In case 698 / 2017

ANSWER

No. 4992

Sofia, 18.04.2018

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the fourth of April, two thousand and eighteen, composed of:

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

EMANOIL MITEV

MILENA SLAVEYKOVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Iliana Stoykova

listened to what was reported

by the chairman

DIANA DOBREVA

by adm. case no

698/2017

The production is Art. 208 et seq. of the Administrative Procedure Code (APC) in connection with Art. 38, para. 6 of the Personal Data Protection Act (PAPA).

It was formed on a cassation appeal of [firm] ([firm]), submitted through a legal representative, against decision No. 7021 of 11.11.2016, issued under adm. case No. 6973/2016 of the Administrative Court of Sofia - city (ACSG), which rejected the

appeal of the assessee against decision No. Ж-11/09.06.2016 of the Commission for the Protection of Personal Data (PCLD/Commission). With this her decision, the complaint with reg. No. Ж-11/12.01.2016, filed by P.DH. for violation committed by [company] of Art. 4, para. 1 of the Labor Code, given the absence of any of the conditions specified in the same provision for the admissibility of the processing of the applicant's personal data by the company, as on the basis of Art. 42, para. 1 of the Labor Code, an administrative penalty was imposed on the company - a "property penalty" in the amount of BGN 10,000.

The annulment of the court decision is requested as incorrect due to a violation of the substantive law, a substantial violation of the rules of judicial procedure and unreasonableness - grounds for annulment under Art. 209, item 3 of the APC.

The main complaints of the assessee, cited in the cassation appeal, are about incorrect application of the substantive law, since the processing of personal data was carried out in the presence of a contractual basis - a contract for the provision of a package telecommunications mobile service and a contract for assigning the collection of claims to a third party , in which subject also falls the obligation that P. H. had after the termination of the contract for the provision of the telecommunications service to [company]. In this case, the provision of § 1, item 3 of the DR of the Personal Data Protection Act, which allows the processing of personal data on behalf of the personal data administrator, should have been applied, and therefore in this case there is no unlawful provision of personal data to a third party. Reasons for a violation of the rules of judicial procedure were also highlighted, which, according to the appellant, are expressed in the confirmation of an unmotivated administrative act, in which there is no proportionality of the imposed punishment with the established facts and failure to indicate the specific legal violation.

The defendant CPLD, through its legal representative, contests the cassation appeal as groundless.

Defendants P.D.H. and [company] did not take a position on the appeal.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion confirming the decision.

The present instance finds the cassation appeal to be procedurally admissible as filed in time and by the proper party. In examining it, it essentially found the following:

In order to establish this legal result, the court accepted that the contested decision of the CPLD is a valid and lawful administrative act that does not suffer from the vices under Art. 146 of the APC. On the basis of the accepted administrative file, the court responded to the arguments of the contesting commercial company and made a conclusion on the existence of a

violation under Art. 4, para. 1, item 2 of the GDPR - processing of personal data without the consent of the person to whom they refer.

According to Art. 218, para. 1 and 2 of the APC, in the cassation proceedings, the court reviews the appealed judgment in accordance with its defects indicated in the complaint, and it is obliged to monitor the validity, admissibility and compliance of the decision with the substantive law ex officio. The court assesses the application of substantive law based on the facts established by the trial court. Accordingly, taking into account the arguments of the parties and verifying the appealed decision, the court of cassation finds that the same is valid, admissible and correct. This conclusion is drawn by the present panel after discussion of the evidence collected in the case, finding the following from a factual and legal point of view in relation to the committed violation within the meaning of Art. 4, para. 1 of ЗЗЛД:

In the reasons for the decision of the CPLD and in that of the ASSG, it is stated that the personal data of X., provided for processing to [company] in its capacity as a personal data controller pursuant to a contract for the provision of a packet mobile telecommunications service, have been transferred from [company] to [company] on 09/03/2015 on the basis of a concluded contract for assigning receivables collection. As of that date, X.'s contract with [company] was terminated, as of 20.05.2015, and in accordance with the conditions agreed between the parties, X. had no obligations under the terminated contract. He did not owe any money, and the equipment was returned on 25/05/2015, and a penalty for non-returned equipment was incorrectly charged, subsequently reversed by [company]. With the termination of the contract under which X. gave consent to the processing of his personal data and in the absence of obligations under the terminated contract on the part of the user of the telecommunications service, the suspensive condition for processing and providing personal data to persons operating from the administrator's name.

Proceeding from the legal definition contained in item 13 of the DR of the LLDP of the concept of "consent of the natural person", the Commission has accepted that the collection and processing of personal data for P. H. is in violation of Art. 4, para. 1, items 1 - 7 of the GDPR, i.e. in the absence of a legal basis for their processing.

The present composition shares the conclusion of the ASSG that in this case there is no lawful processing of personal data in the presence of consent and/or in fulfillment of a contractual obligation. The court also correctly accepted that the contested individual administrative act contains the requisites under Art. 59, para. 2 of the APC and there were no violations of the administrative procedure rules from the category of essential ones, which would vitiate the administrative act and cause its

cancellation.

As for the imposed sanction, it is set at a minimum amount according to Art. 42, para. 1 of the LLDP, and in its decision the Commission has set out explicit reasons why, within the framework of its operational autonomy according to Art. 38, para. 2 of the Labor Code considers that, in view of the nature of the violation, the imposition of coercive administrative measures (mandatory prescription or setting a deadline for remedying the violation) is inexpedient.

The complaint in the cassation appeal that the decision is illegal because procedural rules were violated when it was issued is also groundless.

In view of the above, there are no grounds for annulment of the first-instance decision and it should be left in force.

Led by the above and pursuant to Art. 221, para. 2 of the APC, the Supreme Administrative Court, composition of the fifth department,

RESOLVE:

REMAINS IN FORCE decision No. 7021 of 11.11.2016, issued under adm. case No. 6973/2016 of the Administrative Court Sofia - city.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Diana Dobreva

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Milena Slaveikova