

In case 1413 / 2022

ANSWER

No. 7730

Sofia, 19.08.2022

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the fourth of May two thousand and twenty-two, composed of:

CHAIRPERSON: VIOLETA GLAVINOVA

MEMBERS: GALINA KARAGYOZOVA

MARIA NIKOLOVA

with secretary Nikolina Avramova and with the participation

of the prosecutor Todor Merdzhanov listened to what was reported

by the chairman Violeta Glavinova

in administrative case No. 1413 / 2022

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

It was formed on a cassation appeal of T. Todorov against decision No. 6533 of 09.11.2021 issued under adm. case No.

7262/2021 on the list of the Administrative Court of Sofia-city (ASSG), which rejected his appeal against decision No.

PPN-01-467/2020 of 02.07.2021 of the Commission for the Protection of Personal Data (CPPD) , by which T. Todorov is

ordered within one month to change the scope of the filming of cameras No. 1, No. 2, No. 4 and No. 5, located in his property

with the address Sofia, [residential building], [street] in such a way that they do not film public areas and other people's

properties. Based on the reasons given for the incorrectness of the decision, its cancellation is requested.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data, through chief legal adviser M.

Asiova, maintains that it is unfounded, the appealed decision is correct and wants to be left in force. He claims an award of

legal fees for the cassation instance.

The defendant - R. Petrov contests the cassation appeal and asks for the decision to be confirmed.

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

groundless.

The Supreme Administrative Court, 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 that is unfavorable to it, as well as within the preclusion period under Art. 211 of the APC, which is why it is procedurally admissible.

Considered on its merits, it is unfounded.

The Administrative Court of Sofia-city was appealed by T. Todorov against decision No. PPN-01-467/2020 of 02.07.2021 of the CPLD. The same was decreed in proceedings pursuant to Art. 38 of the Personal Data Protection Act (PPA), as the same was initiated on the occasion of a complaint by R. Petrov alleging that his neighbor T. Todorov had installed video cameras in his property with the address Sofia, [district], [street ], with which he is observed, recorded and filmed, since the scope of the cameras includes his property with the address Sofia, [residential building], [street], without requiring the consent and/or permission of Petrov or that of his family.

The reasons for the court decision set out the factual situation regarding the administrative proceedings that took place and specifically regarding the inspection carried out, for which a statement of findings No. installed five stationary video cameras with the following perimeters for video surveillance: camera No. 1: Captures part of Todorov's yard, the fence, the entrance portal of the house, part of the street in front of the house, part of the fence dividing his yard from Petrov's yard; camera #2: Captures the courtyard portal and a small part of the fence separating the two neighboring properties, a small part of the street in front of the house; camera No. 3: Films the yard space and a narrow part of Petrov's property; camera No. 4: Captures part of the yard space, part of the railing on the second floor and part of the street in front of the house; camera no. 5: Films part of the yard space, the fence separating the two neighboring properties, as well as a narrow part of Petrov's yard. It is reflected in the statement of findings that Todorov gave information that he personally installed the cameras in his capacity as the owner of the property, and it is also reflected in the same that an information sign was installed next to the front door of the property indicating the implementation of video surveillance.

From a legal point of view, the court accepted that the act was issued by a competent authority, in the form provided by the law, in compliance with the administrative procedure rules provided for in the law and in accordance with the substantive law and its purpose.

The decision is correct.

The court of first instance 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 and in accordance with the substantive law and its purpose.

The reasons of the administrative court are fully shared, that in the trial case the processing of personal data carried out by T. Todorov, by filming and recording with an installed video surveillance system, is admissible only when filming his own property, but not that covering parts of other properties, including public places (street) outside the trial property.

The court's conclusion is correct, that after it was categorically established in the case that some of the installed cameras filmed a part of the street in front of Todorov's property, and one camera filmed a small part of Petrov's property, the same leads to a violation of the principle under Art. 5, §1, b. "b" of Regulation (EU) 2016/679, namely personal data should be appropriate, related to and limited to what is necessary in relation to the purposes for which they are processed. The processing of personal data outside the scope of Todorov's property is beyond the processing necessary for the purpose.

The conclusion of the court of first instance, based also on a decision of the CJEU dated 11.12.2014 in case C-212/13, with the subject of a preliminary inquiry, made on the basis of Article 267 of the TFEU by the Nejvyšší správní soud /Czech Republic/, with act of March 20, 2013, received at the Court on April 19, 2013, in the context of the proceedings in the case of Frantisek Rynes v. Úřad pro ochranu osobních údajů /Personal Data Protection Office/, relating to the interpretation of Article 3, paragraph 2 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons in the processing of personal data and on the free movement of such data / repealed by Article 94 of Regulation (EU) 2016 of the EP and of the Council of 27.04.2016 on the protection of the FL in connection with the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46/EC / on the admissibility of video surveillance only through the installed cameras recording the property of T. Todorov, but not one covering other parts of neighboring properties, including public places outside his property /according to the argument of item 13, item 14 and item 35 of the cited decision/.

Given the foregoing, the appealed decision is correct and should be upheld.

In view of the outcome of the dispute and the request made by the legal representative of the defendant on cassation, T.

Todorov will be ordered to pay the CPLD a legal consultancy fee in the amount of BGN 100.

For the stated reasons and on the basis of Art. 221, para. 2, proposition first by the APC, the Supreme Administrative Court,  
three-judge panel of the fifth department

RESOLVE:

REMAINS IN FORCE decision No. 6533 of 09.11.2021 by adm. case No. 7262/2021 of the Administrative Court of Sofia-city.

CONDEMNED T. Todorov from the city of Sofia to pay the Commission for the Protection of Personal Data costs in the case in  
the amount of 100 (one hundred) BGN legal fees.

The decision is final.

True to the original, CHAIRMAN: /p/ VIOLETA GLAVINOVA

secretary: MEMBERS: /p/ GALINA KARAGYOZOVA

/p/ MARIA NIKOLOVA