DECISION № 2905 Sofia, 12.06.2020 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 24 Chamber, in a public sitting on 27.05.2020 in the following Chamber: JUDGE: Branimira Mitusheva with the participation of the Secretary Svetla Gecheva, considering case number 721 on the inventory for 2020 reported by the judge, and in order to rule took into account the following: The proceedings are under Art. 145 - 178 of the APC in connection with Art. 38, para. 7 of the Personal Data Protection Act / PDPA /. It was formed upon a complaint of BULGARIAN TELECOMMUNICATIONS COMPANY / BTC / EAD, [settlement], represented by the Executive Director AD, against Decision № PPN-01-49 of 19.11.2019 of the Commission for Personal Data Protection . The complaint developed arguments for illegality of the administrative act, as ruled in case of significant violations of the administrative-procedural rules and in contradiction with the substantive legal norms. It is alleged that the decision of the commission is completely incorrect from a legal point of view, because at no time during the inspection and in the course of the administrative proceedings, it was clearly established that a natural person acting under the direction of the BTC administrator to personal data, has processed such in violation of the instructions of the administrator. In this particular case, BTC informed the supervisory authority that it considered that there was a risk of breach of personal data security and in this regard initiated an investigation. During the same, the system log files, created and stored upon access to customer monthly invoices, were checked, and it was established that on October 23, 2018 and October 24, 2018, an employee of the position "sales associate in a store network", zone East - B. 2, with the user profile of P. D. P., has loaded the page with the list of monthly bills for the client code of Mr. N., under which code is his mobile service. According to the applicant, the findings in that way did not in any way prove that the employee had unlawfully disclosed to a third party information from a specific monthly account or a detailed reference thereto. It is added that according to the job description of the position "store sales associate", all employees in this position have access to customer invoices issued by BTC for the purpose of fulfilling their official duties for servicing customer inquiries for accrued liabilities. Disciplinary proceedings were instituted, in which no violation of the observance of work by an employee of the company was established, respectively no disciplinary sanction was imposed. It is not established definitively whether the employee PP, whose user profile accessed the list of monthly accounts of Mr. N., has opened a specific monthly account and a detailed reference to it. According to the applicant, the decision, which is the subject of the present proceedings, was also rendered in violation of Art. 59, para. 2, item 4 and item 5 of the APC, as it was not clear what exactly the violation was, which specific actions were the subject of the given legal qualification, as well as completely blank recommendations or guidelines

were issued through a warning issued by the administrative body to BTC to increase the technical and organizational measures for processing personal data in the company. Evidence was presented on the technical and organizational measures taken in connection with the protection of personal data of the company's customers - internal rules, procedures, control functions, training of employees, etc. It is stated that when entering the BTC, employees are explicitly trained and informed about the handling of personal data and strict compliance with the requirements of Bulgarian and European legislation in this regard. The court is requested to issue a court decision annulling the contested decision. The defendant - the COMMISSION FOR PROTECTION OF PERSONAL DATA / CPDP / - regularly summoned, does not send a representative to a court hearing. In the written notes attached to the case, through his procedural representative, he disputed the appeal and expressed an opinion that it was unfounded. The interested party, SNN, was regularly summoned, challenged the complaint and considered it unfounded. SOFIA CITY PROSECUTOR'S OFFICE, regularly notified, does not send a representative and does not express an opinion on the complaint. The court, after discussing the arguments of the parties and assessing the written evidence collected and accepted in the case, finds the following factual situation established: NN for [the company] misusing his personal data without his knowledge and consent. The complaint states that on 31 October 2018 N. found that the telecommunications company had provided a third individual with a detailed printout of telephone conversations from telephone number [PIN] / number of the applicant /, without his knowledge and consent . It is alleged that the information was obtained from Mr N. through a conversation with an acquaintance of his, who sent him a printout of the chat in V. It is also stated that in the communication between the lady and the applicant, the lady claimed that her husband for conversations to find out when Mr. N. spoke to her due to suspicions of intimate relations. It is stated that the issuance of a printout of conversations conducted by BTC to a person other than the holder of the telephone number is in violation of the right to protection of personal data. In connection with the complaint filed in this way, by letter no. № PPN-01-49 / # 2 / 20.02.2019 [company], based on Art. 26 and Art. 36 of the APC, was notified of the initiated administrative proceedings, and was given the opportunity to express a written opinion on the complaint, as well as to present relevant evidence. On 05.03.2019 from the Data Protection Officer of BTC received a notification for violation of personal data security, filed with Reg. № PPN-01-49 # 5 / 06.03.2019, which states that after checking the log files it was found that an employee of the company - P.D., had access to the invoice of a client - S. N. N., on 23.10.2018 at 15.49 and on 24.10.2018 at 2.47 pm, and on the basis of the information received it could be considered that the employee P.D. had unlawfully disclosed to a third party information from the invoice of

Mr. SNN. № PPN-01-49 # 6 / 07.03.2019 [company] has expressed an opinion that the complaint is unfounded, and it is stated that there is no data and no evidence of violation. They inform that the company has adopted a policy for control of access to the information resources of BTC, mandatory training of the company's employees for lawful processing of personal data has been introduced. It is stated that the employees are aware that they can provide information only to the holder of the service, and that the disclosure, discussion, printing, sending and providing personal and traffic data to third parties, including relatives and friends of the holder, is prohibited. if they are not authorized to do so. The company also informed that on the home page of the internal portal for employees in the store network there is a link for quick access to materials related to personal data protection. The statement also clarified that BTC stores the log files establishing the access of its employees to the systems. After an inspection, in view of the complaint filed by the company, it was found that on 23.10.2018 at 15.49 and on 24.10.2018 at 14.47, an employee of the position "sales assistant in the store network", East zone - B. 2, has loaded a page with the list of monthly bills for the client code of Mr. N., under which is his mobile service [PIN]. It is alleged that the employee, with whose username N.'s monthly account was accessed, was duly acquainted with the rules for working with personal data as of July 2, 2018. It is stated that the employee has undergone basic training on the rules for protection of personal data on 27.04.2018, as well as for specialized training for the store network on 31.05.2018. It is added that as a sales assistant, the employee has access to customer invoices issued by BTC for the purposes of official its obligations to service customer inquiries for accrued debts. It was not established that the employee, with whose username the list of Mr. N.'s monthly accounts was accessed, had opened a specific monthly account and a detailed reference to it. It is considered that the company has taken the necessary technical and organizational measures to protect the personal data of its customers. Attached to the opinion are: Content of training on "Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data", uploaded on the internal portal for training of BTC employees; Content of training on "Specialized training - processing of personal data in stores", uploaded on the internal portal for training of BTC employees; Information document "Personal Data and Consumer Protection", uploaded on the internal portal for employees in the store network of BTC; Information document "Questions and Answers" on "Personal Data", uploaded on the internal portal for employees in the store network of BTC; Mandatory process guide “H. S. 3025 ”, available on the internal portal for employees in the store network of BTC; Content of training on GDPR, conducted at meetings with the managers of the company's store network in July 2018; Policy for control of access to information resources of [company]; Job description of the employee with whose

username the access to the monthly account of Mr. N. and an annex to it was made. With a letter ex. № PPN-01-49 / 30.08.2019 the written explanations of Mr. PP were requested, and the company informed the CPDP that the request for submission of written explanations, drawn up by [company] on 08.03.2019 was not served on Mr. P., due to his prolonged absence from work. The required explanations were provided at the open meeting of the Commission. At its meeting held on October 2, 2019, the CPDP decided on the admissibility of the complaint filed by S. N. N. / transcript-extract from protocol № 39 /, as well as constituted as parties to the proceedings: complainant S. NN and the respondent - [company], and a decision was made to consider the merits of the complaint in open court on 30.10.2019. № PPN-01-49 / # 14 / 09.10.2019 and letter, ref. № PPN-01-49 / # 15 / 09.10.2019 [company] and SNN were informed that the complaint will be considered on the merits at an open meeting of the CPDP on 30.10.2019 at 13.00. The complaint was considered at the meeting of the CPDP held on 30.10.2019 and a decision was made to declare the complaint justified, to impose on the administrator [company] an administrative penalty - "property sanction", amounting to BGN 2,000 and to issue a official warning of the administrator [company], based on art. 58, § 2, letter “b”, for violation of Art. 32, § 4 of Regulation / EU / 2016/679 of the European Parliament and of the Council of 27 April 2016 / transcript of extract прото 43 /. With decision № PPN-01-49 / 19.11.2019 the CPDP has announced a complaint with registration № PPN-01-49 / 17.01.2019, filed by SNN against [company], as well-founded for violation of the provision of Art. 32, § 4 of Regulation / EU / 2016/679 of the European Parliament and of the Council of 27 April 2016, as well as on the grounds of Art. 58, § 2, letter “i”, in conjunction with Art. 83, § 4, letter “a” of the Regulation has imposed on the administrator [company] an administrative penalty - “property sanction”, in the amount of BGN 2,000, for violation of the provision of Art. 32, § 4 of Regulation / EU / 2016/679 of the European Parliament and of the Council of 27 April 2016, as well as on the grounds of Art. 58, § 2 (b) of Regulation / EU / 2016/679 of the European Parliament and of the Council of 27 April 2016 issued a formal warning to the controller [company] to increase the technical and organizational measures for the processing of personal data in the company. As part of the administrative file in the case, printouts of the above telephone number for calls were attached; a printout showing the three names and address of the complainant before the CPDP, photos of a communication between Mr. N. and a third natural person who allegedly received access to the complainant's personal data. In view of the facts thus established, the court reached the following legal conclusions: The appeal is procedurally admissible - it was filed by a competent party within the term under Art. 38, para. 7 of the LPPD. As can be seen from the notice of delivery attached to the case, the applicant was notified on 23 December 2019 of the impugned

decision № PPN-01-49 / 19.11.2019, and his appeal against him was filed on 03.01.2020, through the administrative body, ie the complaint is filed within the statutory 14-day period. Considered on the merits, the complaint is unfounded for the following reasons: The contested decision in the present proceedings № PPN-01-49 / 19.11.2019 was issued by a competent administrative body - CPDP in accordance with the powers granted to it under Art. 38, para. 1 and para. 3 of LPPD / in the applicable wording - amended. SG, no. 17 / 26.02.2019 / and Art. 40, para. 2 of the Rules of Procedure of the Commission for Personal Data Protection and its administration / Rules /. 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 in connection with Art. 38, para. 2 of the Regulations, as well as after consideration of the appeal on the merits in open session according to art. 40, para. 1 of the Regulations and was adopted unanimously by the members of the administrative body / Art. 9, para. 3 of LPPD /. The administrative body has also correctly constituted the parties in the proceedings before it. The administrative act was also issued in the form prescribed by law - a decision stating the reasons - factual and legal grounds, due to which the complaint of SN is considered well-founded and respected. The present court also finds that the procedural decision was rendered in accordance with the applicable substantive law provisions and the arguments for illegality presented by the appellant in this sense appear to be unfounded. The substantive law applicable in this case is the one in force on the date on which the infringement is alleged to have taken place - 23.10.2018 and 24.10.2018, and not the amendments adopted following the entry into force of EU Regulation 2016/679 , the texts of the repealed provisions corresponding to the texts of the Regulation. The provision of Art. 2, para. 2, item 1 and item 3 of LPPD / revoked / stipulates that the personal data of natural persons must be processed lawfully and in good faith, as well as be relevant, related to and not exceeding the purposes for which they are processed. In the same way, the principles set out in Art. 5, § 1, b. "A" and b. "C" of EU Regulation 2016/679 / applicable from 25.05.2018 /, regulate that personal data are processed lawfully, in good faith and in a transparent manner with regard to the data subject and appropriate, related to and limited to what is necessary in connection with with the purposes for which they are processed / "minimization of data" /. According to the provision of art. 4, para. 1 of LPPD / revoked, but applicable as of the date of the violation / processing of personal data is permissible only in cases where there is at least one of the following conditions: 1. processing is necessary to fulfill a statutory obligation of the personal data controller ; 2. the natural person to whom the data relate has given his / her explicit consent; 3. the processing 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 undertaken at his request; 4. the processing is necessary in order to protect the life and health of the natural person to whom the data refer; 5. the processing is necessary for the performance of a task, which is carried out in public interest; 6. the processing is necessary for the exercise of powers granted by law to the administrator or to a third party to whom the data are disclosed; 7. the processing is necessary for the realization of the legitimate interests of the personal data controller or of a third party to whom the data are disclosed, except when the interests of the natural person to whom the data relate have priority over these interests. The cited provisions are identical to those provided in Art. 6, § 1 of EU Regulation 2016/679. In the procedural case of the case it is indisputably established that the personal data of Mr. N. were processed by an employee of [company] (the latter was constituted as a respondent in the proceedings before the CPDP), in his capacity as "personal data controller". within the meaning of Art. 3 of LPPD / revoked / and Art. 4, § 7 of EU Regulation 2016/679, who processed the personal data / the three names, address, telephone number and telephone numbers with which he spoke, date and time / in the case of granting access to N.'s personal data to a third natural person, made by an employee of the position of "sales assistant in the store network", who loaded the page with the list of monthly bills for the customer code of Mr. N., under which is the mobile service [PIN] on 23.10.2018. and 24.10.2018. In the course of the administrative proceedings it is indisputably established that the processing of SN's personal data was carried out without his consent and knowledge. Undoubtedly, from the submitted notification for breach of personal data security, by accessing the invoice of the client N. on the above dates, it is established that the controller and the processor of personal data have not taken safe and reliable steps by any individual acting under the management of the controller or processor who has access to personal data to process this data only on the instructions of the controller / to provide invoice data only to the mobile number holder /, unless the person in question is required to do so under Union law or the law of a Member State. Through the access to the invoice of the client SN on 23.10.2018 at 15.49 and on 24.10.2018 at 14.47 with the provision of data to a third party other than the holder of the telephone number, provided that the access to this data is limited, are unduly disclosed to a third party, the information available from these invoices. In view of this, the court finds that the administrative body has correctly qualified the committed violation as such, committed in violation of Art. 32, § 4 of EU Regulation 2016/679. Despite the technical and organizational measures taken, a violation was committed. With regard to the administrative penalty imposed on the complainant, it should be borne in mind that the CPDP has operational independence and in accordance with the functions granted to it assesses which of the corrective powers under Art. 58, § 2 of

the Regulation to exercise. The assessment should be based on considerations of the appropriateness and effectiveness of the decision, taking into account the specifics of each case and the degree to which the interests of the individual data subject are affected, as well as the public interest. The powers under Art. 58, § 2 of the regulation, without this under b. "And" have the character of coercive administrative measures aimed at preventing, resp. to stop the infringement, thus achieving the intended behavior in the field of personal data protection. The administrative penalty "fine" or "pecuniary sanction" provided for in b. "And" of Art. 58, § 2 of the regulation has a sanctioning character and is applied in addition to the measures under b. "I"and "j" or instead of them, ie it depends entirely on the discretion of the supervisory authority whether
to apply to the specific case any of those specified in b. "A" - "z" and "y"
coercive administrative measures or impose a fine or property
sanction or to apply any of the measures under b. "A" - "h" and "y" together with
the imposition of an administrative penalty under b. "And". In determining
the corrective action should be in line with the objective pursued by
its imposition and whether this goal will be achieved by its implementation. IN
in the specific case the court finds that the CPDP has correctly accepted that in this case it is
the corrective measure under Art. 58, § 2, b. "And" of Regulation / EU /
2016/679. With regard to the amount of the administrative penalty should
given that on the one hand the size is individualized by
the administrative body according to the degree of involvement of the public
relations on personal data protection, as well as determined and motivated by
the fact that for the individual have occurred unfavorable
consequences insofar as data are provided that identify and provide
possibility for direct identification of the person. In determining the sanction
the administrative body has also discussed the elements of art. 83, § 2 of the Regulation
/ EU / 2016/679.
With regard to the official warning given to the applicant
it should be borne in mind that the CPDP has, on the basis of Art. 38, para. 3 of

LPPD, with operational independence, in accordance with the provisions provided to it

functions assesses which of the corrective powers under Art. 58, § 2 of

Regulation / EU / 2016/679 to exercise. As stated above,

the assessment should be based on considerations of appropriateness and

effectiveness of the decision taking into account the specifics of each case

and the degree of affecting the interests of the particular natural person - subject

data as well as the public interest. In the present case, the court finds

that the CPDP has correctly accepted that in this case the corrective measure under

Art. 58, § 2, b. "B" of Regulation / EU / 2016/679, taking into account in this regard

the fact that the breach is the first for the controller,

who have taken action to adopt appropriate technical and

organizational measures.

For the foregoing reasons, the present panel of judges accepts as follows

the filed complaint is unfounded and unproven and as such it follows

to be rejected.

Led by the above and pursuant to Art. 172, para. 2 of the APC Administrative Court

Sofia-city, 24th composition

RESOLVED:

DISMISSES the appeal of [company], [settlement], represented by

the executive director AD, against Decision № PPN-01-49 of 19.11.2019

of the Commission for Personal Data Protection, as unfounded.

The decision can be appealed with a cassation appeal before the SAC of the Republic of Bulgaria

14 days from the notification to the parties for its ruling.

JUDGE: