

In case 7138 / 2021

ANSWER

No. 12615

Sofia, 09.12.2021

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on November 10,
composed of:

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

EMANOIL MITEV

MARIA NIKOLOVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Neli Hristozova

listened to what was reported

by the chairman

DIANA DOBREVA

by adm. case no

7138/2021

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 "S.G. Group" EAD, through a legal representative, against decision No. 2783 of 04/26/2021, issued under Adm. case No. 11861/2020 according to the inventory of the Administrative Court of Sofia - City (ACSG), which rejected the appeal of "S.G. Group" EAD against Decision No. PPN-01-195/2019 of 14.04.2020 of the

Commission for the Protection of Personal Data (PCPD), in the part under item 2, which declares A. Shakirov's complaint well-founded in relation to "S.G. Group" EAD, in the part concerning a violation of Art. 20, para. 1, items 1-3 of the Labor Code (repealed), respectively Art. 14, § 1, b. "a" of Regulation /EU/2016/ 679 and on the basis of Art. 83, § 5, b. "b" in relation to Art. 58, § 2, b. "i" of the Regulation imposes on the company a pecuniary sanction in the amount of BGN 2,000 and the company is sentenced to pay the CPLD a legal consultancy fee in the amount of BGN 100.

In the cassation appeal, arguments were developed for the incorrectness of the judicial act due to its being issued with incorrect application of the substantive law - a cassation ground for its annulment under Art. 209, item 3 of the APC.

Cancellation of the decision in the appealed part is requested. Expenses are claimed.

The defendant CPLD contests the cassation appeal. He wants the decision to be upheld in the appealed part. Claims costs.

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

The Supreme Administrative Court, in the current composition of the fifth department, after considering the facts of the case and the arguments of the parties, accepts the following as established:

The cassation appeal was filed by a proper party, against a contestable judicial act, which is unfavorable to it, as well as within the period under Art. 211, para. 1 of the APC, which is why it is procedurally admissible.

Considered on its merits, the appeal is groundless.

With the appealed decision, the ASSG has confirmed Decision No. PPN-01-195/2019 of 14.04.2020 of the CPLD in the part under item 2, by which the complaint filed by Shakirov before the Commission is declared well-founded in relation to "S. G. Group" EAD for violation of Art. 20, para. 1, items 1-3 of the Labor Code (repealed, ed. 2006), respectively Art. 14, § 1, b. "a" of Regulation /EU/2016/ 679 and on the basis of Art. 83, § 5 b. "b" in relation to Art. 58, § 2, b. "i" of the Regulation imposed on the company a property sanction in the amount of BGN 2,000.

Having checked the legality of the contested administrative act before it, the court of first instance accepted that it was issued by a competent administrative authority 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 compliance with the provisions of the law administrative procedure rules and in accordance with the substantive law.

In the present case, there are two assignment contracts concluded between three personal data administrators - "Bulgarian

Telecommunications Company" EAD, "S.G. Group" OOD (now EAD) and "Debt Collection Agency" EAD.

With the first contract dated 22.04.2016, "S.G. Group" EAD acquired the monetary claim to the debtor A. Shakirov in the amount of BGN 1341.45, due under a contract for mobile services concluded between him and "BTK" EAD . With a subsequent assignment agreement dated 20.06.2018 between "S.G. Group" EAD - assignor and "Debt Collection Agency" EAD - assignee, the company transferred its monetary claim to Shakirov to "Debt Collection Agency" EAD.

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. By transferring the claim, the assignee enters into the rights of the previous creditor without the debtor's consent being necessary. Subsequently, the debtor must be notified of the completed assignment in order for it to give rise to an action in relation to him and in relation to third parties - Art. 99, para. 4 of the ZZD. The legal fact that makes the processing of personal data permissible is the assignment of the claim, not the notification. This is because the assignee receives the debtor's personal data already at the conclusion of the assignment agreement. From that moment on, he has a legitimate interest that allows the processing of the data in connection with the collection of the obligation - Art. 4, para. 1, item 7 of the Labor Code. The fact that the notification to the debtor was duly served has no legal significance regarding the assessment of the legality of the assignor's actions in processing the debtor's personal data on the assigned claim. Whether the contract of assignment gives effect to the debtor, whether the claim exists and what is its amount are questions that can be raised before the civil court and decided in the civil procedure.

The court of first instance correctly accepted that the dispute in the case was defined by the resolution of the question whether "S.G. Group" EAD fulfilled its obligation under Art. 20, para. 1, items 1-3 of the Personal Data Protection Act (repealed), according to which when the personal data are not received by the individual to whom they refer, the administrator or his representative provides him with: 1. the data that identifies the administrator and his representative; 2. the purposes of personal data processing; 3. the categories of personal data relating to the relevant natural person. The law does not set requirements for the form of the notification, which is why the person can be notified both with the communication of the assignment contract and by telephone or in any other way, i.e. for the fulfillment of the obligation by the personal data administrator is it is sufficient for the notification to contain the information under Art. 20, para. 1, items 1, 2 and 3 of the Civil Code and that it has reached the addressee.

The present court fully shares the conclusion made by the first instance court that from the evidence in the case, only for

notification No. 15644599001 under Art. 99, para. 3 of the Personal Data Protection Act, together with information under Art. 20, para. 1, 2 and 3 of the AZLD sent by the second assignee "Debt Collection Agency" EAD has data that it was delivered on 07.08.2018 to the debtor, through his mother. In connection with the letter sent to the debtor Shakirov by the first assignee "S.G. Group" EAD in the case, there is only evidence that it was sent to the debtor on 27.02. 2018 from "S.G. Group" EAD, but not that it has reached the addressee. In view of this, the court correctly assessed whether the content of the notification under Art. 99, para. 3 of ZZD No. 15644599001, made by the "Debt Collection Agency" EAD, for which there is only data that it was delivered to the debtor, fully satisfying the requirements of Art. 20, para. 1, item 1, item 2 and item 3 ZZLD by "S.G. Group" EAD. The opinion of the first instance court is correct that there is no obstacle to the notification under Art. 99, para. 3 of the Personal Data Protection Act and the notification under Art. 20, para. 1, item 1, item 2 and item 3 of the Labor Code to be incorporated in one letter, resp. communicated simultaneously by some other legitimate means. However, their different legal nature should be taken into account and, accordingly, the different volume of information that needs to reach the addressee in the capacity of a debtor under the assigned claim, i.e. a participant in a bond legal relationship and as a natural person whose personal data has been provided by one administrator of another's personal data - an interested party in the developed administrative legal relations under the LLDP regime. It concerns obligations imposed under two different laws that protect different social relations. The purpose of the notification under the PPE is to inform the debtor that an assignment has taken place, i.e. that he is already obligated to a new creditor (assignor), from which moment the assignment has effect against the debtor. The same is not intended to inform the debtor that due to the transferred claim, a third party - assignee will process his personal data according to their volume, specified in items 1-5 of Art. 20, para. 1 of the Labor Code. Even assuming that the notification under Art. 99, para. 3 of the Personal Data Protection Act contains some of the data referred to in Art. 20, para. 1 of the AZLD, then they are incomplete, they are not in the volume provided for in items 1-5. On the other hand, it cannot be imposed on the debtor by way of interpretation to assume that the collection of the claim from the new creditor is inevitably linked to the processing of his personal data. In addition, Art. 20, para. 1 of the GDPR expressly includes the provision of the specified data as an obligation of the personal data controller. In this case, notification No. 15644599001 contains information about the administrator of personal data in accordance with the requirement of Art. 20, para. 1, item 1 of the Labor Code, the company's company name, EIC, seat and address of management, the three names of the legal representative are indicated, but it does not comply with the requirements of Art. 20, para. 1, item 2 and item 3 of the GDPR - the notification does not

specify at all the purposes for which the personal data of the individual will be processed. The conclusion of the first instance court is correct, that the contract for the provision of mobile service does not contain Shakirov's express consent for his personal data to be provided precisely to "S.G. Group" EAD, and abstractly to a third party to collect the receivables from him, which is why it is not possible to assume the presence of knowledge in the sense of Art. 20, para. 3, item 3 of the Personal Data Protection Act (repealed) specifically with regard to this administrator of personal data and, accordingly, to release him from the obligation to notify the natural person about the processing - in this sense, decision No. 12741 of 24.10.2017 under Adm. d. No. 5234/2016 of the Supreme Court, V o. R No. 5796 of 3.05.2018 of the Supreme Administrative Court under adm. d. No. 10097/2016, V o. There is no evidence in the case from which to draw a definite conclusion that the requirements for informing the person in the hypotheses of Art. 20 para. 1, item 2 and item 3 of the Labor Code are satisfied. The debtor of the assigned claim was not duly notified within the meaning of Art. 20, para. 1, items 2-3 of the ZZLD from "S.G. Group" EAD nor with the only notification that reached him under Art. 99, para. 3 of the Personal Data Protection Act, made by "Debt Collection Agency" EAD, as it does not meet the content requirements in the sense of the said provision, nor in any other way. In order to assume that the debtor of the assigned claim has been duly notified, including the circumstances under Art. 20, para. 1, item 1, item 2 and item 3 of the Civil Code, it was the burden of the cassation appellant to provide evidence that a notice was not only sent to the debtor, but also received by him, that is, it was served to him with the required under Art. 20, para. 1, item 1-3 contents.

The decision of the first instance court is correct, justified and should be upheld.

In view of the outcome of the case, the claim of the cassation appellant CPLD for the award of costs for the cassation proceedings, which the court determines at BGN 100 legal fees. The costs should be paid by the tax collector "S.G. Group" EAD.

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

Decision No. 2783 of 26.04.2021, issued under adm., REMAINS IN FORCE. case No. 11861/2020 according to the inventory of the Administrative Court Sofia - city.

ORDERS "S.G. Group" EAD to pay to the Commission for the Protection of Personal Data 100 (one hundred) BGN costs before the present instance.

The decision is not subject to appeal

True to the original,

CHAIRMAN:

/p/ Diana Dobрева

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Maria Nikolova