Decision on appeal with registration № PPN-01-209 / 02.04.2018 DECISION» PPN-01-209 / 2018, Sofia, February 26, 2019. Commission for Personal Data Protection (CPDP) composed of: members Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov, regular meeting held on January 23, 2019, objectified in protocol № 3/2019, on the grounds of art. 10, para. 1, item 7 of the Personal Data Protection Act (PDPA) and Art. 57, § 1, letter “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 and on repealing Directive 95/46 / EC (ORD) by examining the merits of the complainant. № PPN-01-209 of 02.04.2018, in order to rule, took into account the following: The administrative proceedings are by the order of art. 38 of the Personal Data Protection Act. The Commission for Personal Data Protection was seised with a complaint with registration № PPN-01-209 dated 02.04.2018 filed by A.H., containing allegations of illegal processing of his personal data. In the complaint A.H. points out that in the period 30 - 31.03.2018 he established that the telecommunication service provider, which he has been using for more than six years - telecommunication operator (TO), has used his personal data illegally. Until 03.03.2017, two mobile numbers were registered in his name: ****** and ****. On 04.03.2017, in the office of the operator - the city of T., an application was submitted for switching from a subscription plan to a prepaid card for mobile number ****. He stated that he had not been notified in any form of this change in the circumstances of the contract, and that he had not submitted such an application to any of TO's offices. After a telephone conversation with A.H. with the operator, found that the number **** is not registered in his name. After a few more calls, he found out in which office of the operator this procedure was performed - the city of T. He claims that the manager of the site in this city called him to ask him what was happening, then tried to remind him that they knew each other. for a long time and there is no need to resort to "more extreme measures", about which A.H. knew nothing. According to him, TO's employees used his personal data and took actions devoid of his signature and consent. He declares that he has not signed the application and has not given his consent for his personal data to be processed for the stated purpose. According to him, it was clear that the signature on the application and his signature were not identical and that his PIN was indicated, but his ID number was not his. it was not just the signature, but the very misuse of his personal data resolved without his express consent. Informs the CPDP that it has not alerted other institutions with a subject identical to the one with which the CPDP has been notified. Attached to the complaint: complaint and response to it, application from 03.07.2018 and response to it, application for switching from a subscription program to a prepaid service.

In the conditions of the official beginning of the administrative process and the obligation of the administrative body to collect evidence and clarify the actual facts relevant to the case with letters with registration №: PPN-01-209 # 1 and PPN-01-209 # 2 , all from 08.05.2018, A.H. and T.O. are regularly notified of the commencement of proceedings. With a letter with registration № PPN-01-209 # 3 dated 21.05.2018, T.O., through P.G. - a proxy expresses an opinion in the complaint. According to T.O. the personal data of A.H. have been processed lawfully, they have been collected for a specific purpose, which is why they argue that the complaint is procedurally inadmissible and unfounded. With regard to the admissibility, it is stated that the appeal was filed outside the term under Art. 38, para. 1, pred. 1 of LPPD, as according to the company A.H. has learned more than a year ago from his alleged moment of learning about the change. Invoice № *** dated 10.03.2017 established that it contains information on the consumption of number **** until 04.03.2017. In the Contract for mobile services for number **** dated 06.06.2014. the subscriber requested as an additional service - a detailed printout of the invoice. In this regard, T.O. considers that A.H. has learned about the violation on March 10, 2018, when the said invoice was issued, together with the detailed printout to it. He considers that it is not within the competence of the CPDP to establish whether a signature has been falsified and that it is not an investigative body. The establishment of the authenticity of a signature does not fall within the scope of the LPPD, but is the subject of criminal proceedings and in this sense are cited Decision № G-6/2012 of 20.09.2012 and Decision № G-344/2015 of 16.12 .2015 In essence, T.O. claims that on 04.03.2017 A.H. has submitted an application for switching from a subscription program to a prepaid service of T.O. in the town of T., due to which the actions of T.O. with regard to the change in the manner of providing the service were in accordance with the objectified by A.H. desire. Additionally, it provides information on the procedure for switching from a subscription program to a prepaid service, according to which when a customer has requested and has been legitimized by a sales consultant to transfer a number from a subscription to a prepaid program, it is entered by the sales consultant in the system. the application for switching from a subscription program to a prepaid service is signed by the client and closed. The contractual relations for the specified number were terminated on the date of submission of the application, and before the termination of the service, as such, according to the subscription plan, it was activated as prepaid in order to allow the client to use services without interruption. The application also reflected the amount that the client had to pay (in this case in the amount of BGN 20.34, which amount included the penalty in the amount of BGN 11.11). With the transition from the use of a contract service to a prepaid service, the contract for the respective number was terminated, and not in its entirety, and no document other than the application was

generated. Based on the above, the CPDP requests to disregard the complaint as procedurally inadmissible and unfounded. Attached to the statement: 2 pcs. power of attorney, contract for mobile services, appendix - price list for private clients, declaration of consent to sign a document, additional agreement to the contract for mobile / fixed services with mobile / fixed number ****, appendix - price list for subscription plans for private persons, declaration - consent, complaint and response to it, application for switching from a subscription program to a prepaid service, invoice № *** dated 10.03.2017 together with a detailed printout, the applicable general conditions to the concluded contract for mobile / fixed services with mobile / fixed number **** and additional agreement to it, valid as of 14.06.2014 - the date of entry into force of the initial contract, and as of 14.03.2015 - the date of signing the additional agreement, as well as link to the current General Terms and Conditions, which also apply to the conclusions of A.H. contract: ******, invoices issued for January and February 2017; screen print; internal procedure for switching mobile numbers from subscription to prepaid service; instruction on the manner and means of processing and measures for personal data protection together with presentation, leasing contract dated 14.03.2015, invoice № **** dated 10.03.2017 together with a detailed printout, statement of findings № ** * from 19.01.2017. With a Decision of the CPDP from a meeting held on 03.10.2018, objectified in the minutes № 38/2018, the complaint was accepted as regular and admissible, as its content is in accordance with the requirements of Art. 30, para. 1 of PDKZLNA, respectively art. 29, para. 2 of the APC; the complaint was filed by a natural person with allegations of illegal processing of personal data concerning him - use of his personal data to switch from a subscription program to a prepaid service for mobile number **** without his consent; the complaint was filed against TO, who has the capacity of personal data controller; to a competent body and within the normatively established term, by a person with legal interest, the negative prerequisites specified in Art. 27, para. 2 of the APC. According to the objections made by T.O. regarding the existence of a precluded right to appeal due to the filing of the same outside the established 1-year period from learning of the violation and the competence of the commission to consider this case, the CPDP's considerations to disregard the same are as follows: the statement of TO that on the date of issuance of the invoice and the printout to it - 10.03.2017 A.H. has learned about the violation, as in the latter were reflected data for consumption until 04.03.2017, it should be noted that the invoice and printout for March 2017 it is established that they are dated 10.03.2017 year, reporting period 10.02.2017 - 09.03.2017, as the latter contains data on consumption until 04.03.2017, ie it concerns the lack of recording data on consumption from several days to the end of the reporting period, namely from 04.03.2017 to 09.03.2017, which does not give grounds to accept as reasonable the objection of TO, moreover that the lack of

consumption for these five days may be due to a number of reasons - error in the printout, damage to the device, actual lack of consumption, incl. due to pronouncing the free minutes, etc. It is evident from the printout itself that, for example, on 25.02.2017 there are no data on consumption, ie. it is an extremely short period of time. Next in the complaint of A.H. to T.O. dated 02.04.2018, with which he informed T.O. for the situation that has arisen, it is stated that this number is registered in his name, but is used by his relative (which by virtue of item 19 of the applicable GTC at the time of the contract and the agreement is admissible). unfounded. Regarding the objection for lack of competence of the CPDP in connection with the investigation of the issue of the authorship of the signature, in particular whether it was placed by A.H. and that this issue did not fall within the scope of the LPPD, but is the subject of criminal proceedings, it should be noted that in this case the specific authorship of the alleged act is irrelevant for the purposes of administrative proceedings - false signature on the application. The latter is relevant to the criminal proceedings in assessing the existence of a crime, but not to compliance with the requirements of LPPD / ORD, ie irrelevant to the administrative dispute are the specific causes and mechanisms that lead to the violation. The obligation to process personal data in compliance with the mandatory rules contained in the LPPD / ORDP is the controller and it is the latter who is responsible for failure to comply with this obligation. Based on the above, the decision constitutes as parties: applicant A.H. and respondent T.O. and a graphic expertise was appointed on the signature of the complainant, affixed to the consumer / representative A.H. against the column "signature" in a copy of the Application for switching from a subscription program to a prepaid service, with SIM card number ******* dated 04.03.2017. The parties are regularly notified of the decision of the CPDP, as on 25.10 .2018 a sample signature was given for a comparative study by the complainant, on site at the CPDP. With a letter with registration № PPN-01-209 # 18 dated 29.10.2018 of the CPDP a request was made to the NICC to prepare an expertise of the complainant's signature, in response to which a letter with registration № PPN-01-209 # 19 of 09.11.2018, a protocol for performed expertise № 2018 / DOK-260 of 06.11.2018 was sent to NICC. Minutes № 48/2018 set a date for consideration of the complaint in open session. An open meeting was held on January 23, 2019, in accordance with the provisions of Art. 39, para. 1 of the PDKZLDNA, for which the complainant regularly notified does not appear and does not send a representative, for the respondent, duly notified, appears P.G. with a power of attorney for the file. The latter stated that she was aware of the file, requested that the hearing be adjourned on the grounds that T.O. has referred the EWC on the basis of the NICC's conclusion in order to establish a possible crime, which in turn is important for clarifying the subjective responsibility in connection with the proceedings before the eventual engagement of the objective one

of the administrator and presents as evidence in connection with the request: signal to PSA and bill of lading. No other requests. The respondent's request for adjournment of the hearing was disregarded on the grounds that for the purposes of the present administrative proceedings the authorship of the committed act is irrelevant as far as placing a false signature against the column "signature" for user / representative A.H. in a copy of the Application for switching from a subscription program to a prepaid service, with a SIM card number ******* dated 04.03.2017. The latter is relevant to the criminal proceedings in assessing the existence of a crime, but not to the obligations for the observance of the requirements of LPPD / PDPA by the personal data controller, which in turn does not require a conclusion on the preliminary significance of this issue in relation to the responsibility of the controller - legal entity, which is defined as objective and innocent, incl. in respect of the dispute referred to the committee. This issue would be relevant for civil proceedings in connection with possible claims by the administrator for damages resulting from a crime, but not for the current administrative proceedings. For these reasons, the CPDP finds no grounds for postponing the hearing or suspending the appeal proceedings. In essence, the representative of the respondent party considers that the dispute has not been clarified on the factual side, as the submitted expertise does not establish with which hand A.H. has signed the contract / application, respectively in the examined material for the preparation of the expertise and supports the request for termination of the proceedings due to delay of the complaint. The Commission for Personal Data Protection, after considering the views of the parties in the context of the evidence gathered in the file, finds that the complaint is well-founded and as such should be upheld for the following reasons: Not disputed between the parties but also Evidence establishes that the respondent party processes personal data of the complainant in the context of existing and existing contractual relationships on the occasion of provided / used service under a contract concluded between them for mobile services (as of the date of conclusion the respondent is called "***" now “*****”) by application № ****, on 06.06.2014 and in force from the same date, with a term of 12 months (06.06.2015), for number ****. In the said contract A.H. - a minor, with the consent of his parent, in his capacity as a user with a signed signature has certified that he has received a copy of the contract and that he agrees to comply with the GTC of TO He has expressed a wish for the contract to enter into force immediately, as well as to receive a detailed invoice, refusal of a paper invoice and a limit for mobile internet. On 14.03.2015 with an additional agreement to the contract for mobile / fixed services with mobile / fixed number **** a subscription plan and conditions have been agreed, a leasing device has been received and the term for using the services has been extended to 14.03.2017 d. The user has declared that he has received a copy of the GTC, that he agrees with them and that he undertakes

to comply with them. According to item 26 of the applicable general conditions, when using services through an individual contract, payment for services used is made on the basis of an invoice issued monthly in the name of the consumer, failure to receive such does not release the consumer from his obligation to pay amounts due. From submitted invoices for the months of January, February 2017 and printouts to them it is established that TO has issued a general invoice and printout containing the total consumption mobile numbers: ****** and **** with user A .X. From the invoice and the printout for the month of March 2017 it is established that they are dated 10.03.2017, reporting period 10.02.2017 - 09.03.2017, recipient: A.H., PIN *** and address ****** that it contains data for consumption until 04.03.2017. Given the maintained request for termination of the proceedings by the respondent, on the grounds that the date of knowledge of the violation is the date of issuance of the invoice and printout - On March 10, 2018, the CPDP considers that it should not re-rule on this request, especially since various facts and circumstances are not indicated in connection with this request. This issue was considered and discussed by the CPDP in its assessment of the admissibility of the complaint, and the Commission set out the reasons why this request was disregarded and therefore refers to the already stated considerations on this issue. From an application for switching from a subscription program to a prepaid service for mobile number **** it is established that on 04.03.2017 the user of mobile number **** identified by the following data: A.H. (under this name also appears in the supplementary agreement, the first name is correctly written in the contract), PIN ***, ID card № ***, address **** has submitted the same (in the contract as a permanent address is indicated this, and as the address for receiving the invoices - the address indicated in the complaint, the ID card number coincides, as in the documents attached to the supplementary agreement another ID card number is indicated - ****.). Signed by the seller - consultant of TO the fact that the user has personally signed is certified. According to the opinion of the respondent and provided in the submitted internal procedure, after the client has expressed a wish and has been identified by a sales consultant to transfer a number from a subscription to a prepaid program, it is entered into the system by a sales consultant, the transfer application is printed. and is signed by the client and closed. From the date of submission of the application, the contractual relationship was terminated for the specified number, and before the service was terminated, as such, according to the subscription plan, it was activated as prepaid in order for the customer to use services without interruption. The application indicated the amount due, which in this case was BGN 20.34, including a penalty of BGN 11.11. According to item 5 of the internal procedure, an application is required for the purpose of the change, and an identification document is presented (identity card, driver's license, international passport), and in the case of authorization - a power of

attorney. The obligations of the seller - the consultant are outlined in item 7, including that for verification of personal data of the client. The requirement for identification is also contained in Art. 133 of the GTC. In the specific case, the subject of the dispute are the data used in the application for switching from a subscription program to a prepaid service for mobile number **** dated 04.03.2017. According to the respondent, the application for change was submitted by A.H. and in this sense the change is in accordance with his desire. A.H. for his part, he claims the opposite - that this change is not at his request and that he did not apply for the transition from a subscription program to a prepaid service and that he did not sign one. In order to clarify the facts and circumstances of the case and in particular whether the signature in the application for switching from a subscription program to a prepaid service dated 04.03.2017 was placed A.H., ie whether there is indicated by the administrator According to the conclusion of the Research Institute of Forensics - Ministry of Interior, objectified in the Protocol for performed expertise № **** from 06.01.2018 the signature placed for the user / representative A.H. against the column "signature" in a copy of the Application for switching from a subscription program to a prepaid service, with a SIM card number ******* dated 04.03.2017 is an image of a signature that is not placed by A.H. .Regarding the objection of the respondent party as far as the expertise is concerned, the CPDP should point out, firstly, that this objection was made only in the course of the merits and secondly - that the respondent party stated at a meeting, presenting evidence that the proceedings referred to the EWC with suspicions of a crime, which is also the basis for a request to postpone the hearing. It is evident from the content of the signal that the respondent refers to the conclusion drawn up in the proceedings and applies it as evidence before the EWS.

The CPDP fully credits the conclusion of the Research Institute of Forensics - Ministry of Interior and finds it established that the signature was not placed by the complainant.

In view of the above, the categorical conclusion is that as of 04.03.2017 the consent of A.H. for switching from a subscription program to a prepaid service for a mobile number ****, as in the proceedings it was established that the signature placed in the column for user / representative A.H. is not required by the complainant, therefore the use of his personal data as a form of processing for the stated purpose - switching from a subscription program to a prepaid service is contrary to the established mandatory rules of LPPD / PDPA.

According to Art. 4, para. 1, item 2 of LPPD / Art. 6, § 1, b. ”A” of the PDPA, the processing of personal data is admissible when the natural person to whom the data relates has given his / her explicit consent. In this case, this condition of the law / regulation is not present. A.H. has provided personal data to a mobile operator for the purpose of concluding a contract for

mobile services for number **** under a subscription program and its implementation, as their subsequent processing by the administrator, namely for switching to prepaid service for the specified number contradicts Art. 4, para. 1, item 2 of LPPD / Art. 6, § 1, letter “a” of the ORD. of the administrator the processing of personal data of A.H. to be made in the presence of any of the others, provided in the provision of art. 4, para 1 of LPPD / art. 6, § 1 of the ORZD conditions, as such are not established, therefore the complaint is justified, as it is indisputably established that the administrator has violated Article 4, paragraph 1 of LPPD / Art. 6 para.

Taking into account the fact that as of 25.05.2018 the General Regulation on Data Protection and the provision of Art. 94, § 2, according to which references to the repealed Directive 95/46 / EC (the provisions of which have been transposed into the Personal Data Protection Act - §1a of the RD of the LPPD) are interpreted as references to the Regulation, it should be noted that identical with the provisions of the LPPD commented in connection with the specific case are also written in the ORD.

According to the provisions of Art. 58, § 2 of the CPDP corrective powers, the CPDP considers that the personal data controller should be imposed an administrative penalty - a pecuniary sanction for the violation in the amount of BGN 53,000.

The motives for determining an administrative penalty - the property sanction as the most appropriate measure against the administrator and its fairness are as follows: the provisions of Art. 58, § 2 of the ORZD measures are applicable in cases where it is a case of non-fulfillment of an obligation on the part of the administrator leading to a violation, in which by taking subsequent action on his part it would be possible to eliminate the violation. In the present case, the remedial measures referred to in points (a) to (h) and (h) (j) of Article 58 (2) of the Regulation are not inapplicable in so far as the infringement has already taken place and could not therefore achieve the objective are effective, proportionate and dissuasive. Only the pecuniary sanction, as a corrective measure under Article 58 (2) (i) of the Regulation, appears to be the most appropriate and effective measure to deal with the infringement. In this sense, it should be noted that in addition to a purely sanction measure, a reaction of the state to the violation of the statutory rules, the property sanction also has a disciplinary effect, in view of not committing the same violation in the future.

In this case, the violation concerns the legality of the processing of personal data. It is evident from the evidence gathered in the course of the proceedings that the applicant's personal data were processed by TO in the context of a change - switching from a subscription program to a prepaid mobile number **** service without the applicant's knowledge and consent. for damages suffered by the latter, nor for actions taken by the administrator in connection with the violation.

The technical and organizational measures and policies presented by the administrator are presented.

From a reference made in the record keeping system of the CPDP it was established that data are available for previous violations committed by the administrator during the processing of personal data. In this regard: Decision of the CPDP № ***. (entered into force on 18.01.2018), whereby the administrator for violation of Art. 4, para. 1 of the LPPD, a property sanction in the amount of BGN 21,000 was imposed, Decision of the CPDP № *** (entered into force on 07.05.2013), whereby the administrator for violation of Art. 4, para. 1 of the LPPD, a property sanction in the amount of BGN 18,000 has been imposed, Decision of the CPDP № ***. (entered into force on BGN 18.06.2014), whereby the administrator for violation of Art. 4, para. 1 of the LPPD, a property sanction in the amount of BGN 15,000 was imposed, Decision of the CPDP № *** (entered into force on 15.07.2014), whereby the administrator for violation of Art. 23, para. 1 of the LPPD, a property sanction in the amount of BGN 2,700 was imposed. It should be noted that the responsibility of the controller has already been committed for an identical breach (registration of prepaid services without the knowledge and consent of the data subject) and in this sense and despite the fact that he was sanctioned in the amount of 18 000 BGN for this violation, this amount has not had the necessary impact on the administrator to stop committing this type of violation.

Motivated by the above and on the grounds of Art. 38, para. 2 of LPPD in connection with Art. 39, para. 2 of PDKZLDNA and under arg. of Art. 142, para. 1 of the APC, the Commission for Personal Data Protection

HAS DECIDED AS FOLLOWS:

1. Announces a complaint reg. № PPN-01-209 dated 02.04.2018 filed by A.H. against a telecommunications operator, UIC ****** for justified.

2. In connection with item 1i on the grounds of art. 58, § 2, b. ”And” in connection with Art. 83, § 5, item “a” of the ORD imposes on the administrator a telecommunication operator, UIC ****** administrative penalty - property sanction in the amount of BGN 53,000 for violation of Art. 6, § 1 of the ORD.

The decision of the Commission for Personal Data Protection may be appealed before the Administrative Court of Sofia within 14 days of its receipt.

After the entry into force of this decision, the amount of the imposed penalty shall be transferred by bank transfer:

BNB-Central Bank

IBAN: BG18BNBG96613000158601

BIC BNBGBGSD

Commission for Personal Data Protection, Bulstat 130961721.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov

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Decision on the appeal with registration № PPN-01-209 / 02.04.2018

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