In case 12716 / 2016

ANSWER

No. 3054

Sofia, 12.03.2018

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the fifteenth of November two thousand and seventeen in composition:

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

DIANA DOBREVA

EMANOIL MITEV

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Georgi Hristov

listened to what was reported

by the judge

EMANOIL MITEV

by adm. case no

12716/2016

The proceedings are in accordance with Art. 208 et seq. of the APC.

It was formed on a cassation appeal of G.D.K. from [town], against decision No. 3612 /27.05.2016 under Adm. e. No. 8751/2015 of the Administrative Court Sofia-city/ACSG/, which rejected his appeal against decision No. Ж-49/2015 of 20.07.2015 of the Commission for the Protection of Personal Data/KZLD/, in the part with which [U.L.], [locality] and [U.L.],

[locality] - on the basis of Art. 38, paragraph 2 of the Personal Data Protection Act/PPD/ - are given mandatory instructions to undertake the necessary technical and organizational measures to protect personal data when processing and storing official documentation.

In the cassation appeal, arguments are presented for the incorrectness and illegality of his decision. It is requested to cancel it in the contested part.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data, represented by legal counsel P. expresses an opinion that the cassation appeal is groundless.

The defendants in the cassation appeal - [YUL], [town] and [YUL], [town], do not send representatives.

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

The Supreme Administrative Court, a three-member panel of the fifth department finds the cassation appeal admissible - filed against an appealable decision, by a party to the case, for which it is unfavorable and within the time limit under Art. 211, para. 1 of the APC, but considered as unfounded in substance.

By Decision No. 3612/27.05.2016, issued under adm. case No. 8751/2015 according to the inventory of the Administrative Court - Sofia-city, K.'s appeal against decision No. Ж-49/2015 was left without consideration. from 20.07.2015 of the Commission for the Protection of Personal Data, with which his complaint reg. No. Ж-49 dated 02.13.2015 was upheld. against [YUL] [populated place] and [YUL], [populated place], in the part with which the same on the basis of Art. 38, para. 2 of the Law on the Protection of Personal Data (PPA) mandatory instructions are given to take the necessary technical and organizational measures to protect personal data when processing and storing official documentation. In order to issue its ruling, the court considered that the cassation appellant had no legal interest in contesting and the CPLD ruled on his request. It is accepted that with regard to the choice of the implemented measures to remedy the violation - whether to issue prescriptions or impose a sanction, the commission decides within its operational autonomy, therefore in this part the decision is made on expediency and is not subject to control for legality before the court.

By Resolution issued under adm. case No. 2989/2016 a three-member panel of the Supreme Administrative Court - annulled the final decision of the ASSG by accepting that K. has a legal interest in contesting the decision of the CPLD in all its parts. In accordance with the mandatory reasons of the Supreme Court of Appeal, the Supreme Court of Appeals issued a decision on the merits of the dispute.

The court, proceeding from the fact that the CPLD on the basis of Art. 38, paragraph 2 of the CPLD, has the operational autonomy to issue a decision with which it can issue mandatory prescriptions, set a deadline for remedying the violation or impose an administrative penalty. The conclusion of the first-instance court is that, in accordance with the law, the administrative body made a decision for the detected violations on the part of the school authorities to give them prescriptions, but not to impose an administrative penalty on them.

The conclusion of the first-instance court that the decision of the CPLD is lawful is substantiated. It concerns violations, which first for each of the schools; the personal data, although unlawfully, were disclosed to a state body RUP of the Ministry of the Interior, which by law, on its own basis, disposes of the personal data of the citizens, which is why the violation does not reveal a degree of gravity that would justify the imposition of the most severe measure .

Conclusions shared in full by the present bench. The form of control chosen by the administrative body - making a decision to issue mandatory prescriptions, in view of the specifics of the dispute under consideration, fully implement the objectives of the law and contribute to the personal data of natural persons stored and processed being protected from accidental or illegal destruction, or from accidental loss or unauthorized access.

In view of the above, the decision as correct should be left in force.

For the stated reasons and on the basis of Art. 221, para. 2, proposition first of the Administrative Procedure Code, the Supreme Administrative Court, three-member panel of the fifth department

RESOLVE:

REMAINS IN FORCE decision No. 3612 /27.05.2016 by adm. No. 8751/2015 of the Administrative Court of Sofia-city.

The decision is final and not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Diana Dobreva

/p/ Emanoil Mitev