

DECISION № 7090 Sofia, 20.11.2019 ON BEHALF OF THE PEOPLE ADMINISTRATIVE COURT - SOFIA-CITY, Second Department 59 panel, in a public session on 31.10.2019 in the following panel: JUDGE: Zornitsa Doichinova with the participation of Secretary Svetla Gecheva, considering case number 9903 on the inventory for 2019 reported by the judge, and in order to rule took into account the following: The proceedings in the case are under Art. 38, para 7 of the LPPD, supra art. 145 APC. The proceedings in the case were instituted on an appeal against Decision № PPN-01-71 / 24.07.2019 of the Commission for Personal Data Protection, filed by the National Social Security Institute, represented by the manager II, through his attorney Yuk A. which the NSSI was imposed a property sanction in the amount of BGN 5,000 for processing the personal data of P. M. J.-D. in violation of Art. 23, para 1 of the LPPD / revoked /, resp. Art. 25, para 1 EU Regulation 2016/679. The appeal sets out considerations for the illegality of the contested decision, as ruled in contradiction with the substantive and procedural law, as well as in contradiction with the purpose of the law. He considers the decision to be unmotivated and rendered in contradiction with the previous practice of the defendant. Considers incorrect the conclusion of the defendant that the NSSI, in its capacity as controller of personal data, has not taken the necessary technical and organizational means to protect the personal data of individuals. He points out that the NSSI has introduced a mechanism through which access to personal data of individuals is carried out, as well as the control of this access, which fully comply with the LPPD and EU Regulation 2016/679. An effective instruction № 14 / 23.07.2013 has been introduced, concerning the measures and means for personal data protection. As of the date of committing the alleged violation - 01.01.2016 to 05.02.2018, the provision of Art. 25, §1 of EU Regulation 2016/679 has not entered into force. It is also alleged that the CPDP, without specifically examining, accepted that special personal data were available, and according to the complainant it concerns only the Register № 7 register on PIN or LNC - all submitted notifications. In addition, the CPDP incorrectly accepted that the NSSI has not taken action to mitigate the adverse effects on the person whose personal data is available. This is because no evidence of damage to this person has been collected in the administrative proceedings. He asks for the annulment of the contested decision. At the hearing, he was represented by Yuk A., who upheld the appeal and asked for the annulment of the contested decision. Defendant - Commission for Personal Data Protection presented the file on the complaint filed with it, in connection with which the contested decision was issued. At a court hearing, through his attorney, Yuk P., he challenged the appeal. He states that the grounds for annulment of the act indicated in the appeal are present. The decision is correct and lawful, issued in accordance with substantive law. The commission has correctly exercised its powers under the

regulation, as well as the amount of the imposed sanction has been determined. It has been established that the violation is not the first for the complainant, but another, and therefore asks for confirmation of the decision. Claim costs for legal fees. The interested party P. M. J.-D., through his attorney. Ch., In an opinion submitted in the case, disputes the appeal and asks for its rejection. It states that it was established in the proceedings that the defendant had violated a fundamental right of her, namely the inviolability of her personal data. It has been indisputably established that on 29 November 2016, her personal data, stored in the NSSI files, were illegally accessed by an employee of the complainant. Access to data is without proven business necessity. This access is due to non-fulfillment of the obligation to take technical and organizational measures by the defendant for the storage of personal data. In instruction № 14 / 23.07.2013 on the measures and means for personal data protection, developed by the NSSI, it is stated that the access of the NSSI employees to the registers containing personal data is carried out in fulfillment of the specific official duties assigned to them. Points out that the decision correctly takes into account that the period of the violation concerns from 01.01.2016 to 05.02.2018, which is before the application of EU Regulation 2016/679, as well as before the changes in the LPPD made in connection with regulations. That is, the correct decision is in accordance with the regulations from before the amendments to the law. Reference № 7 contains special personal data, and in addition to three names and PIN, it contains data on employment contracts, income, insurance and sick leave. He asks for the appeal to be rejected. In a court hearing he is represented by a lawyer. Ch., Who maintained an opinion and challenged the appeal, asking for its rejection. Claim costs. The SGP does not take a position and is not represented in a court hearing. Administrative Court Sofia-city, in the current court panel, after discussing the arguments of the parties and assessing under Art. 235, para. 2 of the Civil Procedure Code, in conjunction with Art. 144 of the APC, the written evidence accepted in the case, accepts as established on the factual side the following: P. M. J.-D. has referred to the CPDP with complaints № PPN-01-71 / 06.02.2018 and PPN-01-84 / 12.02.2018 against the NSSI, in which it set out considerations for illegal access to her personal data by an employee of the NSSI, with which is violated LPPD. She stated that she had contacted the NSSI Governor in connection with this illegal access, who replied that the inspection had revealed a violation by the official, who had accessed G.'s personal data without proven official necessity or consent. in the reference "Information on PIN or PIN - All submitted notifications". It is stated that this illegal access was made on November 29, 2016. By letter no. № PPN-01-84 / 07.03.2018, the CPDP has notified the NSSI of the submitted complaints, and has been given a deadline for an opinion. The NSSI has taken an opinion through its manager, which states that in the period from 01.01.2016 to 01.12.2017,

two requests were made for access to the registers of the NSSI, containing personal data of P. M. Zh. -E .. The application made on 19.05.2016 is in connection with the application submitted by the insurer of G. to the sick list, ie. access is due to business necessity. With regard to the second access, carried out on 29.11.2016, it is stated that it is up to "Information on PIN or LNC-All submitted notifications" and for this access no specific official need has been established for its implementation. Attached to the NSSI response are documents, in particular Instruction № 14 / 23.07.2013 on measures and means for personal data protection processed by NSSI, approved by Order № 736 / 23.07.2013 of the NSSI Manager . Article 11, item 2 of the instruction specifies the persons entitled to access the data in the registers maintained by the administrator. According to Article 12, item 2 of the instruction, the employees with authorized access are obliged to process personal data lawfully and conscientiously, as they are obliged not to process personal data in a way incompatible with the purposes for which they are collected and processed. In connection with their obligations under the instructions, the persons fill in a declaration in which they declare that they are familiar with the requirements. Specifically, such a declaration was signed by IT - Head of Department, on 27.10.2014. With Art. 14, para. for compliance with specific measures for protection and control of access. The instructions also outline the types of protection, namely physical, personal, documentary, cryptographic and protection of automated information systems. Of importance in this case is the personal protection, which is a system of organizational measures against individuals processing data on the instructions of the controller (Article 15, paragraph 2, item 2). At a meeting held on 02.05.2018 of the CPDP, objectified in Minutes № 20, the two complaints filed were joined for joint consideration, the parties to the complaints were constituted and an open meeting was scheduled, for which P.M.J.-D . and NSSI are regularly notified. Specific written evidence has been requested specifically from the NSSI. The job description of I.T. of NSSI-C. city. An explanation given by IT to the NSSI in connection with the internal inspection was also presented, stating that he could not remember the reason for the access. In addition, the NSSI presented an opinion on specific issues raised by the CPDP, specifying that the control over the use of information files and databases of the NSSI is carried out at two levels - physical and logical, all data are in isolated segments of the network , and the network itself is isolated without the possibility of direct access. It is stated that in case of a specific need for inspections, search or verification criteria are used, which are PIN / LNC for the insured persons in the internal systems and UIC for legal entities. When searching through the site, the criterion is PIN or UIC, as IDP / ICO identifiers are issued by the NSSI. For the applications of the NSSI database system, logs are maintained, through which all resources containing personal data are monitored. The logs document who accessed, when and

to what resource. The regulation of the access is done on the basis of the official duties of the employees. Three open meetings were held on the file, the last one at which the file was clarified was held on April 10, 2019. At this meeting it was unanimously decided to declare the complaint well-founded and to impose a sanction of 5 on the NSSI. BGN 000.00, on the grounds of Art. 23 of the LPPD. The file initiated on the two appeals ended with the issuance of Decision № PPN-01-71 / 24.07.2019 of the Commission for Personal Data Protection, which imposed on the NSSI a property sanction in the amount of BGN 5,000. for the processing of personal data of P. M. J.-D. in violation of Art. 23, para 1 of the LPPD / revoked /, resp. Art. 25, para 1 EU Regulation 2016/679. The CPDP has accepted that it has been proved that the personal data of P.M.J.-D. In addition, it is accepted that the controller of personal data - NSSI has not taken the necessary actions to protect the personal data of the complainant from unauthorized access, or such actions are clearly insufficient, as G.'s personal data were accessed without proven official necessity, on 29.11.2016, when the illegal access was made. The imposed sanction, the CPDP motivated by the fact that the violation is not the first time, as for an identical violation, the NSSI was sanctioned by decision № PPN-01-65 / 2018, entered into force, which imposed a sanction in the amount of of BGN 1,000.00. The decision was communicated to the applicant's representative on 26 July 2019. In the course of the court proceedings the applicant submitted to the court an excerpt from the register of employment contracts, from which it was established that , information is received to the three names of the person, address, telephone, date of conclusion of the contract, date of the last additional agreement, grounds, term of the contract, NACE code, NAC code, basic salary, termination date, date of first notification. According to the statement of the procedural representative of the complainant, this is a sample reference № 7. A Policy for Personal Data Protection at the NSSI, adopted after the entry into force of EU Regulation 2016/679, was also presented. Given the facts thus established, the current court panel of the ACCG, by conducting a comprehensive inspection of the legality of the challenged individual administrative act on all grounds under Art. 146 of the APC, by the order of art. 168, para. 1 of the APC, reached the following legal conclusions: The subject of dispute is Decision № PPN-01-71 / 24.07.2019 of the Commission for Personal Data Protection, which imposed on the complainant NSSI a property sanction in the amount of BGN 5,000 for processing the personal data of P. M. J.-D. in violation of Art. 23, para 1 of the LPPD / revoked /, resp. Art. 25, para 1 EU Regulation 2016/679. The appeal was filed by a person who has a legal interest in challenging the act, as it is the appellant who was sanctioned by the decision, due to which the act affects the rights and legitimate interests. The appeal is within the term for appealing the individual administrative acts, for which proper evidence has been presented. The complaint is directed

against a challenging administrative act. According to the requirements of art. 168, para. 1 of the APC, in the case of official and comprehensive judicial review of legality, the court performs a full inspection of the appealed administrative act on its validity, compliance with procedural and substantive provisions on its issuance and compliance with the purpose pursued by law, ie all grounds referred to in Art. 146 of the APC. In its assessment, the court proceeds from the legal and factual grounds specified in the disputed individual administrative act, the submitted administrative file and the evidence gathered in the case. In examining the administrative act, the court is not bound by the grounds introduced by the appellant or by his request. The court should also annul or annul the act if it finds a defect that the appellant has not indicated. In accordance with the procedural law. The disputed act was issued by the competent authority, within the scope of its powers, according to Art. 38, para 3 LPPD, according to which a provision, in case of a complaint submitted to the CPDP by the data subject, who considers that his rights under Regulation (EU) 2016/679 and LPPD have been violated, the commission shall issue a decision and may apply the measures under Art. 58, § 2, letters "a" - "h" and "j" of Regulation (EU) 2016/679 or under Art. 80, para. 1, items 3, 4 and 5 and in addition to these measures or instead to impose an administrative penalty in accordance with Art. 83 of Regulation (EU) 2016/679, as well as under Chapter Nine. That is, insofar as the commission has been seised by a person who believes that his rights under the LPPD have been violated by having illegal access to his personal data, it is within its powers to rule with a decision that is subject to challenge by the administrative court. . In that sense, the contested decision was taken by a competent authority, taken unanimously by all those present. The meeting at which the appeal was examined on the merits was held in the presence of the four members, and only the chairman was absent, ie. there is a quorum required for the meeting and the decision is taken unanimously by all present. The administrative act is issued in the required written form and is objectified as a decision as required by law. The decision contains all the required details provided in Art. 59, para. 2 of the APC, including the factual and legal grounds for its issuance. The will of the body is objectified in the operative part, as the decision corresponds to the stated reasons. The existence of a defect in the form of the act, representing an independent ground for its revocation within the meaning of Art. 146, item 2, supra art. 59, para. 2, item 4 of the APC. The decision was issued in the absence of violations of the administrative procedure rules, which should be qualified as significant within the meaning of Art. 146, item 3 of the APC and to determine its repeal. The current panel of judges maintains that the violation of the rules of administrative procedure is significant only when it has affected or could have affected the final decision on the merits of the administrative body. The proceedings were initiated by the complainant P.M. A file was opened on the complaint,

for which the NSSI was informed through its manager, a study was conducted, written evidence was collected, open meetings were held, of which the parties were regularly notified and attended, and then after clarifying the complaint by In fact, the commission, at its meeting, took its decision and issued an explicit written act - a decision in which it set out its considerations and its final decision. In view of the above, the present panel accepts that no significant procedural violations leading to its annulment have been committed during the adoption of the decision. In accordance with the substantive law. Considered on the merits, the complaint is unfounded. First of all, it should be clarified that 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 - 29.11.2016, and not the amendments adopted following the entry into force of EU Regulation 2016 / 679. These are the provisions in force until the amendments promulgated with the State Gazette. issue 7 of January 19, 2018. Subsequently, there are other amendments promulgated with SG. No. 17 of 26 February 2019. It should also be borne in mind that the repealed provisions of the LPPD are reflected in EU Regulation 2016/679, as the texts of the repealed provisions correspond to the texts of the Regulation. According to Article 2, paragraph 2, item 2 of LPPD / revoked, but effective as of the date of the violation / personal data are collected for specific, well-defined and legal purposes and they can not be further processed in a way incompatible with these goals. In Art. 4, para. 1 of the LPPD / revoked / the processing of personal data is admissible only in the cases when at least one of the following conditions is present: 1. the processing is necessary for fulfillment of a normatively established 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. Pursuant to Article 23, paragraph 1 of the LPPD / revoked / , the personal data controller shall take the necessary technical and organizational measures to protect data from accidental or illegal destruction, or accidental loss, from unauthorized access, alteration or dissemination, and from other illegal forms of processing. It is indisputable that the complainant NSSI is a controller of personal data and as such has the right to process

and store for the purposes of the institution personal data of insured persons. It is also indisputable that in the work of the NSSI, structured in central management and territorial divisions, it is necessary for organizational reasons, the processing to be assigned to more than one data processor, in view of the specific responsibilities of employees. The activity of the National Social Security Institute as a controller of personal data falls entirely under the hypothesis of Article 24, paragraph 1 of the LPPD. According to the mandatory provision of Article 24, paragraph 2, the controller of personal data is obliged to appoint a processor and provide sufficient guarantees for their protection. In the case, the court found that the personal data of P. M. J.-D., processed and stored in the NSSI, for the period from 01.01.2016 to 01.12.2017 was accessed twice - on 19.05.2016 and 29.11.2016. It is established that the request for access, made on 19.05.2016 is in connection with the application submitted by the insurer to G. to the sick list, ie. access is due to businessnecessity and falls within the scope of Art. 4 LPPD / revoked /. Regarding the second

access, carried out on 29.11.2016, is established to be to "Information on PIN or LNC-All submitted notifications "was performed by IT as a chief

department at the National Social Security Institute and for this access no specific official need has been established for its implementation. This is not indicated either by the official or by the applicant as her employer, nor is there any concrete evidence to refute it

this conclusion. It is established that the access that has been made is to Reference № 7, in which contain in addition to personal data of the person, such as three names and PIN, is carried out access to special personal data such as employment contracts and income. Given the therefore, the current panel of judges considers that the CPDP's conclusion that illegal, officially unjustified access to personal data of P.M.

J.-D., stored in the registers of the National Social Security Institute. The access was made by an employee of the National Social Security Institute,

but as a controller of personal data, it is the NSSI that should bear

liability to the person concerned for unauthorized access. The employee accomplished unauthorized access is solely disciplinary

to his employer, but not to the person concerned.

As indicated above, according to the provision of Art. 23, para 1 of the LPPD / revoked /, the controller of personal data is obliged to take the necessary technical and organizational measures to protect data from accidental or illegal destruction, or accidental loss, unauthorized access, alteration or distribution, as well as from other illegal forms of processing. Indeed the case proves that the NSSI has taken such measures, as the manager has approved Instruction № 14 / 23.07.2013 on the measures and means for personal data protection, processed by the NSSI, distinguishing the types of protection, including and personal protection, but it is clear that personal protection measures are not enough effective in view of the unauthorized access to personal data of individual. In this sense, the CPDP has reached the right conclusion in this regard. It is the duty of the administrator to ensure effective control over employees its compliance with the rules of the LPPD to access the personal data of citizens who are stored and processed by the NSSI, only if proven official necessity or in other cases provided by law. This means the files and administrative files distributed to the specific employee to be monitor and control whether data processing is related to them. If a working mechanism for preventive control and preventive protection is not established, the administrator will find out about the illegal processing only after it is performed, and in the general case if the data subject understands and lodged a complaint. Such is the present case in which the person concerned has also learned alerted the authority, but this happened one year after the wrongdoing access on 29.11.2016, as there is no data that the administrator has established himself the infringement and to have taken action. And even more so that the violation was established one year later, which also hinders the involvement of the disciplinary responsibility of the employee.



Indeed, non-compliance with the rules and abuses in the processing of personal data for extracurricular purposes by processors is grounds for engaging their disciplinary responsibility. The threat to employees to be brought to disciplinary responsibility can act as a deterrent only if has constant control. In the present case, there is no data on the person protecting personal data, which according to the instructions has a specific obligation to exercise control, nor has any other NSSI employee found out about the illegal actions of the employee IT, despite the entries in the log files, and she was attracted to disciplinary liability. However, the disciplinary responsibility of employees which is realized by the order of the Civil Servant Act or by the order of the Code of labor, does not exclude the responsibility of the personal data controller under the LPPD. In view of the above, the present panel of judges finds that from those gathered in the case evidence it is indisputably established that the applicant had done what was alleged against him violation of Art. 23, para. 1 LPPD / revoked /, as it has not provided sufficient guarantees for the protection of the personal data of a natural person as a result of which it has come to light illegal access to that person's personal data.

The applicant's objection as to the amount of the property imposed sanction is unfounded. The sanctions provided for in the LPPD have been adopted in view of deterring the offender from committing new offenses. In this case it is imposed the highest amount of the sanction provided by law, Art. 42, para. 33ЛД / revoked /. The amount of the sanction, in accordance with the purpose of the law, is determined according to the gravity of the violation, mitigating and aggravating circumstances. In the present case, as is apparent from the evidence gathered in the case, the violation of the administrator is due to the wrongful acts of one employee, but they can and should be controlled directly. Given the volume of the data processed in the NSSI and the nature of public relations

affect the lack of sufficient protection, the court considers that the imposed property sanction corresponds to the gravity of the violation and achieves the purpose of the law. The body is held that the applicant had been sanctioned once for an identical infringement, and on the court is ex officio known and another violation of the same type, sanctioned under the relevant order, with an effective decision for which property has been imposed sanction in the amount of BGN 1,500.00 / year. № 3464 / 20.05.2016, ruled by Adm. № 629/2019 of the ACCG /. It is therefore clear that the sanctions imposed are ineffective, therefore, the highest amount of the penalty was correctly imposed on the applicant, provided by law.

In view of the above, the present panel does not find grounds for annulment of the contested decision, with the result that the action should be dismissed and the decision should be dismissed confirm.

At the expense of:

No costs are due to the applicant.

In the light of the outcome of the dispute, the defendant must be ordered to pay the costs legal fees. In determining its amount, the court took into account the provision of art. 78, para. 8 of the Civil Procedure Code, in connection with Art. 143, para. 4 and Art. 144 of the APC, supra.

Art. 37, para. 1 of the Legal Aid Act and Art. 24 of the Ordinance for payment of legal aid, considering that a fee of 100 should be awarded BGN

To the interested party P. M. J.-D. costs are also due on the grounds of art. 143, para 3 of the APC, according to the presented list of expenses, in the amount of BGN 580 for attorney's fees.

Thus motivated and on the grounds of art. 172, para 2 and art. 173, para 2 of the APC, the court

RESOLVED:

DISMISSES the appeal of the National Social Security Institute, represented by the manager II against Decision № PPN-01-71 / 24.07.2019 of the Commission for protection of personal data, which imposed on the NSSI a property sanction in the amount of 5,000 BGN for processing the personal data of P. M. J.-D. in violation of Art. 23, para 1 of the LPPD / revoked /, resp. Art. 25, para 1 EU Regulation 2016/679.

SENTENCES the National Social Security Institute, represented by the Governor II TO PAY to the Commission for Personal Data Protection the amount of BGN 100.00. for legal fees.

SENTENCES the National Social Security Institute, represented by the Governor II TO PAY to P. M. J.-D., with PIN [PIN] the amount of BGN 580.00 expenses for attorney's fees.

THE DECISION is subject to appeal, with a cassation appeal, before the Supreme Court administrative court, within 14 days of its announcement.

A copy of the decision to be sent to the parties to the dispute.

JUDGE: