access of NSSI employees to personal data of individuals in the registers maintained by the administrator, led to the unauthorized access made electronically on 29.11.2016 to the personal data of the applicant by I.T. - employee of the TD of NSSI - Sofia - city, the same as a result of non-fulfillment of the obligation imposed on the personal data controller to take technical and organizational measures. In view of the distribution of the burden of proof in the process and the evidence gathered from the file, it is necessary to conclude that the complaints are well-founded and the complainant's personal data stored in the NSSI are processed, accessible, without proven official necessity by I.T. - employee of the TD of the National Social Security Institute - Sofia - city. The rights of the person referring to the CPDP have been violated. Given the nature and type of the violation found and the fact that it has been completed and is not the first for the personal data controller, the Commission considers it appropriate, proportionate and dissuasive to impose a corrective measure under Art. 58, § 2, letter "i" of the Regulation, namely imposition of a property sanction on the NSSI administrator for violation of Art. 23 of LPPD, respectively Art. 25 of the Regulation, considering that it will have a warning and deterrent effect and will contribute to the observance by the administrator of the established legal order. As well as a purely sanctioning measure, a reaction of the state to the violation of the normatively established rules, the property sanction also has a disciplinary effect. The administrator is obliged to know the law and to comply with its requirements, moreover, that he owes the necessary care provided for in the LPPD and the Regulation and arising from his subject of activity, human and economic resources. In determining the amount of the sanction and in accordance with the conditions under Art. 83, para. 2 of the Regulation, the Commission considered that the administrator was sanctioned for an identical violation with an effective Decision № PPN-01-65 / 2018, which imposed a sanction of BGN 1,000, the last voluntarily paid by the NSSI, i.e. the violation is not the first for the administrator. This is a violation of the rights of one person, as there is no evidence of actions taken by the controller to mitigate the consequences of the damage suffered by the data subject or those in connection with the entry into force of the cited sanction of the Commission. The violation was completed by the act of its commission and is irremovable, and the violation became known to the CPDP as a result of its referral by the victim. An aggravating circumstance is the fact that the information contained in the NSSI database is large and contains data not only for three names, address and PIN, but also a special category of personal data related to the insurance rights of the person. The

circumstances under Art. 83, para. 2, letter "b" and "i" of the Regulation are irrelevant insofar as it concerns an administrator of personal - legal entity that does not form guilt, and at the time of the violation approved codes of conduct, respectively approved certification mechanisms are not introduced . Guided by the above and on the grounds of Art. 38, para. 3 of LPPD, the Commission for Personal Data Protection, DECIDES: 1. Announces complaints № PPN-01-71 / 06.02.2018 and № PPN-01-84 / 12.02.2018, filed by P.D. against the National Social Security Institute, as well-founded. 2. Pursuant to Art. 83, § 4, letter "a" in connection with Art. 58, § 2, letter "i" of EU Regulation 679/2016 imposes on the NSSI an administrative penalty - a pecuniary sanction in the amount of BGN 5,000 (five thousand leva) for processing the personal data of the complainant in violation of Art. 23, para. 1 of LPPD (repealed), respectively Art. 25, para. 1 of EU Regulation 2016/679. 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, IBAN: BG18BNBG96613000158601, BIC BNBGBGSD Commission for Personal Data Protection, BULSTAT 130961721 The decision is subject to appeal within 14 days of its service through the Commission for Protection of Personal Data data before the Administrative Court - Sofia - city MEMBERS: Tsanko Tsolov / p / Tsvetelin Sofroniev / p / Maria Mateva / p / Veselin Tselkov / p / Files for download Decision on appeals with registration № PPN-01-71 / 06.02.2018 and PPN-01-84 / 12.02.2018