In case 14183 / 2016

ANSWER

No. 5458

Sofia, 25.04.2018

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the twenty-sixth of February, two thousand and eighteen, in composition:

CHAIRMAN:

HEALTH SHUMENSKA

MEMBERS:

DIANA DOBREVA

JULIA KOVACHEVA

to secretary

Valeria Georgieva Georgieva

and with participation

to the prosecutor

Makedonka Popovska

listened to what was reported

by the judge

JULIA KOVACHEVA

by adm. case no

14183/2016

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

It was formed on a cassation appeal of [company] against decision No. 6238 of 13.10.2016 by adm. case No. 1189/2015 of the Administrative Court - Sofia-city. In it, complaints are made about the incorrectness of the judicial act and its cancellation is requested.

The defendant in the cassation appeal - A. N. K., through his attorney, submits a written response in which he maintains that the appealed decision is correct, there are no cassation grounds for its cancellation, therefore it should be left in force.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data, through its legal representative, expresses the opinion that the cassation appeal is groundless and the appealed decision should be upheld.

The defendant [company] has not expressed an opinion on the cassation appeal.

The prosecutor from the Supreme Administrative Prosecutor's Office gives a reasoned conclusion that the cassation appeal is groundless.

The Supreme Administrative Court, composition of the fifth department, finds that the cassation appeal is procedurally admissible as filed within the legal term and by the proper party. Considered in substance, it is unfounded, for the following reasons:

With the appealed decision, the Administrative Court - Sofia City rejected the appeal of [company] against decision No. Ж-453 of 06.01.2015 of the Commission for the Protection of Personal Data, which declared the appeal reg. No. Ж-453 as partially justified /29.11.2013 of A. N. K. against [company] for illegal processing of K.'s personal data and on the basis of Art. 42, para. 1 ЗЗЛД has imposed a property sanction on the company in the amount of BGN 15,000. for a violation under Art. 2, para. 2, item 1 ZZLD.

The court established the following factual circumstances:

The proceedings before the Commission for the Protection of Personal Data were initiated following a complaint by A. N. K. regarding the processing of his personal data by [company] in connection with a service provided by the company at the address [town], [residential building], [street] , [residential address] lot number [number].

The Commission for the Protection of Personal Data has upheld K.'s complaint regarding the unlawful processing of his personal data in the amount of three names, telephone number, address and amount of the obligation, in his capacity as a subscriber of [company] regarding the provision of services to the specified address, by providing them to [company] - a collection company, for the purposes of collecting accumulated debts under lot [number]. The obligation was granted to [company] with a procurement protocol, in accordance with the provision of Art. 24, para. 1 ЗЗЛД – with contracts for the collection of overdue receivables of [company's] debtors.

The court correctly accepted as lawful the Commission's conclusions that the file did not prove the existence of contractual

relations between [company] and A.K.. It indicated that according to the relevant legal regulation - Regulation No. 9 for the use of the water supply and sewage systems of 1998 (repealed) and the current Ordinance No. 4 of 14.09.2004 for the terms and conditions for the connection of users and for the use of water supply and sewage systems, a written contract is required between the company and the users of the services. In this case, [company] did not present a contract with A.K.. According to a report submitted in the case on the status of batch number [number], the obligations under the same were charged to A.K. from 2002 - to 2014. The basis for this is a request for the sealing of water meters in the property, which was not attached to the case. The court also found that the indication of A.K. in the carnets issued by [company] for the process client number of A.K. as the new owner of the property does not correspond to the findings of the court decisions presented in the case, which rejected the claims for ownership of the above-described immovable property of the testator and the defendant in cassation. Upon correct establishment of the relevant facts, the court reached legally justified conclusions that the absence of a contract between the legal entity and K. excludes the grounds under Art. 4, para. 1, items 2 and 4 of the Personal Data Protection Act for the processing of the personal data of the defendant in cassation - express consent of the individual to whom the data relates and/or the need to protect his life and health. He correctly assumed that the other grounds referred to in Art. 4, para. 1 of the GDPR for lawful processing of A.K.'s personal data.

The court's legal considerations that [company] has not fulfilled its obligations as a personal data controller under Art. 19, para. 1, item 3 in the above Art. 20 of the Labor Code, after having collected and stored the personal data of the complainant, to provide him with information that his personal data will be provided to a third party, with a view to collecting the liabilities accumulated under the specified batch number. The court correctly pointed out that K.'s personal data were collected in an unspecified manner in order to supply water to the property and seal the water meters, and after they were collected for a specific purpose, in violation of the rule under Art. 2, para. 2, item 2 of the LLDP the company has additionally processed the same for other purposes. This circumstance points to a violation of the principle of proportionality in the processing of personal data.

The arguments in the cassation appeal for barring the right to appeal from the natural person due to the expiration of the terms under Art. 38, para. 1 of the Labor Code at the time of referral to the commission - one year from the knowledge of the violation, but no later than five years from its commission. As can be seen from the data in the case, the complaints of the defendant in cassation relate to the period from 2011 to November 2013. The complaint to the commission is from 29.11.2013.

In the decision appealed before the first instance, the commission discussed the facts relevant to the dispute and established that the obligation under the above-mentioned batch and the data of the individual as a subscriber of "Sofijska voda" were provided to [company], in its capacity as a personal data processor , with award protocol dated 22.10.2013. In this situation, the commission correctly assumed that it was referred within the terms of Art. 38, para. 1 of the Labor Code and examined the merits of A.K.'s complaints. The arguments that the court did not take into account the fact that the commission ruled outside the subject of A.K.'s complaint cannot be shared either. The cassation defendant described in the complaint in general, the factual circumstances related to unlawful processing of his personal data by the company, in which the administrative body has carried out a comprehensive study of the relevant facts and established the specific violations of the rules for the collection and provision of personal data by the personal data controller. The factual and legal findings of the commission are relevant to the disputed issue and within the scope of the administrative proceedings outlined in the appeal. The court checked the legality of the contested administrative act and reached the correct conclusion that it does not suffer from the vices under Art. 146 APC. The objections of the assessee regarding the existence of contractual relations between the parties do not find support in the evidentiary material. As the decision-making court correctly accepted, first of all - there is no written contract between the company and the individual, and secondly - the requirements of the General Terms and Conditions of [company] for opening a batch in accordance with Art. 56, para. 2 of the same, respectively - for changing an open batch under the conditions of art. 58, para. 2 – upon the death of a natural person user. In the case, proper evidence has been presented that both the testator and the defendant in cassation are not the owners of the real estate for which the lot number is indicated above. In this situation, in view of the factual and legal circumstances referred to above, the court correctly accepted as a lawful conclusion of the commission that the company, in the capacity of a personal data administrator, allowed the unlawful processing of the personal data of the individual. For the committed violation, [company] was imposed a pecuniary sanction under Art. 42, para. 1 ЗЗЛД in an amount that is close but minimal. The court correctly considered that the commission's decision regarding the type and amount of the sanction was motivated and, accordingly, based on the severity of the committed violation.

Given the above, the appealed decision is correct, there are no cassation grounds for its annulment, therefore it should be left in force.

The representative of the defendant in the cassation appeal claimed costs, but as far as no evidence was presented in the case that such costs were incurred in the cassation proceedings, they should not be awarded.

Led by the above, the Supreme Administrative Court, Fifth Department,

R E S H I :

REMAINS IN FORCE decision No. 6238 of 13.10.2016 by adm. case No. 1189/2015 of the Administrative Court - Sofia-city.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Zdravka Shumenska

Secretary:

MEMBERS:

/p/ Diana Dobreva

/p/ Yulia Kovacheva