

In case 8400 / 2020

ANSWER

No. 3531

Sofia, 17.03.2021

IN THE NAME OF THE PEOPLE

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

composed of:

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

DIANA DOBREVA

VIOLETA GLAVINOVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Marinela Toteva

listened to what was reported

by the judge

DIANA DOBREVA

by adm. case no

8400/2020

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

Three cassation appeals were filed, the first filed by D. Petrov, the second, filed by ChSI M. Miladinov, the third, filed by the Commission for the Protection of Personal Data, and all three against decision No. 8021 of 16.12.2019, issued by adm. . case No. 3254/2019 according to the inventory of the Administrative Court Sofia - city (ACSG).

In the cassation appeal of D. Petrov, arguments were developed for the incorrectness of the judicial act in the part in which the decision No. ППН-01-447/12.06.2018 of the Commission for the Protection of Personal Data was annulled, due to the fact that it was issued with incorrect application of the material law and admitted substantial violations of the procedural rules - grounds of cassation for its cancellation under Art. 209, item 3 of the APC.

The complaints in the cassation appeal of M. Miladinov are about the incorrectness of the appealed decision in its part, which rejects his appeal as having been decided in violation of the substantive law - cassation grounds for annulment under Art. 209, item 3 of the APC.

In the cassation appeal of the Commission for the Protection of Personal Data, arguments were developed for the incorrectness of the judicial act in the part in which the decision of the commission was annulled, due to the fact that it was issued with incorrect application of the substantive law and significant violations of the rules of judicial procedure were committed - cassation grounds for the annulment of it under Art. 209, item 3 of the APC.

The defendant - PSI M. Miladinov, through his legal representative, contests the cassation appeals of D. Petrov and the Commission for the Protection of Personal Data and asks that they be rejected as groundless. Claims costs.

The defendant - D. Petrov, contested the cassation appeals of M. Miladinov and the Commission for the Protection of Personal Data at a court hearing. He does not claim costs for the cassation proceedings.

The defendant - Commission for the Protection of Personal Data does not dispute the complaint of D. Petrov and disputes the complaint of M. Miladinov. Claims costs.

The representative of the Supreme Administrative Prosecutor's Office gives a reasoned conclusion on the unfoundedness of the cassation appeal of M. Miladinov and on the merits of the cassation appeals of the Commission for the Protection of Personal Data and D. Petrov.

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 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 of the APC, which is why they are procedurally admissible.

Considered in substance, the complaints of the Commission for the Protection of Personal Data and D. Petrov are well-founded, and the complaint of M. Miladinov - unfounded.

With the appealed decision, the ASSG has canceled Decision No. PPN-01-447/12.06.2018 of the Commission for the Protection of Personal Data, in its part, which declared the complaint reg. No. PPN-01-447/12.06.2018 as well-founded year, filed by D. Petrov against CSI M. Miladinov, for the fact that when processing Petrov's data on 08.02.2018, he violated the principle of legality under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of Regulation /EU/ 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 /EC (GDPR); and on the basis of Art. 58, § 2, b. "b" of the GDPR, an official warning was issued to the administrator of the ČSI M. Miladinov for the violation committed under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" from GDPR.

With the appealed decision, the appeal by M. Petrov Miladinov, in his capacity as a private bailiff, entered in the register of KChSI under No. 786, against Decision No. PPN-01-447/12.06.2018 of the Commission for the Protection of Personal Data was rejected , in its part, with which the complaint reg. No. PPN-01-447/12.06.2018, filed by D. Petrov against ChSI M. Miladinov, was declared to be well-founded, for the fact that during the processing of Petrov's data on 30.05 .2018 violated the principle of reducing data to a minimum under Art. 2, para. 2, item 3 of the Labor Code/ Art. 5, § 1, b. "c" of GDPR; and on the basis of Art. 58, § 2, b. "d" of the GDPR for a violation under Art. 2, para. 2, item 3 of the Labor Code/ Art. 5, § 1, b. "c" of the GDPR has ordered the personal data administrator ChSI M. Miladinov to comply with the personal data processing operations when serving papers/summons/messages in accordance with Art. 47 of the Civil Code to debtors in enforcement cases with the provisions of the regulation, processing such data that are adequate, relevant and limited to what is necessary in view of the purpose of their processing. In the part of the court decision on costs, the Commission for the Protection of Personal Data was ordered to pay to M. Miladinov, court costs in the amount of 250 (two hundred and fifty) BGN, and M. Miladinov was ordered to pay the Commission for the Protection of Personal Data court costs in the amount of 100 (one hundred) leva and for D. Petrov court costs in the amount of 250 (two hundred and fifty) leva.

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 partly in accordance with the substantive law.

For the alleged violation committed on 30.05.2018, the court has accepted that the same is confirmed by the collected

evidence in the case. According to the provision of Art. 47, para. 1 and, para. 2 of the Code of Civil Procedure, under the conditions specified in it, the servicer sticks a notice on the door stating that the papers have been left at the office of the relevant authority, in this case - at the PSI. I.e. insofar as it was not found at the address, the subpoena had reason to stick the notification, but not the message with data on the social security number and the amount of obligations, which are missing from the notification. In view of this, the court correctly accepted that the contested decision of the Commission for the Protection of Personal Data in this part of it is correct, therefore it correctly rejected the appeal filed in this part of it.

The cassation instance finds the decision of the Administrative Court of Sofia - city in its part, which accepts that the alleged offense committed on 02/08/2018 is not found to be incorrect in the case.

In order to rule it, the court accepted that according to Art. 46, para. 1 and para. 2 of the Civil Code, when the message cannot be delivered personally to the addressee, it is delivered to another person who agrees to receive it; as this other person can be any adult of his household or who lives at the address, or is a worker, employee or employer of the addressee. I.e. only in her capacity as a neighbor, the subpoena had no reason to hand over the documents for D. Petrov to the neighbor Dudinska. In this case, however, it was established that Petrov gave his consent over the phone to receive the subpoena for voluntary performance; which circumstance Petrov does not deny. Even if this consent is not in the form required by the Code of Civil Procedure in order to assume that there is a regular service in the enforcement proceedings of a person under Art. 39, para. 1 of the Civil Code - judicial addressee, the same should be discussed as a statement of consent under Art. 4, para. 1, item 2 of the Labor Code. In the sense of § 1, item 13 of the DR of the GDPR, "consent of the natural person" is any freely expressed, specific and informed statement of will by which the natural person to whom the personal data refers unequivocally agrees to their processing; in this case to be provided to a third party. The law does not limit the proof of consent to only written evidence. In this case, the burden of proof of this circumstance is on the PSI, as from the testimony of the witnesses Dudinska and the subpoena Milanov, who were questioned in the case, it is established that Petrov gave his consent to receive the subpoena for voluntary execution, and accordingly also for the personal data contained in it. which are identical to those on the execution sheets delivered at the same time. In view of the above, the court accepts that D. Petrov has given his consent to the provision of his personal data by the PSI to his neighbor Dudinska.

This conclusion of the court is incorrect and is not supported by the evidence in the case. Indeed, the case established the fact that before the papers containing personal data were handed over to the neighbor Dudinska, Petrov was informed by her that

she would be served with a summons. In Art. 57 of the Civil Code describes the details of the subpoena. They do not contain any that can be defined as personal data. In her testimony, which Dudinska gave before the court (p. 108), she stated that "the person who brought it told me that he was carrying some documents, he did not tell me where he came from. I did not read the contents to /Petrov/ on the phone, he told me if it was a subpoena to receive it". Petrov found out about the contents of the received documents after handing them over to the neighbor and clearly expressed his disagreement with the disclosure of his personal data. Therefore, in this case, there is no freely expressed, specific and informed declaration of will, with which the natural person to whom the personal data refers, unequivocally consents to their processing. This consent should be an unequivocal indication of the will of the data subject by means of a statement or a clear affirmative action on his part after the processing of the data, which in the present case is lacking. Petrov's declaration of will, made in front of the neighbor and the summoner, was not specific and informed, which is why the conclusion made in the court decision cannot be accepted, that the violation alleged to have been committed on 02/08/2018 by the PSI M. Miladinov is not established. Therefore, by reaching a conclusion about the illegality of the administrative act in this part of it and on these grounds upholding the appeal, the court of first instance issued a decision that is not in accordance with the law and should be annulled as incorrect.

In accordance with what has been stated, the current court panel accepts that the decision of the Administrative Court of Sofia - City, in its part, rejecting the appeal by M. Miladinov, in his capacity as a private bailiff, entered in the register of the State Security Agency under No. 786, against Decision No. PPN -01-447/12.06.2018 of the Commission for the Protection of Personal Data, in its part, which declared a well-founded complaint Reg. No. PPN-01-447/12.06.2018, filed by D. Petrov against PSI M. Miladinov, for the fact that, when processing Petrov's data on 30.05.2018, he violated the principle of reducing data to a minimum under Art. 2, para. 2, item 3 of the Labor Code/ Art. 5, § 1, b. "c" of GDPR; and on the basis of Art. 58, § 2, b. "d" of the GDPR for a violation under Art. 2, para. 2, item 3 of the Labor Code/ Art. 5, § 1, b. "c" of the GDPR has ordered the personal data administrator ChSI M. Miladinov to comply with the personal data processing operations when serving papers/summons/messages in accordance with Art. 47 of the Civil Code to debtors in enforcement cases with the provisions of the regulation, processing such data that are adequate, relevant and limited to what is necessary in view of the purpose of their processing, is valid, permissible and correct, and should be confirmed.

In the part of the court decision that annulled Decision No. PPN-01-447/12.06.2018 of the Commission for the Protection of Personal Data, in the part of it that declared a well-founded complaint Reg. No. PPN-01-447 /12.06.2018, filed by D. Petrov

against ChSI M. Miladinov, for having violated the principle of legality under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of Regulation /EU/ 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 /EC (GDPR); and on the basis of Art. 58, § 2, b. "b. " from the GDPR, an official warning was sent to the administrator of the ČSI M. Miladinov for the violation committed under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of the GDPR, the court decision is incorrect and should be annulled, and Miladinov's appeal should be rejected.

In view of the outcome of the case, the claim of the cassation appellant, the Commission for the Protection of Personal Data, for the award of costs for the cassation proceedings, proven in the amount of BGN 170 (one hundred and seventy BGN), representing BGN 100 legal fees and BGN 70 paid state tax. The costs should be paid by the tax collector of the Tax Office M. Miladinov.

In the part of the court decision that annulled Decision No. PPN-01-447/12.06.2018 of the Commission for the Protection of Personal Data, in the part of it that declared the appeal Reg. No. PPN-01-447 /12.06.2018, filed by D. Petrov against CSI M. Miladinov, for the fact that, when processing Petrov's data on 02.08.2018, he violated the principle of legality under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of Regulation /EU/ 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 /EC (GDPR); and on the basis of Art. 58, § 2, b. "b. " from the GDPR, an official warning was sent to the administrator of the ČSI M. Miladinov for the violation committed under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of the GDPR, the court decision is incorrect and should be annulled, and Miladinov's appeal should be rejected.

In view of the outcome of the case, the claim of the cassation appellant, the Commission for the Protection of Personal Data, for the award of costs for the cassation proceedings, proven in the amount of BGN 170 (one hundred and seventy BGN), representing BGN 100 legal fees and BGN 70 paid state tax. The costs should be paid by the tax collector of the Tax Office M. Miladinov.

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

AVOIDS decision No. 8021 of 16.12.2019, issued under adm. case No. 3254/2019 according to the inventory of the

Administrative Court of Sofia - city, in the part by which Decision No.PPN-01-447/12.06.2018 of the Commission for the Protection of Personal Data was revoked, in the part by which was announced as a well-founded complaint reg. No. PPN-01-447/12.06.2018, filed by D. Petrov against ChSI M. Miladinov, for the fact that, when processing Petrov's data on 08.02.2018, he violated the principle of the legality under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of Regulation /EU/ 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 /EC (GDPR); and on the basis of Art. 58, § 2, b. "b. " from the GDPR, an official warning was sent to the administrator of the ČSI M. Miladinov for the violation committed under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of the GDPR and the Personal Data Protection Commission was sentenced to pay M. Miladinov court costs in the amount of BGN 250 (two hundred and fifty) and instead ruled:

REJECTS the appeal of the PSI M. Miladinov against Decision No. PPN-01-447/12.06.2018 of the Commission for the Protection of Personal Data, in the part of it which declares a well-founded appeal Reg. No. PPN-01-447/12.06 .2018, filed by D. Petrov against ChSI M. Miladinov, for the fact that, when processing Petrov's data on 02.08.2018, he violated the principle of legality under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" of Regulation /EU/ 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 /EC (GDPR); and on the basis of Art. 58, § 2, b. "b. " from the GDPR, an official warning was sent to the administrator of the ČSI M. Miladinov for the violation committed under Art. 2, para. 2, item 1 of the Labor Code/ Art. 5, § 1, b. "a" from GDPR.

REMAINS IN FORCE decision No. 8021 of 16.12.2019, issued under adm. case No. 3254/2019 according to the inventory of the Administrative Court Sofia - city in its remaining appealed part.

CONDEMNED M. Miladinov to pay to the Commission for the Protection of Personal Data BGN 170 (one hundred and seventy BGN) costs before the present instance.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Diana Dobrev

/p/ Violeta Glavinova