

In case 11563 / 2016

ANSWER

No. 6655

Sofia, 22.05.2018

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

EMANOIL MITEV

EMIL DIMITROV

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Chavdar Simeonov

listened to what was reported

by the judge

EMANOIL MITEV

by adm. case no

11563/2016

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

It was formed on a cassation appeal filed by the director of RZI - Smolyan, Dr. M. K., against decision No. 5657/15.08.2016, issued under Adm. case No. 4527/2016 from the Administrative Court of Sofia-city with arguments for irregularity due to a violation of the substantive law, admitted substantial violations of the procedural rules and unreasonableness - cancellation

grounds in the sense of art. 209, item 3 of the APC. The annulment of the judicial act and resolution of the dispute on the merits is requested.

The defendant - the Commission for the Protection of Personal Data, through its legal representative. V., contests the cassation appeal and maintains an opinion on its unfoundedness. Claims an award of costs in the case representing legal fees.

The defendant - B. M. H. does not take an opinion on the cassation appeal.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion that the appeal is groundless.

The Supreme Administrative Court, fifth department, taking into account the content of the complaint, the opinions of the parties and the evidence in the case, accepts the following:

The cassation appeal was filed within the period under Art. 211, para. 1 of the APC, by the proper party and in the presence of a legal interest, which is why it is procedurally admissible. Considered on its merits, the same is unfounded.

With the appealed decision, the ASSG rejected the appeal of the RZI city of Smolyan against decision No. Ж-210/24.03.2016 of the Commission for the Protection of Personal Data and condemned the appellant to pay the defendant court costs in the amount of BGN 300.

Having verified the legality of the contested administrative act before it, the court of first instance accepted that it was issued by a competent administrative authority within the framework of the powers granted to it, in the required written form, with an indication of the legal and factual grounds, in compliance with the administrative provisions established by law production rules and in accordance with substantive law.

The decision is valid, permissible and correct. The annulment grounds indicated by the assessee are not available.

The factual situation accepted as established in the case is supported by the written evidence presented with the administrative file and collected during the trial.

The conclusion of the first-instance court for the issuance of decision No. Ж-210/24.03.2016 by a competent administrative body - the Commission for the Protection of Personal Data /KPLD/ in accordance with its powers under Art. 38, para. 1 and para. 2nd sentence of Art. 10, para. 1, item 7 of the Labor Code, in the form prescribed by law, in the presence of the required details under Art. 59, para. 2 APC, therefore it is a valid act.

The court's finding that there were no substantial violations of the administrative production rules when issuing the contested

decision was substantiated. The same was decreed after the parties were given the opportunity to express their opinion and present written evidence (Article 36 of the APC). The administrative act was issued after considering the merits of the complaint in an open session according to Art. 9, para. 4 of the Labor Code and Art. 39, para. 1 of the Regulations for the activities of the CPLD and its administration and was unanimously adopted by the members of the administrative body (Article 9, paragraph 3 of the CPLD).

The court's conclusion that the decision was rendered in accordance with the applicable substantive legal provisions is legitimate. With a correctly clarified factual situation and after discussion of the evidence related to the judicial administrative dispute, collected in the administrative proceedings before the CPLD and presented to the court, a justified conclusion was made about the legality of the decision of the CPLD.

According to Art. 23, para. 1 GDPR, the administrator of personal data takes the necessary technical and organizational measures to protect the data from accidental or illegal destruction, or from accidental loss, from illegal access, modification or distribution, as well as from other illegal forms of processing, as in para. 3 the measures under para. 1 and 2 to be consistent with modern technological achievements and provide a level of protection that corresponds to the risks associated with the processing and the nature of the data that must be protected, as in para. 4 of the same article provides for the measures and terms under para. 1 and para. 2 to be determined by an instruction of the personal data controller.

From the evidence presented, the court reasonably accepted that the violation committed by the disputing party of 23, para. 1 and para. 3 of the GDPR, expressed in the fact that, in its capacity as a personal data administrator, it did not take the necessary technical and organizational measures to protect the data of B.M.H., and the measures taken were not in line with modern technological achievements to ensure a level of protection that corresponds to the risks associated with the processing and the nature of the data to be protected. This conclusion was made after an analysis of the evidence presented in the case. A violation of Art. 23, para. 1 and para. 3 of the AZLD, for which the administrative body lawfully undertakes the responsibility of the RZI under Art. 42, para. 9 of the Labor Code.

On the grounds stated, having reached a conclusion on the legality of the administrative act and on these grounds having rejected the appeal, the court of first instance rendered a decision in accordance with the law.

Regarding the amount of the imposed sanction, the present composition accepts that it is in accordance with the current legislation, with the type and severity of the violation, which is why it is correctly set below the average amount.

In view of the above, the current court panel accepts that the decision of the Administrative Court of Sofia - City is correct, which is why it should be left in force.

In view of the outcome of the dispute, the request of the defendant on cassation for the award of costs representing legal fees provided for in the provision of Art. 78, para. 8 of the Code of Civil Procedure, in the version after the amendment of the code, promulgated in the State Gazette number: 8, dated 24.01.2017. Pursuant to Art. 24 of the Ordinance on payment of legal aid, in administrative cases the remuneration for one instance is from BGN 100 to BGN 200. For the proceedings in the present case, costs in the amount of 100 (one hundred) BGN should be awarded in favor of the defendant.

Guided by the above and based on Art. 221, para. 2 of the APC, the Supreme Administrative Court, fifth department

RESOLVE:

REMAINS IN FORCE decision No. 5657/15.08.2016, issued under adm. case No. 4527/2016 from the Administrative Court of Sofia-city.

JUDGMENT Regional Health Inspectorate Smolyan, with headquarters and address of management Blvd. ], [street] costs of the case in the amount of 100 /hundred/ BGN, representing legal fees.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Emil Dimitrov