

DECISION № 739 Sofia, 08.02.2019 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 72 Chamber, in a public hearing on 22.01.2019 in the following Chamber: JUDGE: Mihail Malchev with the participation of Secretary Zornitsa Dimitrova, considering case number 8381 on the inventory for 2018 reported by the judge, and to rule took into account the following: The proceedings are under Article 145 et seq. Of the APC, in connection with Article 38, paragraph 6 of the Act for the Personal Data Protection Act / PDPA /. It was formed on the complaint of SGK against Decision № PPN-01-106 / 2017. from 12.06.2018 of the Commission for Personal Data Protection / CPDP / in the part in which the complaint of AA was accepted as well-founded and of S. G. K., in his capacity of controller of personal data - Chairman of the Management Board of Condominium , located in [settlement], [residential area] [residential address], an administrative penalty was imposed - a fine in the amount of BGN 500 for violation of Article 23, paragraph 1 of the LPPD. The court was seised with a request to annul the decision as illegal, to declare it null and void. With an effective court ruling of 25.09.2018. the appeal of S. G. K. against Decision № PPN-01-106 / 2017 was left without consideration. from 12.06.2018 of the Commission for Personal Data Protection in the part in which the decision is disputed as illegal and the proceedings in administrative case № 8381/2018 are terminated. inventory of the Administrative Court - Sofia - a city in this part. The applicant considers that the contested administrative act is void. It submits that the contested decision was given by an incompetent authority in the wrong procedure. He points out that his administrative penal responsibility can be realized only by the order of ZANN. He maintains that the content of the contested decision is completely incomprehensible. He requests that the order be set aside and that he be ordered to pay the costs. The defendant, the Commission for Personal Data Protection, through a procedural representative, sets out reasons for the unfoundedness of the complaint and the legality of the issued decision. He asks the court to dismiss the appeal, as well as to award legal fees. The interested party - A. Ts. A., regularly summoned, did not appear in court, did not send a representative and did not express an opinion on the appeal. In an application attached to the case, he expressed an opinion that the complaint was unfounded. A prosecutor from the Sofia City Prosecutor's Office, regularly summoned, did not take part in the proceedings in the case and did not express an opinion on the legality of the challenged act. Administrative Court Sofia - city, taking into account the arguments of the parties and having collected and assessed in their entirety all the evidence presented, considers established by the FACTUAL and LEGAL PARTY the following: The appeal is PROCEDURALLY ADMISSIBLE. It was filed against an act subject to judicial control by a person with active procedural legitimacy - the addressee of the disputed administrative act. Considered on the merits, the

complaint is UNFOUNDED. With the procedural Decision № PPN-01-106 / 2017. from 12.06.2018 of the Commission for Personal Data Protection in the disputed part, the complaint of AA was accepted as well-founded and of S. G. K. in his capacity as administrator of personal data - Chairman of the Management Board of Condominium, located in [settlement], [residential district] [residential address] an administrative penalty was imposed - a fine in the amount of BGN 500 (five hundred) for violation of Article 23, paragraph 1 of the LPPD. The case law has established a clear criterion only in case of nullity of the administrative act in the case of lack of competence. With regard to the other requirements for legality of the administrative act, there is no firmly established criterion in the case law, which does not mean that the administrative act cannot be declared null and void in the absence of other prerequisites under Article 146 of the APC. The nullity of the administrative act may be due to non-compliance with the requirements for form, as well as those for significant violations of administrative procedural rules, in conflict with substantive law and inconsistency with the purpose of the law. Generally speaking, the criterion for invalidity of the administrative act in the case of a defect of material illegality is present when the violation of the substantive law is such that it violates particularly essential requirements of the applicable norm. The essential requirements may be relevant both to the legal basis for the issuance of the act and to the essential elements or requirements of the same norm. The annulment of an administrative act is a means of eliminating illegal administrative acts affected by such a significant defect that the act initially, from the moment of its issuance, cannot give rise to the legal consequences to which it is addressed. In order not to create a legal appearance that it exists, if it finds grounds for that, the court should remove it from the legal peace by declaring it null and void. In legal theory and case law it is consistently accepted that the lack of competence of the administrative body and non-compliance with the established form in all cases leads to the nullity of the administrative act, while the contradiction of the act with substantive law is grounds for its nullity only when legal its consequences are completely incompatible with the rule of law, so that in no way, including if it were unappealable, could they be recognized (Decision № 8035 of 01.07.2008 of the SAC under Administrative Case № 3988/2008). ., II otd.). The complainant's objections of incompetence of the administrative body and substantial violations of the rules of procedure are completely unfounded. The allegations in the appeal that the contested decision is incomprehensible are unsubstantiated and unfounded. The procedural 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 the LPPD. This administrative body is authorized to consider complaints against acts and actions of the administrators, which violate the rights of individuals 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. The bodies that exercise control over the observance of the LPPD are: 1. The Commission on the grounds of Art. 10, para. 1, item 7 by the order of art. 38 and Art. 39 of LPPD and 2. the chairman of CPDP and the members of the commission or persons authorized by them by the administration on the grounds of art. 12 ZZLD. 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. 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. Despite the fact that it is indisputably established in the case that SGK is not registered as a controller of personal data, insofar as a complaint was filed against his processing of personal data, it was properly considered by the CPDP and it did not come out. of its powers. According to § 1, item 1 of the RD of LPPD "Personal data processing" is any action or set of actions that can be performed on personal data by automatic or other means, such as collection, recording, organization, storage, adapting or modifying, restoring, consulting, using, disclosing by transmitting, distributing, providing, updating or combining, blocking, deleting or destroying. In this case, the court finds that there is an indisputable processing of personal data. According to Art. 3, para. 1 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 jointly with another person determines the purposes and means for processing personal data. The same definition is given in Art. 2, p. "D" of Directive 95/46 / EC 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 / EC). Therefore, it is sufficient to process personal data within the meaning of the law in order to turn a natural person, as in the present case, into a controller of personal data. Whether it is registered in the register under Art. 10, para. 1, item 2 of the LPPD is a separate issue, and in this regard it should be borne in mind that the CPDP should register controllers only when they maintain registers

of personal data - an argument of § 3 of the TFP of the LPPD and Art. 10, para. 1, item 2 of the LPPD. Persons who do not maintain registers, but process personal data within the meaning of the law, as in the present case, also have the capacity of controller of personal data and the CPDP may consider complaints against them and accordingly establish or not commit violations in the processing of this data. No violations of the administrative procedure rules were committed during the enactment of the administrative act. The decision was rendered after the parties were given the opportunity to express an opinion and present written evidence - Art. 36 of the APC, as well as after consideration of the appeal on the merits in an open court hearing according to Art. 9, para. 4 of LPPD and Art. 39, para. 1 of the Regulations for the activity of the CPDP and its administration and was accepted as necessary

majority / art. 9, para. 3 of LPPD /. The administrative body is also correct constituted the parties in the proceedings before him. The administrative an act has been issued in the prescribed by art. 59 APC written form - a decision in which the motives are indicated - factual and legal grounds. Based on the facts the findings of the body indicate the violated legal norms. They are observed 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, as the complaint was considered in open court meeting, summoning the parties and gathering evidence, and the decision is taken unanimously by the members of the administrative body, if necessary quorum.

The court considers that the decision was issued in accordance with the substantive law and the purpose of the same, in view of which it is not subject to revocation and according to Art. 146, item 4 and item 5 of APK. Its legal consequences are fully compatible with the legal order, such as size of the imposed penalty is the minimum provided by law.

In view of the foregoing, the court finds that there are no grounds for declaring nullity of the contested decision. It is lawful - issued by a competent authority, in the form provided, in the absence of significant infringements of administrative and production rules and proper application of material

law, in accordance with its purpose. In view of the above, the complaint filed against him as unfounded, should be rejected.

According to the outcome of the case and the request for the award of legal counsel remuneration by the procedural representative of the defendant, as well as on the grounds of art. 143, para. 4 of the APC, the applicant should be ordered to pay the defendant the amount of BGN 100, representing legal fees, determined by the order of art. 37, para. 1 of the Legal Aid Act and Art. 24 of the Ordinance to pay for legal aid.

We are guided by the above and on the grounds of Article 172, paragraph 2 of the APC, Administrative Court Sofia city,

RESOLVED:

DISMISSES the appeal of SGK against Decision № PPN-01-106 / 2017. from 12.06.2018 of the Commission for Personal Data Protection / CPDP / in the part in which the complaint of AA is accepted as well-founded by S. G. K., in his capacity as controller of personal data - Chairman of the Management Board of a condominium located in [inhabited place], [residential area] [residential address] an administrative penalty was imposed - a fine of BGN 500 for violation of Art. 23, para. 1 of the LPPD.

ORDERS S. G. K. to pay the Commission for Personal Data Protection legal consular fee in the amount of BGN 100 / hundred /.

The decision can be appealed in cassation within 14 days from its communication through the Sofia City Administrative Court before the Supreme Court Administrative Court.

The decision shall be notified to the parties by sending a copy of it in the order of Article 137 of the APC.

JUDGE: