Decision on appeal with registration № PPN-01-282 / 27.04.2018 DECISION» PPN-01-282 / 2018 Sofia, 03.09.2019 Personal Data Protection Commission (CPDP) composed of: Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Tsvetelin Sofroniev, Maria Mateva and Veselin Tselkov at a meeting held on June 26, 2019, on the grounds of 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), considered on the merits a complaint № PPN-01-282 / 27.04.2018 filed by D.Zh. The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act (PDPA). D.J. refers to the Commission for Personal Data Protection with a complaint, which deals with the misuse of her personal data by a telecommunications operator (TO). Mrs. D.J. informs that on April 26, 2018 she received a phone call **** (according to her from a collection company), during which she was notified of the existence of obligations to TO She claims that she never had a relationship with T.O. and declares that it did not consent to the processing of her personal data for any purpose by the two companies, and that she did not authorize a third party to sign contracts on her behalf and on her behalf. In the course of the proceedings the applicant informed that she had submitted a signal to the Ministry of the Interior about the case, ent. № ****, in connection with which she was interrogated by an economic police officer. 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, T.O. was notified of the proceedings instituted before the CPDP, a written statement and relevant evidence were required. In response, an opinion was filed that the complaint was unfounded, alleging that T.O. processes the personal data of Mrs. D.J. lawfully in connection with a contract for the provision of mobile services dated 02.04.2016, to which the applicant is a party and taken from the same on a leasing device Lenovo A6010 Black and tablet Telenor Smart TAB White, received in the company's store at *** **. They claim that the obligations of Ms. D.J. to T.O. in connection with the used services, the leasing installments and the penalty for early termination of the contract amount to BGN 1401.84. part of the standard procedure of the company, a photocopy of the back of the ID card of Mrs. D.Zh. With regard to the applicant's allegations that she had had a card with a different number since 2014, the company stated that even if a false document had been used to draw up the contracts, this could not have led to TO's unlawful conduct. have an obligation to keep their identity documents, and in case of loss or theft - to declare this in the nearest unit of the Ministry of Interior. They

find that in view of the allegations of a document crime, the complaint should be left without consideration as inadmissible, as far as the establishment of this circumstance is outside the scope of the LPPD and is subject to possible criminal proceedings. In addition, they point out that Ms. D.J. has been duly notified of her obligations to TO, for which she presents evidence - an invitation for voluntary performance. They emphasize that the company has not used the services of a collection company to collect the specific receivable, as the data of Ms. D.Zh. in connection with the collection of the debt were processed by employees of TO specifying that the applicant's number was publicly available on the Internet. They consider that there is no data on the misuse of the personal data of Mrs. D.Zh. by T.O. Apply relevant evidence. In order to clarify the case from a legal and factual point of view, the SDVR requested information about the movement in file № ****, in response to which it was stated that the file was forwarded by jurisdiction to 07 RU-SDVR. After an inquiry by the CPDP, the 07 RU-SDVR informed that an expert report was appointed and prepared on the file, which shows that the signatures and the handwritten text in the columns "for the consumer", "for the subscriber" and "lessee" in the procedural contracts are not were laid by D.J. In view of the above, the applicant requested information on whether she had notified the police of the loss, damage and destruction of her identity card, in connection with which Ms D.J. confirms that her ID card was stolen in 2014, enclosing a certificate from the Ministry of Interior - SDVR. In the course of the proceedings and pursuant to a decree of 16.10.2018, a certified copy of Protocol № *** was presented to the Sofia District Prosecutor's Office for a graphic examination of handwriting prepared by expert J.A. at the Forensic Science Group, concluding that the applicant had not signed and had not written the manuscript in the procedural documents. 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 control over compliance with the LPPD and Regulation (EU) 2016/679. The appeal shall contain the obligatory requisites, 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 it is regular. The appeal is procedurally admissible, 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 against a competent party - a legal entity - a personal data controller, whatever the quality of TO. undoubtedly have in respect of the applicant within the meaning of Art. 4, para. 7 of the General Regulation EU 2016/679 in view of the evidence gathered in the file. It is referred to a competent body to rule - the CPDP, which according to its powers under Art. 10, para. 1, item 7 of LPPD (repealed) respectively Art. 57, § 1 (f) of Regulation (EU) 2016/679, deals with complaints against acts and actions of data controllers that violate the rights of individuals related to the

processing of personal data, with no exceptions under Art. 2, § 2, letter “c” and Art. 55, § 3 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 and / or activities performed by courts in the performance of their judicial functions. 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 27.02.2019 the complaint was accepted as regular and procedurally admissible and as parties in the proceedings were constituted: complainant - D.Zh. and respondent - TO, in his capacity as controller of personal data. The parties have been regularly notified of the hearing scheduled for 17.04.2019 on the merits, indicating the distribution of the burden of proof in the process and the opportunity to present additional evidence in support of their allegations, as well as to request the collection of other such relevant to the dispute. A certified copy of the expertise attached to the file was sent to the respondent. In the course of the proceedings a request was filed by T.O. for constitution as a party in the proceedings of AT, with allegations that “the contracts subject to the proceedings before the CPDP have been concluded in a shop in the town of ***** of this commercial partner of T.O. “. Attached are explanations from an employee of AT, which are irrelevant to the case, insofar as they were given by an employee of the company in a store other than the store where it is stated that the procedural contracts have been concluded. By a decision of a meeting of the Commission held on April 17, 2019, AT was constituted as a respondent in the proceedings, and the consideration of the complaint on the merits was postponed to June 12, 2019, of which the parties were regularly notified. From A.T. An opinion was filed that the complaint was unfounded, with certified copies of the procedural contracts attached to it, and in view of its content the company was required to specify whether the procedural contracts and promissory notes were concluded by AT, in his capacity as commercial representative of T.O. and to inform whether the person V.V. is an employee of A.T. and provide a certified copy of the employment contract concluded with him, as well as to indicate whether the store where the contracts were concluded, the same with code **** and address ****, is part of the network of AT In response, the company informed that the ad hoc contracts were concluded "in POS **** with the address of the commercial site ****, which site from 10.05.2019 does not function and is not part of the network of AT “. Regarding the person VV indicate that he is a former employee of the company and specify that his employment contract was terminated as of June 3, 2019. In support of the latter, they present a certified copy of the employment contract and an order for its termination. At a meeting of the CPDP held on June 12, 2019, the complaint was submitted for consideration on the merits. The applicant - regularly notified, did not appear, did not represent herself. A.T. - regularly notified, not represented.

T.O. - regularly notified, represented by legal counsel G., who disputes the appeal. Presents and the Commission accepts, as relevant to the subject matter of the dispute, a printout of e-mail correspondence dated 13.05.2019 containing a request from AT for terminating the subcode of the site where the procedural contract was concluded, as proof that until that date it is part of the chain of AT In addition, it presents a screen printout from the system of T.O. from which it is clear who is the object in which the contract was concluded. has stopped the collection of receivables from Ms. D.J. after establishing the fact that she did not sign the procedural contract. In the conditions of art. 8, para. 8 of the Rules of Procedure of the Commission for Personal Data Protection and its administration, the ruling on the merits of the complaint was postponed and it was considered at a meeting of the CPDP held on June 26, 2019. As an administrative body and in connection with the need to establish the truthfulness of the case, as a basic principle in the 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 complaint PPN-01-282 / 27.04.2018 is justified. In issuing the decision, the change in the legal framework in the field of personal data protection and the fact that from 25.05.2018 applies 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 and the fact that from 02.03.2019 in force Act amending and supplementing the Personal Data Protection Act. 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 the processing - data collection and conclusion of procedural contracts was made on 02.04.2016. is also the fact that the provision of Art. 4, para. 1 of LPPD (revoked, but effective as of the date of processing) corresponds to the provision of Art. 6, § 1 of the Regulation and does not contradict it, as both provisions impose an obligation for lawful processing of personal data in the presence of a condition for admissibility of processing. The subject of the complaint is illegal processing of the personal data of the complainant in connection with concluded with T.O. contracts. It is not disputable between the parties, and from the evidence gathered in the file it was established that on 02.04.2016 in a store located in **** a contract for the provision of mobile services was concluded with a contract term of two years, a contract for purchased on lease Lenovo A6010 Black and a contract for purchased on lease tablet Telenor Smart TAB White, with parties

to the contracts T.O. and D.J. - the needs, respectively the lessee. It was established that there were two promissory notes issued in connection with the leasing contracts on the same date for amounts of BGN 266.57 and BGN 91.77, respectively. It was indisputably established that the contracts and orders were concluded by an employee of AT , in the company's office, the same distributor of T.O. and administrator of personal data, which were subsequently transferred to T.O. The procedural documents contained three names, a unique civil number, address and identity card number of the applicant, information which undoubtedly has the character of personal data of the person given the fact that through it the same can undoubtedly be individualized. The applicant's allegations that her personal data had been unlawfully processed for the purposes of the contracts were well founded. They are supported by the evidence gathered in the file, in particular from the presented protocol № *** on the list of 07 RU-SDVR for prepared expertise of the procedural documents with the conclusion that the signatures under the same were not put by D.Zh. - the applicant in the present proceedings. The latter imposes the conclusion that the applicant's personal data were processed by AT, in the case of collection and use for the conclusion of contracts, without the knowledge and consent of the applicant and without valid contractual relations between the parties. The processing is not performed in fulfillment of a statutory obligation of the personal data controller, is not necessary to protect the life and health of the individual, nor to perform a task in the public interest or to exercise powers granted to the controller by law, as and to realize the legitimate interests of the administrator, which should take precedence over the interests of the individual. In this regard, it must be concluded that the data were processed by A.T. without the presence of a condition for admissibility of the processing in violation of Art. 4, para. 1 of the LPPD (repealed) and the rights of the person referring to the CPDP have been violated. It is indisputable that the applicant's data were also processed by T.O. in connection with the collection of obligations arising from the contracts, for the purposes of which they are kept by the mobile operator. The Commission finds that with regard to T.O. the complaint is unfounded, considering that the same acted in good faith, arguing that the data were collected not by the company but by A.T. and after establishing the fact that the contracts in which they were contained had not been signed by the applicant, T.O. has stopped collecting the receivables arising from them, has terminated the contracts and has no financial claims against the applicant. Disagree with the latter Maria Mateva and Tsanko Tsolov - members of the Commission vote with a special opinion, believing that the complaint is well-founded and in relation to TO In view of the nature and type of the established violation, the Commission finds that the corrective measures under Art. 58, § 2, letter "a", "b", "c", "d", "e", "e", "g", "h" and "j" of the Regulation are inapplicable and inappropriate in this case, in view of the gravity of the

infringement and the fact that it had been completed and that it had caused damage to the applicant. In this regard, it finds it appropriate, proportionate and dissuasive to impose a corrective measure under Art. 58, § 2, letter “i” of the Regulation, namely the imposition of a pecuniary sanction on AT Considering that it will have a precautionary effect and will contribute to the observance 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 they owe the necessary care provided for in the LPPD and the Regulation and arising from its subject of activity, human and economic resources. The Commission, taking into account the purpose of the penalty, its nature and severity, the public relations it affects and the categories of personal data affected by it, determines as a proportional sanction of BGN 23,000 - much below the average minimum provided for in the Regulation in the norm of art. 42, para. 1 of LPPD (repealed) for violation of Art. 4, para. 1 of the same law. 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 it was a violation of the rights of one person, and the sanctioned company is a small enterprise within the meaning of the law and the violation is first for him and he helped to reveal the facts and circumstances of administrative proceedings. As aggravating circumstances in determining the amount of the sanction, the Commission took into account that the violation was completed by the act of its commission and is irreparable, and the same became known to the CPDP as a result of its referral by the victim. An aggravating circumstance is the fact that the processed personal data are in large volumes, namely three names, address, ID card number and a single civil number of the person, and they are used to create financial and contractual ties of the person. The circumstances under Art. 83, para. 2, letter "b" and "i" of the Regulation are irrelevant insofar as it concerns a personal data controller - a legal entity that does not form a fault, 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, HAS DECIDED: 1. Declares the complaint № PPN-01-282 / 27.04.2018 as well-founded in respect of AT 2. On the grounds of art. 83, § 5, letter “a”, in connection with Art. 58, § 2, letter “i” of EU Regulation 679/2016 imposes on A.T. with UIC *****, with registered office and address of management *****, in his capacity of personal data controller, property sanction in the amount of BGN 23,000 (twenty-three thousand BGN) for personal data processing of the applicant in violation of Art. 4, para. 1 of LPPD (repealed), respectively Art. 6, § 1, of EU Regulation 2016/679. 3. By a majority of three votes, and with the dissenting views expressed by Ms Maria Mateva and Mr Tsanko Tsolov,

the Commission dismissed the complaint as unfounded in respect of the telecommunications operator. After the entry into force of the decision, the amount of the imposed penalties to be 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 service. , through the Commission for Personal Data Protection, before the Administrative Court Sofia - city. CHAIRMAN: MEMBERS: Ventsislav Karadjov / p / O.M. Tsanko Tsolov / n / Tsvetelin Sofroniev / n / O.M. Maria Mateva / n / Veselin Tselkov / n / Files for download Decision on appeal with registration № PPN-01-282 / 27.04.2018