

In case 4119 / 2020

ANSWER

No. 10179

Sofia, 23.07.2020

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the second of July,  
composed of:

CHAIRMAN:

ANNA DIMITROVA

MEMBERS:

ILIANNA SLAVOVSKA

TINKA KOSEVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Makedonka Popovska

listened to what was reported

by the judge

ILIANNA SLAVOVSKA

by adm. case no

4119/2020

The proceedings are in accordance with Art. 208 - 228 of the Administrative Procedure Code (APC).

Two cassation appeals, almost identical in content, were filed by "I Trust" EOOD and "Credissimo" EAD through a legal  
representative against decision No. 414 of 21.01.2020 in administrative case No. 9953/2019 of the Administrative Court of

Sofia- city □□(ASSg), which rejected their appeals against decision No. PPN-01-151/2018/24.07.2019 of the Commission for the

Protection of Personal Data. Based on the arguments given for the incorrectness of the decision, as it was given in case of an admitted violation of the rules of judicial procedure, expressed in the non-distribution of the burden of proof and the separation of the disputed from the undisputed, in the case of incorrect application of the substantive law and unreasonableness, it is requested to cancel it and to award administrative costs.

The defendant in the cassation appeal - Commission for the Protection of Personal Data (CPDP) through a legal representative contests the same and asks the court to issue a decision rejecting it as unfounded.

The defendant in the cassation appeal - E. Musarliev, in a submitted detailed written answer, contests the same and asks the court to issue a decision rejecting it as unfounded and awarding him the incurred litigation expenses.

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

The Supreme Administrative Court (SAC), a composition of the Fifth Division, during the ex officio review of the contested decision pursuant to Art. 218, para. 2 of the APC and considering the arguments presented in the cassation appeal, considers the following established:

The appealed decision is valid and admissible, and considered in substance it is also correct.

The court of first instance, after the legality check, accepts that the contested administrative act was issued by a competent authority, in the form provided by law, in compliance with the administrative procedure rules provided for in the law and in accordance with the substantive law and its purpose.

The subject of a legality check before the ACC was decision No. PPN-01151/2018/24.07.2019, by which it was accepted that Musarliev's complaint about unlawful processing of his personal data was well-founded and the same were processed - provided in violation of Art. 2, para. 2, item 1 of the Personal Data Protection Act (PDPA) in its version was effective until its repeal by SG No. 17/2019, effective at the time of committing the violation, resp. of Art. 5, paragraph 1, b. "a" of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016. on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (text with EEA relevance) (consolidated version) (Regulation) ) from "Credissimo" EAD to "I Trust" EOOD for the conclusion of a guarantee contract - i.e. they were additionally processed in a manner incompatible with the purposes specified in the cited normative provisions. It is also accepted that "I Trust" EOOD processed Musarliev's personal

data without any of the conditions under Art. 4, paragraph 1 of the Labor Code, in its version effective until its repeal by SG No. 17/2019, but effective at the time of committing the violation, respectively in violation of Art. 6, paragraph 1 of the Regulation. With the decision, a property sanction of BGN 10,000 was imposed on each of them on the basis of Art. 83, § 5, b. a" in conjunction with Art. 58, § 2, letter "i" of the Regulation.

The court has clarified the facts relevant to the dispute, based on the collected evidence, it justifiably accepts that in the case of "Credissimo" EAD, which is the controller of personal data, when concluding a loan agreement over the phone with Musarliev on 15.09.2017, he received from him his personal data, whereby on the same date at 2:15 p.m. a copy of the contract with attached standard European forms for providing information on consumer credit received and General Terms and Conditions of the credit granting company was received at the e-mail address indicated by the latter. On the same date at 2:19 p.m., a guarantee contract was received at Musarliev's email address from "I Trust" EOOD, which was prepared after Musarliev's personal data was provided by "Credissimo" EAD to "I Trust" EOOD. At the same time, the decision correctly states that these facts are not disputed by the two companies, and in practice they are not disputed in the cassation appeals either. The claims that the contract concluded by Musarliev with "Credissimo" EAD on 15.09.2017 is the third in a row and that he had previously provided his personal data to this company in essence does not constitute a dispute with the fact established in the case that it was "Credissimo" EAD provided the data to "I Trust" EOOD without the express and informed consent of Musarliev, especially since there are no claims that the latter company received his personal data from him. The argument for ignoring the General Terms and Conditions of "Credissimo" EAD, in their part under section XIV Additional provisions, item 6, in which the cases for which the borrower gives his consent to the provision of his personal data are specified on more than one page to third parties, but insofar as they are formulated in general and considering the number and type of third parties, it was reasonably and correctly accepted in the decision that in this case this consent does not meet the requirements of the definition of § 1, item 13 of the DR ZZLD (amend. ). A basic principle in the GDPR, as well as in the repealed Directive 95/46/EC and the currently effective Regulation, is that the consent to the provision of personal data given by any person must be a freely expressed, specific and informed statement of will, with which the physical a person to whom the personal data refers unequivocally consents to their processing. In this case, from the content of the stated text of the General Terms and Conditions, it is not possible to substantiate a conclusion that consent was given by Musarliev in a manner that meets the requirements of the law.

Moreover, both in the appealed decision and in the administrative act, it was correctly accepted that Musarliev's data were provided to "I Trust" EOOD by "Credissimo" EAD in violation of the provision of Art. 2, para. 2, item 2 of the Labor Code and the same are processed by "I Trust" EOOD in the absence of any of the prerequisites under Art. 4, para. 1 ЗЗЛД.

At the same time, both companies were correctly imposed a pecuniary sanction in the amount of BGN 10,000 for each of them, although the same was imposed incorrectly on the basis of Art. 83, § 5, b. a" in conjunction with Art. 58, § 2, letter "i" of the Regulation, given the fact that the proceedings before the CPLD were initiated with the submission of Musarliev's complaint on 12.03.2018, in which, according to § 44 of the PPR of the CPLD (SG No. 17/2019 d.) in this case, the norm of Art. 42 of the Labor Code, which should have been applied in its version before the amendment by SG No. 17/2019, to the extent that the sanction is determined in the minimum amount provided for in the cited legal text, no conclusion of an admitted substantial violation when issuing the act follows.

During the inspection, no violations of the judicial procedure rules were found. Contrary to the claims in the cassation appeals, with a special order of 30.09.2019, the court has allocated the burden of proof, and the same follows from the provision of Art. 170 APC, which norm in all cases should be complied with by the parties in the proceedings.

The argument that the court did not separate the disputed from the undisputed is also unfounded. The fact that in its decision the court accepted as indisputably established facts based on the evidence attached to the case does not lead to the conclusion claimed by the plaintiffs, and in addition it should be stated that in this case the proceedings are administrative and the court has carried out a full legality check of the deed contested before him on all the grounds under Art. 168 APC.

The fact that in the appealed decision the court made conclusions that are not in favor of the applicants does not lead to a conclusion that it is unfounded. On the contrary, the same were extracted on the basis of the evidence collected in the case and were presented in a reasoned and clear manner.

In view of the foregoing, the present judicial panel of the Supreme Court of Appeals accepts that the appealed decision is correct and should be left in force, as having been issued in the absence of cassation grounds for annulment.

With this outcome of the case and on the basis of Art. 143, para. 3 of the APC, the two assessees should be sentenced to pay Musarliev the administrative expenses incurred before the present instance in the amount of BGN 500, representing the fee paid by him for one lawyer.

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

RESOLVE:

Decision No. 414 of 21.01.2020, issued in administrative case No. 9953/2019 by the Administrative Court of Sofia-city,

REMAINS IN FORCE.

ORDERS "Credissimo" EAD, with EIK 175330437 and "I Trust" EOOD, with EIK 203508899 to pay E. Musarliev, with TIN [TIN]  
administrative costs in the amount of 500 (five hundred) BGN.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Anna Dimitrova

Secretary:

MEMBERS:

/p/ Iliana Slavovska

/p/ Tinka Koseva