

In case 2825 / 2021

ANSWER

No. 7740

Sofia, 29.06.2021

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the twenty-first of April,
composed of:

CHAIRMAN:

HEALTH SHUMENSKA

MEMBERS:

DONKA CHAKAROVA

EMIL DIMITROV

to secretary

Madeleine Dukova

and with participation

to the prosecutor

Iliana Stoykova

listened to what was reported

by the judge

EMIL DIMITROV

by adm. case no

2825/2021

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 "A1 Bulgaria" EAD, through a legal representative, against decision No. 7313/16.12.2020, issued under Adm.d. No. 7496/2020 of the Administrative Court of Sofia-city /ASSG/.

The assessor submits arguments for the incorrectness of the appealed decision as being issued in violation of the substantive

law, a substantial violation of the rules of judicial procedure and unreasonableness - ground for annulment according to Art. 209, item 2 and item 3 of the APC. Request that the decision be reversed. He presents detailed considerations in the cassation appeal. Claims costs.

The respondent - CPLD, through a procedural representative, contests the cassation appeal. He expresses his views in written notes. Claims costs. Objected under Article 78, Paragraph 5 of the Code of Criminal Procedure.

The defendant - K. Marinov does not express an opinion on the cassation appeal. Claims no expenses.

The representative of the Supreme Administrative Prosecutor's Office gives a reasoned conclusion on the admissibility and unfoundedness of the cassation appeal.

The current composition of the Supreme Administrative Court, fifth department, accepts that the cassation appeal was filed within the period under Art. 211, para. 1 APC and by a party for whom the judicial act is unfavorable, which is why it is admissible. Considered on its merits, the cassation appeal is groundless.

With the appealed decision, the ASSG rejected the company's appeal against decision No. PPN-01-1553/2019 of 07/06/2020. of the Commission for the Protection of Personal Data (PCPD).

With the cited decision CPLD:

1. Declares complaint reg. №PPN-01-1553/20.09.2019, filed by K. Marinov, as well-founded;
2. On the basis of Article 58, paragraph 2, letter "i" of Regulation 2016/679 in conjunction with Article 83, paragraph 5, letter "b" imposes on the administrator of personal data "A1 Bulgaria" EAD, an administrative penalty " property sanction" in the amount of BGN 5,000. for violation of Article 12, §4 in conjunction with §3 of Regulation (EU) 2016/679.

The ASSG correctly accepted that the contested act of the CPLD was issued by a competent body, in the prescribed written form, in compliance with the administrative procedure rules, the substantive law and in accordance with the purpose of the law.

In the case, it was established that "A1 Bulgaria" EAD is the administrator of personal data pursuant to Article 4, item 7 of the GDPR, to which a request was made by e-mail on 17.06.2020. by the subject of personal data K. Marinov, to exercise rights under Art. 15-22 of the General Regulation on the Protection of Personal Data (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016/GDPR, the Regulation/.

There is no data in the case, and it is not disputed that the assessee in this case did not act on Marinov's request, as only on 03.12.2019. notified the applicant that the submitted application was improper and instructed to provide additional data.

In view of these facts, the present composition shares the conclusion of the ASSG that, given the provision of Art. 12, §4 GDPR, the personal data administrator was obliged to notify the data subject at the latest within one month of receiving the request of the reasons not to also take action on the possibility of filing a complaint with a supervisory authority and seeking legal protection.

There is a failure to fulfill the obligation of "A1 Bulgaria" EAD, in its capacity as a personal data administrator, to notify the data subject K. Marinov, without delay and at the latest within one month of receiving the request from this entity to exercise rights under Articles 15-22 of the Regulation, for the reasons for not taking action and for the possibility of filing a complaint with a supervisory authority and seeking legal protection.

Irrelevant in this case are the subsequent actions of the administrator, including the actions expressed in sending a letter dated 03.12.2021.

The arguments in the cassation appeal are not credited. They are in contradiction with the applicable provisions of Chapter III, Art. 12 §3 and §4 GDPR given the undisputed facts of the case.

Contrary to the thesis of the assessee, in this case there is no question of a time limit for responding to a complaint filed under Art. 37 of the Labor Code (Repealed - SG No. 103 of 2005). This provision is not part of the law in force at the date of the submission of the request by Marinov, just as the norm cited by the assessee of Art. 53, para. the order of Art. 15-22 of the GDPR and the referral to the CPLD in accordance with the order of Art. 38, paragraph 1 of the CPLD.

With regard to the objection of the assessee related to the application of Article 83 of the GDPR related to consideration of the elements determining the amount of the imposed property sanction under Article 83, §2 of the Regulation, it should be noted that given the nature of public relations related to the processing of personal data, and the specifics of the case, the reasons of the first-instance court for the application by the AO of the corrective powers under Art. 58, §2 of the regulation are fully shared, to which reasons the present composition refers to the basis. Art. 221, Para. 2, Art. second APK. In addition, the decision of the supervisory authority, which is subject to a dispute before the General Data Protection Authority, is in accordance with the objectives of the GDPR for effective protection of personal data, taking into account the legitimate interests of the administrator of personal data, which cannot be expressed in failure to fulfill an imperative obligation of the same regulated in GDPR.

Next, no substantial procedural violations committed by the administrative court were found. In accordance with the provisions

of Article 168, paragraph 1 of the APC, the court has verified the legality of the contested act. The burden of proof in the trial is distributed in accordance with the requirements of Article 170 of the APC, in the case of procedural activity shown by the judicial panel in accordance with Article 171, paragraph 4 of the APC. The court's decision was made after collecting the admissible evidence relevant to the subject of the court proceedings and after their discussion, including the arguments of the parties.

The first-instance decision was not found to be unfounded. The conclusions of the court panel correspond with the evidence collected in the case and were formed after their correct assessment.

On the basis of the above, the current court panel accepts that when the appealed court decision is rendered, the violations pointed out by the appellant under Article 209, item 3 of the APC are not present, therefore the same should be left in force.

Given the outcome of the dispute, the request made by the representative of the CPLD for the award of a legal consultancy fee for the present instance is justified, and such should be awarded on the basis of Art. 143, para. 3 APC in the amount of BGN 100.

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

RESOLVE:

REMAINS IN FORCE Decision No. 7313/16.12.2020, issued under Adm. d. No. 7496/2020 of the Administrative Court Sofia-city.

ORDERS "A1 Bulgaria" EAD [EIC], to pay to the Commission for the Protection of Personal Data, an amount in the amount of 100/hundred/BGN. costs of the case.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Zdravka Shumenska

Secretary:

MEMBERS:

/p/ Donka Chakarova

