In case 5475 / 2021

ANSWER

No. 11332

Sofia, 09.11.2021

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on October 6, composed of:

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

EMANOIL MITEV

MARIA NIKOLOVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Momchil Taralanski

listened to what was reported

by the chairman

DIANA DOBREVA

by adm. case no

5475/2021

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

It was formed based on a cassation appeal filed by "Karol Standart" EOOD, with headquarters and management address in the city of Sofia, represented by the managers R. Hristov and N. Velova, through attorney at law. Iliev and on a cassation appeal filed by the Commission for the Protection of Personal Data (PCPD) with headquarters in the city of Sofia, through a

legal representative. Parvanova, both against decision No. 1340 of 04.03.2021, issued under adm. case No. 11855/2020 from the Administrative Court Sofia - city (ACSG).

In the cassation appeal of the commercial company, arguments were developed for the incorrectness of the judicial act due to its lack of foundation, its enactment with incorrect application of the substantive law and admitted substantial violations of the procedural rules - cassation grounds under Art. 209, item 3 of the APC. It is requested that it be annulled in the part by which the company is sentenced to pay a property sanction in the amount of BGN 10,000 and that the dispute be resolved on its merits. He claims an award of the state fee paid for filing the case.

The Commission for the Protection of Personal Data considers the decision of the court in the part by which item 4 of the contested Decision No. ППН-01-805 of 25.08.2020 of the Communist Party of Ukraine was canceled, also incorrect, unfounded, issued in violation of the substantive law and in the event of a substantial violation of the procedural rules - cassation grounds within the meaning of Art. 209, item 3 of the APC. It is requested to cancel it in this part and resolve the dispute on the merits by rejecting the challenge on the appeal of ZAD "OZK - Zastrahovane" AD.

The defendants - JSC "OZK - Insurance" JSC, Yu. Sotirova and P. Petkov do not appear in the O.S.Z. and take no opinion.

The procedural representative of the Supreme Administrative Prosecutor's Office gives a reasoned conclusion on the unfoundedness of the cassation appeal filed by "Karol Standart" EOOD and on the merits of the cassation appeal filed by the CPLD. Considers that the appealed decision should be upheld as correct in the part by which the property sanction was reduced from BGN 25,000 to BGN 10,000 imposed on the commercial company and canceled in the part by which item 4 of Decision no. PPN-01-805 of 25.08.2020 of the CPLD, with which on the basis of Art. 83, § 4, b. "a" above Art. 58, § 2, b. "and" of Regulation (EU) 2016/679 on ZAD "OZK Zastrahovane" AD an administrative penalty was imposed - a property sanction in the amount of BGN 5,000 for violation of Art. 25, § 1 of the said Regulation. In this part, it proposes that the appealed decision be annulled, and the dispute resolved in substance by rejecting the challenge on the appeal of ZAD "OZK Zastrahovane" JSC, as unfounded.

The Supreme Administrative Court, in the current composition of the fifth department, after assessing the data in the case, the arguments of the parties and within the framework of its powers under Art. 218 APC accepts the following as established:

The cassation appeals are filed by the proper parties, against a contestable judicial act that is unfavorable to them, as well as within the time limit under Art. 211, para. 1 APC, which is why they are procedurally admissible.

As indicated, the subject of judicial review for legality before the court of first instance is Decision No. ППН-01-805 of 25.08.2020 of the CPLD, by which, on the basis of Art. 83, § 5, b. "a" above Art. 58, § 2, b. "and" of Regulation (EU) 2016/679, an administrative penalty was imposed on "Karol Standart" EOOD - a property sanction in the amount of BGN 25,000 for processing personal data of P. Petkov in violation of Art. 5, § 1, b."a" of the Regulation; ZAD "OZK Zastrahovane" AD has been imposed an administrative penalty - a property sanction in the amount of BGN 5,000 for violation of Art. 25, § 1 of the Regulation, based on Art. 83, § 4, b. "a" above Art. 58, b. "and" and on the basis of Art. 58, § 2, b. "d" of the Regulation on violation under Art. 32, § 4 of it, in relation to the commercial company, an order was issued, in the nature of a PAM, to take measures for each person acting under his direction to process personal data according to the instructions of the company, taking into account the requirements of the GDPR, the LLPL and the special CC within a specified period.

The court accepted as partially justified the challenge on the appeal of "Karol Standart" EOOD and reduced the amount of the property sanction imposed on it from 25,000 to 10,000 BGN. canceled item 4 of Decision No. PPN-01-805/25.08.2020 of the CPLD, with which on the basis of Art. 83, § 4, b. "a" above Art. 58, § 2, b. "and" from Regulation (EU) 2016/679, an administrative penalty was imposed on him - a property sanction in the amount of BGN 5,000 for violation of Art. 25, § 1 of the Regulation.

With the same decision, legal costs incurred by ZAD "OZK Zastrahovane" AD in the amount of BGN 50 have been assigned to the CPLD.

In order to decide this result, the court checked the legality of the contested administrative act before it and accepted that it was issued by a competent administrative body within the framework of the powers granted to it, in the required written form, with an indication of the legal and factual grounds, subject to the administrative procedure rules established in the law, but in relation to "OZK Zastrahovane" AD, the decision under item 4 is unfounded and issued due to incorrect application of the substantive law.

The decision is valid, admissible and correct in the part with which the challenge of "Karol Standart" EOOD and the property sanction imposed on it for processing personal data of P. Petkov in violation of Art. 5, § 1, b."a" of the Regulation was reduced from BGN 25,000 to BGN 10,000 and incorrectly in the part with which the property sanction imposed on ZAD "OZK Zastrakhovane" JSC was canceled - a fine in the amount of BGN 5,000 BGN for violation of Art. 25, § 1 of Regulation (EU) 2016/679.

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

Reasonably, the court of first instance accepted that the disputed decision of the CPLD was issued by a competent authority, in accordance with its powers under Art. 38, para. 1 and para. 2 of the Labor Code, in the form prescribed by law, containing all the required details under Art. 59, para. 2 of the APC, therefore it is a valid act.

The court's finding that there were no significant violations of the administrative procedure rules when issuing the contested decision was substantiated. The same was decreed after the parties were notified in accordance with Art. 26 of the APC for the initiation of the proceedings initiated by the complaint of the injured person; they are given the opportunity to participate in it by expressing an opinion and presenting written evidence (Article 36 of the APC); the administrative act was issued after considering the merits of the appeal 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 accepted as undisputedly established that on 04.06.2018, through the employee of the insurance broker "Karol Standart" EOOD - K. Topalova, in the company's office in Sofia, an insurance policy ZP No. BG/23/118001638038, issued from ZAD "OZK Insurance" AD. According to the text, a compulsory liability insurance has been concluded for a Mercedes motor vehicle, model "E 200" with registration [vehicle registration number], based on the Registration Certificate, Part I with No. [number]. In the policy, P. Petkov is listed as the owner, with data for his three names, social security number and address, it is reflected that he is the owner of the above-mentioned motor vehicle. According to the insurer, an insurance premium of BGN 251.60 was also paid, at the cash desk in the representative office on "Yanko Sakazov" street on the same date, for which Invoice No. BG/23/118001638038-01 was issued.

It was also established beyond dispute that the details of the insured and the motor vehicle were manually entered by the employee due to a "momentary crash" of the Guarantee Fund's EISOUKR system. Subsequently, during an administrative check, it was established that the owner of the mentioned motor vehicle is a third party - "Teddy and Roz" EOOD.

Meanwhile, by letter ex. No. 99-538/26.07.2018, the insurer "OZK Zastrakhovane" notified Mr. Petkov that he owes an additional premium in the amount of BGN 1,193.50, payable within 5 days of receiving the message and due to non-payment of the additional premium insurance policy No. BG/23/118001638038 was terminated on 27.07.2018.

Upon receiving the message, Mr. Petkov appealed to the CPLD with a complaint that his personal data was unlawfully used, as he did not and does not own the L.A. "Mercedes", model "E 200" with registration [vehicle registration number] .

In the course of the administrative proceedings before the CPLD, the stated facts were not contested and were accepted by the court of first instance. Based on this, the court concluded that the challenge of "Karol Standart" EOOD is partially justified, and that of "ZZK Zastrahovane" CJSC is fully justified and issued its decision.

The present instance finds the cassation appeal of "Karol Standart" EOOD to be groundless, and the appealed decision in the part that reduced the imposed penalty from BGN 25,000 to BGN 10,000 to be justified and lawful, issued with the correct application of the substantive law.

In Art. 5, § 1 of Regulation 2016/679, the principles related to the processing of personal data are indicated, and according to § 2 of the text, the administrator is responsible and is obliged to prove compliance with these principles. In Art. 5, § 1, b. "a", i.e. first of all, the requirement that personal data be processed lawfully, in good faith and in a transparent manner with respect to the data subject ("lawfulness, good faith and transparency") is indicated. Reasonably, the court of first instance accepted that in this case these basic principles were violated by the controller of personal data. This is so because P. Petkov's data were processed without his knowledge and consent, against his will with bad faith intent. The objection that in this case it is a question of committing a crime - using a "false" is legally irrelevant document - vehicle registration certificate, part I. When considering a complaint for a violation of personal data processing, as is the case at trial, the CPLD does not assess whether a crime has been committed and who its perpetrator is, but whether there is unlawful processing of personal data - has a violation been committed by the personal data administrator when processing the personal data and in connection with this, taken are sufficient measures to ensure the lawful processing of personal data. The presence or absence of data on a crime committed under the Criminal Code is irrelevant to the administrative dispute, because different circumstances are assessed in the two proceedings. In the proceedings before the CPLD, the subject of discussion is whether the personal data controller has fulfilled its obligations under the GDPR to protect the data it processes. In this case, the Commission correctly established a violation of the obligation of "Karol Standart" EOOD as a personal data administrator.

The objection that the broker should not bear administrative responsibility for the case is also unfounded, since only the insurer has access to the data of the Ministry of the Interior and the Traffic Police and only he could make an inquiry about the ownership of the trial vehicle. The principles laid down in the text of Art. 5, § 1 of the Regulation applicable from 25.05.2018

affect all controllers of personal data, such as the insurance broker and its employees. Unconditionally, personal data must be processed lawfully, in good faith and in a transparent manner with respect to the data subject, and in this case this subject did not provide his data (names, address and social security number, which are personal data within the meaning of Art. 4, § 1 of the Regulation) and did not give his consent for them to be processed by an administrator in the sense of § 2 of the text, for which there is indisputable evidence.

That is why the conclusion of the deciding court, that the responsibility of "Karol Standart" EOOD should be engaged for the violation attributed to it by the CPLD, is fully shared by the present instance.

The court of first instance correctly accepted that it is within the competence of the administrative body to determine the type and amount of the penalty that should be imposed for each specific case in order to achieve the objectives of the Regulation.

The conclusions of the court regarding the type and amount of the pecuniary sanction imposed on "Karol Standart" EOOD are shared in full, without the need to repeat them. The court correctly pointed out that the punishment was not individualized in view of the degree of impact on public relations regarding the protection of personal data, and when determining it, the CPLD did not discuss the elements of Art. 83, § 5 of the Regulation, which is why the sanction appears to be unreasonably high and was correctly reduced.

The decision in this part should be confirmed as justified and correct, given in compliance with the procedural rules.

The cassation appeal of the CPLD is well-founded.

In this part, the appealed decision is unfounded and illegal and should be annulled, and the dispute should be decided on its merits by rejecting the challenge to the appeal of ZAD "OZK Zastrahovane" against Decision No. PPN-01-805 of 25.08.2020. , with which on the basis of Art. 83, § 4, b. "a" above Art. 58, § 2, b. "and" from Regulation (EU) 2016/679, an administrative penalty was imposed on him - a property sanction in the amount of BGN 5,000 for violation of Art. 25, § 1 of the Regulation.

With correctly established facts, undisputed by the parties, the court incorrectly analyzed the evidence in the case and, based on this, made unfounded legal conclusions, which are not shared by the present instance.

According to Art. 25, § 1 of Regulation (EU) 2016/679 the administrator shall introduce, both at the time of the determination of the means of processing and at the time of the processing itself, appropriate technical and organizational measures, for example pseudonymization, which have been developed with a view to effective implementation the principles of data protection, for example data minimization, and the integration of the necessary safeguards into the processing process in order

to comply with the requirements of this Regulation and to ensure the protection of the rights of data subjects taking into account the achievements of technical progress , the costs of implementation and the nature, scope, context and purposes of the processing, as well as the risks posed by the processing with varying probability and severity for the rights and freedoms of natural persons.

The administrator of personal data is obliged to implement appropriate technical and organizational measures to ensure the protection of personal data, and the very fact that this was not achieved in this case, even though the insurer had the data from the Ministry of Interior/Traffic Traffic database, points to a violation of the meaning of Art. 25, § 1 of the Regulation. The violation has been proven and the responsibility should be shared. According to Art. 28, §4 of the Regulation when the processor of personal data includes another processor of personal data for the performance of specific processing activities on behalf of the controller through a contract or other legal act under Union law or the law of the Member State, the same obligations are imposed on this other person for data protection, as well as the obligations stipulated in the contract or other legal act between the administrator and the personal data processor, in particular to provide sufficient guarantees for the application of appropriate technical and organizational measures so that the processing meets the requirements of the regulation.

In this case, contrary to the claims of the insurer, the introduced measures are clearly not sufficiently consistent with the Code of Conduct, Ordinance No. 54 for registering GFs, imputed as a legal requirement and the Regulation, which engages its responsibility. And it is within the scope of the operational independence of the administrative body to determine the type and amount of the imposed penalty, which the CPLD has done. It has not been proven that the personal data administrator has taken measures for any person acting under his direction to process personal data according to the instructions of the company, taking into account the requirements of the GDPR, the LLDP and the special CC within a specified period, in the sense that instructions were given by CPLD in the procedural decision and deadline for implementation. The decision of the administrative body is justified and lawful and should remain in force by rejecting the appeal of ZAD "OZK Zastrahovane".

In view of the outcome of the case, the claim for the award of costs incurred in the case is groundless and should not be respected.

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

RESOLVE:

AVOIDS decision No. 1340 of 04.03.2021, issued under adm. case No. 11855/2020 of the Administrative Court of Sofia - city, in the part by which, upon appeal of ZAD "OZK Zastrahovane" AD, EIC [number], Decision No. PPN-01-805/2018 of 25.08.2020 was annulled. of the Commission for the Protection of Personal Data in the part under item 4, with which, on the basis of Art. 83, § 4, b. "a" cf. Art. 58, § 2, b. "and" from Regulation (EU) No. 2016/679 for violation under Art. 25, § 1 of the same, an administrative penalty was imposed - a property sanction in the amount of BGN 5,000 and instead RULES:

REJECTS the challenge to the appeal of ZAD "OZK Zastrahovane" JSC, EIC [number] against Decision No. PPN-01-805/2018 of 25.08.2020 of the Commission for the Protection of Personal Data in the part under item 4, with which, on the basis Art. 83, § 4, b. "a" cf. Art. 58, § 2, b. "and" from Regulation (EU) No. 2016/679 for violation under Art. 25, § 1 of the same, an administrative penalty was imposed - a property sanction in the amount of BGN 5,000, as unfounded.

decision No. 1340 of 04.03.2021, issued under adm., REMAINS IN FORCE. case No. 11855/2020 from the Administrative Court of Sofia - city in its remaining appealed part.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Diana Dobreva

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Maria Nikolova