In case 5379 / 2019

ANSWER

No. 1063

Sofia, 22.01.2020

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on January thirteenth,

composed of:

CHAIRMAN:

GALINA KARAGYOZOVA

MEMBERS:

JULIA KOVACHEVA

MARIA NIKOLOVA

to secretary

Madeleine Dukova

and with participation

to the prosecutor

Camelia Nikolova

listened to what was reported

by the chairman

GALINA KARAGYOZOVA

by adm. case no

5379/2019

The proceedings are under Art. 208 et seq. of the Administrative Procedure Code (APC).

It was formed based on a cassation appeal filed by "Toplofikatsia Sofia" EAD, represented by the executive director K. Georgiev, through his legal representative Ts. Runevska, against decision No. 692 of 06.02.2019, issued under adm. case No. 7178/2018 of the Administrative Court - Sofia-city (ASC), Second Department, 58 Chamber, which rejected the company's

appeal against decision No. PPN-01-108/2017 of 01.06.2018 of The Commission for the Protection of Personal Data (PCPD). In the cassation appeal, arguments were developed for the incorrectness of the court decision, due to the groundlessness of the court's conclusions and incorrect application of the substantive law - grounds for annulment under Art. 209, item 3 of the APC, asking for its cancellation and another decision to be made in its place, which cancels the decision of the CPLD and rejects the appeal of S. Ivanov, alternatively if the court considers that it is necessary to collect new evidence to decided to return the case for a new examination by the CPLD. Legal fees are claimed.

The Respondent Commission for the Protection of Personal Data, through its legal representative Gladnikova, in a written response and in the appeal, contests the cassation appeal and requests that it be rejected as unfounded. Claims legal fees.

The defendant S. Ivanov, in a written statement prepared by his attorney, Adv. V. Ruseva and personally in the village of contests the cassation appeal and requests that it be rejected as groundless. He claims to be awarded the costs incurred for the cassation instance.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion that the cassation appeal is groundless and considers that the court decision should be rightly left in force.

The Supreme Administrative Court, composition of the Fifth Department, after considering the facts of the case and the arguments of the parties, accepts the following as established:

The cassation appeal was filed by a proper party, against a contestable judicial act, which is unfavorable to it, as well as within the period under Art. 211, para. 1 of the APC, which is why it is procedurally admissible.

Considered on its merits, it is unfounded.

The subject of control in the proceedings before the ASSG is decision No. PPN-01-108/2017 of 01.06.2018, issued by the Commission for the Protection of Personal Data, referred to with a complaint by S. Ivanov, with TIN [TIN] against " Toplofikatsia Sofia" EAD for illegal processing of his personal data, through the injunction proceedings instituted against him at the company's request in accordance with Art. 417 of the Code of Civil Procedure, enforced execution and garnishment of his pension and bank accounts, for unpaid heating energy, for the period from August 2010 to February 2012, interest and costs, provided that the same has never been was a subscriber of the company, he did not use energy at the indicated address in [town], as he lives in [town].

The court collected the evidence relevant to the dispute and after discussing it, correctly established the facts of the dispute. It

was considered established that a written statement was requested from the defendant company on the subject of the complaint, with instructions for presenting evidence, according to the file filed before the CPLD. "Toplofikatsia Sofia" EAD has presented a statement in which it is stated that the company is registered as a personal data administrator. S. Ivanov is the owner of real estate - apartment. [number], located in [town], [residential address], with subscriber number 285603, according to notarial act number 19, case number 336271/04.11.1997. Owner of the lot for subscriber number 285603 during the period From August 2010 to February 2012, I. Georgieva submitted an application - declaration for the opening of the lot with entry No. ОП-914/09.06.2010. Since the same company did not pay for the required thermal energy, the company initiated legal proceedings to establish, award and collect the amounts due for the used and unpaid energy, submitting an application to the SRS for the issuance of an execution order under Art. 410 of the Civil Code against the owner S. Ivanov. The SRS partially accepted the claim, which necessitated a challenge to the legal act before the SGS, which with its decision fully accepted the claim. On the basis of the issued writ of execution, enforcement proceedings were initiated at the PSI. The respondent company stated that it obtained the applicant's personal identification number from the Registration Agency, whose register is public.

From the evidence collected in the administrative file, it is established that with note. deed No. 19, case No. 33621/97, drawn up by a notary at the Sofia Notary Office, S. Ivanov with TIN [TIN] sold to I. Georgieva apartment No. [number], located in [town], [residential ], [residential address], having reserved the right to use the apartment for life. With an application - declaration dated 09.06.2010, I. Georgieva requested from "Toplofikatsia Sofia" EAD, that a lot be opened for her for household needs of consumers in [populated place].

On 10.05.2013 "Toplofikatsia Sofia" EAD submitted to the SRS an application under Art. 410 of the Code of Criminal Procedure for the issuance of an execution order in relation to S. Ivanov with TIN [TIN]. A statement from subscriber accounts No. 285603 of S. Ivanov, with TIN No. [TIN] and address in [town]. On 27.06.2013, S. Ivanov with EGN [EGN] submitted an objection to the SRS under the Civil Code No. 7617/2013 according to the inventory of the same court. On 25.07.2013, "Toplofikatsia Sofia" EAD submitted a claim to the SRS to establish its claim, with a copy of the note attached. act No. 19, case No. 33621/1997. By decision of city ordinance No. 12817/2013 on the inventory of the SRS, on the basis of Art. 422 of the Civil Code, the court recognized as established in relation to S. Ivanov with TIN [TIN] that he owes the sum of BGN 257.14 - principal amount for thermal energy delivered in the period from 08.2010 to 02.2012 in a property with subscriber no. 285603,

for which amount an execution order was issued under Art. 410 of the Civil Code and rejected the claim for the difference up to its full amount. A writ of execution was issued for the awarded amount.

By Decree foreclosure on immovable property dated 18.06.2007, foreclosure was imposed on the described immovable property - apartment No. [number], located in [town], [residential address], owned by S. Ivanov TIN [TIN ]. The administrative file also contains a reference for a property and a reference for a person from the Registration Office, according to which the owner of the described apartment in [town] is S. Ivanov with TIN [TIN]. The latter filed a negative declaratory action in the SRS against "Toplofikatsia Sofia" EAD to establish the absence of the obligation, subject of city case No. 12817/2013 of the SRS and of the executive case of the PSI, on which city case No. 19014 was initiated /2017, with a ruling according to which, as of 10.08.2017, the proceedings were terminated, and the claim was returned.

Given these data, the administrative body accepted, ruling on the basis of Art. 27, para. 2 of the APC, in connection with Art. 38 of the Rules of Procedure of the Commission for the Protection of Personal Data and its Administration, with protocol No. 15/04.04.2018, that the complaint is admissible. In a letter, the defendant was instructed to submit additional evidence, and in response to the letter, the company again submitted a foreclosure decree and a property reference, through which it identified the applicant.

The complaint was considered at a meeting on 02.05.2018, as can be seen from protocol No. 20, of which the parties are regularly notified.

With the contested decision before the ASSG, the CPLD accepted that the respondent company processed the personal data of S. Ivanov with the EGN [EGN] unlawfully, without the existence of any condition for the admissibility of the processing under Art. 4, para. 1, item 1 to item 7 of the Personal Data Protection Act (PAPA), the PAPA has accepted that a coercive administrative measure cannot be applied - giving a deadline for remedying the violation, as it is complete and irremediable. The granting of a mandatory prescription is also inapplicable, since there is no omission that can be rectified and the property sanction was imposed on the basis of Art. 42, para. 1 of the AZLD in the minimum amount – BGN 10,000.

With these data, from a legal point of view, the court accepted that the disputed decision was issued by a competent authority, within the framework of the powers granted to it under Art. 38, para. 2 of the Labor Code. There are no admitted violations of the administrative production rules and the substantive law has not been violated.

The court pointed out that "Toplofikatsia Sofia" EAD, as a personal data controller, unlawfully processed the personal data -

the names and the unique civil number of the applicant as a natural person, through the initiated legal and executive proceedings. This is because there are no circumstances that make the processing permissible. The court rejected the objection that the applicant's three names and personal identification number appear in references from the Registry Office, stating that this does not exclude the obligation of the personal data controller to process the person's personal data in accordance with the requirements of the Personal Data Protection Act. No connection has been established between the complainant and I. Georgieva, in whose name is the item for which the debts to the company have not been paid. The same was notified and had the notarial deed, from which it is established that the owner of the property is precisely I. Georgieva, and the user is S. Ivanov, but with an identification number different from that of the complainant. The company also had an objection from S. Ivanov with the EGN [EGN], regardless of which, it filed a claim, in which the data of the complainant are indicated.

The processing of the applicant's personal data was not necessary for the realization of the legitimate interests of the personal data administrator due to the priority of the interests of the company over those of the individual, since no relationship exists between him and the company. The processing took place without the consent of the applicant, in the absence of the circumstances under Art. 4, para. 1 of the GDPR on admissibility of personal data processing.

Regarding the imposed sanction, the court accepted that it was justified, it was imposed in the minimum amount, meeting the purpose of the law. The court also rejected the objection that the CPLD should have constituted other defendants, having discussed the claims of the complainant and the subject of the complaint before the CPLD, in which Ivanov provided the commission with the assessment of which persons violated the law. For these reasons, he rejected the present's appeal as groundless.

The decision thus rendered is valid, admissible and correct.

The objection in the cassation appeal that the court incorrectly applied the substantive law is groundless. Given the correctly established facts, the court made legally justified conclusions that none of the grounds of Art. 4, para. 1 of the Labor Code, determining the admissibility of the processing of the personal data of the applicant S. Ivanov. There is no relationship of any kind between him and the company - bond or otherwise, there is also no relationship between the owner of the property in [residential building] - I. Georgieva, who is also the holder of the lot, on which it is alleged that there are unpaid amounts for used thermal energy and the applicant. The company had at its disposal, as well as the notarial deed of ownership of the

object in which the thermal energy was used, from which the owner and the person who retained the right of use is established, which has the same names, but with a different TIN from that of the applicant, it had at its disposal and with data from its own lot, opened for the property, on which the obligations were established, before submitting its request for the issuance of an enforcement order to the SRC, with which it processed the personal data of the applicant. In this regard, the objection in the cassation appeal, that the objection to the SRS, submitted by S. Ivanov with the EGN [EGN], in which this EGN is indicated, was not delivered to the applicant, i.e. he was not notified of the difference in the uniform civil number cannot be shared. The company was able to identify the difference long before the SRS was referred, as well as by reviewing the case data.

The alleged violation that both the administrative body and the court did not collect all the relevant evidence and formally approached the dispute is not present either. The objection is not supported by the data in the case. Both the CPLD and the court have collected and discussed all the evidence presented in the administrative file and in the case. It is not established that the assessor was deprived of the opportunity to request and present the relevant evidence in his opinion. On the contrary, in the proceedings before the CPLD, this possibility was indicated to him, as well as additional data was requested from the body ex officio, on the other hand, the court also correctly distributed and indicated the burden of proof. The fact that no other defendants were involved in the administrative proceedings does not affect the right of defense of the liquidator company.

The hypothesis of § 1a of the DR of the LLDP, in conjunction with Art. 23 of Directive 95/46 of the EC to fully or partially exempt the controller of personal data from liability, upon proof that he is not responsible for the event that led to the damage, as claimed in the cassation appeal. The objection is based on the fact, which was claimed by the present assessee both within the administrative and judicial proceedings before the court of first instance, that the personal data of the applicant were established by the company from the public register of the Registration Agency, in whose registers it was entered already in 2007, a foreclosure decree on the real estate described in [locality], the owner of which is S. Ivanov with TIN [TIN], i.e. insofar as the processing is illegal and dates from 2007, since it was carried out by another administrator, the assessor has made lawful access to the public register, which is why he should be released from responsibility.

The court correctly accepted that it was proven that it was the company that was responsible for the unlawful processing of the personal data - name and social security number of the applicant. "Toplofikatsia Sofia" EAD, when undertaking legal proceedings, should have complied with the data it already had about the ownership of the trial property, the holder of the lot of

the same, opened on the basis of the concluded contract for the supply of heat, to which it is a party company. From these data, it is undisputedly established that the company has no contract or other relationship with the person against whom the proceedings under Art. 410 et seq. of the Civil Code, i.e. it cannot be considered proven that the company committed the violation - the illegal processing of the complainant's personal data - solely on the basis of the data from the public register.

All the stated circumstances were correctly assessed by the deciding court, which is why its conclusions are justified and in harmony with the data in the case. The substantive law has also been correctly applied, as the court's detailed reasoning and analysis of the applicable norms of the Labor Code, including the justification of the imposed measure, are shared by the present instance and should not be repeated, according to Art. 211, para. 2, proposition latest from APK.

The rendered decision is correct, it does not suffer from the vices pointed out in the cassation appeal and should be left in force.

In view of the outcome of the case, the claims of the defendants on cassation for the award of costs for the cassation proceedings, which were filed in a timely manner, are justified. In favor of the CPLD, a legal consultancy fee in the amount of BGN 100 should be awarded, on the basis of Art. 78, para. 8 of the Code of Civil Procedure, applicable on the basis of Art. 144 of the APC, in conjunction with Art. 37 of the Law on Legal Aid and Art. 24 of the Ordinance on payment of legal aid. In favor of S. Ivanov, the sum of BGN 400 should be awarded, expenses incurred for attorney's fees, established by a contract for legal protection and assistance dated 10.01.2020, actually paid for one attorney.

For the stated reasons and on the basis of Art. 221, para. 2, proposition first by the AKP, the Supreme Administrative Court, Fifth Division,

RESOLVE:

Decision No. 692 of 06.02.2019, issued under adm., REMAINS IN FORCE. case No. 7178/2018 of the Administrative Court - Sofia-city, Second Department, 58 Chamber,

JUDGMENT "Toplofikatsia Sofia" EAD with headquarters and address of management in the city of Sofia, to pay the Commission for the Protection of Personal Data the sum of 100 (one hundred) BGN for legal fees.

JUDGMENT "Toplofikatsia Sofia" EAD with headquarters and management address in Sofia, to pay to S. Ivanov of [town], [address], TIN [TIN] the sum of 400 (four hundred) BGN, expenses incurred for attorney's fees for the cassation instance.

True to the original,

CHAIRMAN:

/p/ Galina Karagyozova

Secretary:

MEMBERS:

/p/ Yulia Kovacheva

/p/ Maria Nikolova