In case 11663 / 2016

ANSWER

No. 5715

Sofia, 02.05.2018

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

11663/2016

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

It was formed on a cassation appeal of [company], through its legal representative. Vl. C. and on a cassation appeal of [company], submitted through the procedural representative, Adv. G. D. against decision No. 5449/28.07.2016 issued under adm. case No. 12034/2015 from the Administrative Court of Sofia-city (ACSG).

The plaintiffs present arguments for the incorrectness of the appealed decision as contrary to the applicable substantive law and unfounded - cancellation grounds in the sense of Art. 209, item 3 of the APC.

Its annulment, resolution of the dispute on the merits and awarding of the costs incurred in the case are claimed.

The defendant party – the Commission for the Protection of Personal Data, through its legal representative. P., expresses an opinion that the cassation appeals of the two commercial companies are groundless.

The defendant - I.S.S. /the name I. is according to the data on the identity card, a copy of which is attached to the case - l.73/ does not express an opinion.

The prosecutor from the Supreme Administrative Prosecutor's Office gives an opinion on the groundlessness of the cassation appeals.

The present instance, taking into account the arguments of the parties and the evidence in the case, found the following established:

The cassation appeal was submitted within the time limit and is admissible, but considered in substance it is groundless, for the following reasons:

With the appealed decision, the ASSG rejected the challenge to the appeals of [company] and [company] against decision No. Ж-179/06.11.2015 of the Commission for the Protection of Personal Data /KPLD/, by which [company] was imposed a property a sanction in the amount of BGN 12,000 for a violation within the meaning of Art. 42, para. 1 st. Art. 4, para. 1, m.p. 1, 3, 4, 5, 6 and 7 of the Labor Code, and [company] - a pecuniary sanction in the amount of BGN 2,000 for a violation within the meaning of Art. 42, para. 3rd paragraph of Art. 20, para. 1, m.p. 1 and 2 of the WPLD due to the fact that, in their capacity as administrators of personal data, they unlawfully processed the personal data of I.S.S.. By the same decision, the two commercial companies were sentenced to pay the WPLD costs of the case, representing legal consultancy remuneration in the amount of BGN 300.

On the factual side, the court accepted that I. S. appealed to the CPLD for the fact that [company], without her consent, unlawfully provided [company] with data that she had under a consumer credit contract concluded in 2007 d., on which there are outstanding debts, namely: three names, address, uniform civil number and mobile phone. The collection of the bank was transferred with an assignment agreement to [company], which company processed S.'s personal data pursuant to and for the purposes of the assignment agreement dated 07/08/2014.

From a legal point of view, the court accepted that the disputed act was issued by a competent authority, subject to compliance with the legal form and administrative production rules and with correct application of the substantive law. He stated that the borrower did not consent to her personal data being provided to a third party - [company]. In this case, the interests of the credit institution, related to the collection of its claim, through the institution of cession, do not prevail over the interest of the person protected by the LLDP, since there is another possibility for the bank to realize its claim. The GDPR is a special law, the purpose of which is to guarantee the inviolability of the person and private life by ensuring the protection of natural persons in case of unlawful processing of the personal data related to them.

The decision is valid, permissible and correct. The specified cancellation grounds are not available.

The factual situation was correctly established by the court. Evidence relevant to the correct resolution of the dispute has been collected, which the court has discussed in their mutual relationship and in connection with the objections of the parties. Based on this, the court has made justified legal conclusions, which are fully shared by the present judicial composition.

It is not disputed that between [company] and I.S. on 08.12.2007 a credit agreement was concluded /l.71-72/, in fulfillment of which she expressly agreed to her personal data being processed by [company] and/or its partners "only for the purposes of "Security of Payments" insurance, Policy No. 001337" /l. 71-on the back/.

With the facts established in this way, there is illegal processing of personal data both by [company], when providing them to - [company], and when processing S.'s personal data by - [company], regardless of the presence of contract of assignment of which it has been notified. The two commercial companies are in violation of the norm of Art. 4, para. 1 of the Personal Data Protection Act, and in the specific case they did not comply with the requirements for the admissibility of the processing of personal data, since there was no express consent on the part of the debtor

The provisions of Art. 4, para. 1, item 2 of the Labor Code, and of Art. 7, b. "a" of Directive 95/46/ EC of the European Parliament and of the Council of 24.10.1995 on the protection of natural persons in the processing of personal data and on the movement of such data, require the express, unequivocal and informed consent of the natural person, provided his data to a personal data controller, for any provision of his data to a third party. It should be informed in advance by the administrator on what occasion and for what purpose its data will be provided to the third party, so that it can make an informed judgment and give consent or refuse. From this it follows that for each specific case, the express consent of the individual is necessary, which consent in the present case is not found to have been given by I.S.

In the trial case, the conclusion of the deciding court that none of the conditions provided for in Art. 4, para. 1 of the Labor Code, determining the admissibility of the processing of I. S.'s personal data by [company] in the event of their provision to [company], respectively [company] processed the personal data of S. in violation of the provisions of Art. 4, para. 1 of the LLDP conditions, including in the specific hypothesis accepted by the administrative body /in the absence of establishment by the company of S.'s express consent to provide her personal data/ is justified and lawful.

The provision of Art. 4, para. 1 of the GDPR stipulates that the processing of personal data is admissible if any of the listed conditions are met, which in this case were not fulfilled. In violation of Art. 4, para. 1, m.p. 1, 3, 4, 5, 6 and 7, the processing was not carried out in fulfillment of a legally established obligation of the administrator; it is not necessary to protect the life and health of the natural person, nor to perform a task in the public interest or to exercise powers granted to the administrator by law, as well as to realize legitimate interests of the administrator, before which the interests of the natural person have no priority.

At the same time, the conditions under Art. 4, para. 1, item 2 and item 3 of the Labor Code. According to Art. 4, para. 1, item 3 of the GDPR, the processing of personal data is permissible when it is necessary to fulfill obligations under a contract to which the natural person to whom the data relates is a party, as well as for actions preceding the conclusion of a contract and undertaken under his request. S. is not a party to a contract with [company], therefore it is not possible to assume that for the fulfillment of her obligation arising from another contract /in the case of the credit contract/ processing of her personal data by a person with which she is not in a contractual relationship.

The assignment agreement, as well as the fact that the assignee is also a personal data controller, do not change the above conclusions. The assignment of a claim as a binding legal relationship is irreconcilable with the obligations of the administrator of personal data to process them only in the cases provided for by law. [Company]'s claim to I.S. and its assignment to [Company] is irrelevant, given the fact that she did not specifically consent in advance to the provision of her personal data to [Company] for the purposes of fulfilling her obligation under the contract with [company], i.e. there is no express consent of the person to whom the data refer and according to Art. 4, para. 1, item 2 of the Labor Code. To assume that any administrator of personal data can provide it to another for processing without complying with the conditions of the law means providing access to a practically unlimited circle of persons to the personal data, which is contrary to the purpose of the law that the personal data are processed only by authorized persons under the legally established conditions and purposes.

In this case, the pecuniary sanctions imposed on [company] and [company] were legally determined by the administrative body in an amount close to the minimum provided for in Art. 42 ЗЗЛД .

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.

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

RESOLVE:

REMAINS IN FORCE decision No. 5449/28.07.2016 issued under adm. case No. 12034/2015 from the Administrative Court of Sofia-city.

OSAŽDA [company], EIK [EIK] with registered office and management address [town], g.k. [residential building], [address], building [number] and [company], EIK [EIK] with headquarters and management address [town], [street] to pay to the Commission for the Protection of Personal Data, costs of the case in the amount of 100 /hundred/ BGN, representing legal consultancy remuneration for the cassation instance.

THE DECISION is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Emil Dimitrov