In case 11405 / 2020

ANSWER

No. 1962

Sofia, 16.02.2021

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on February 1st,

composed of:

CHAIRMAN:

GALINA KARAGYOZOVA

MEMBERS:

JULIA KOVACHEVA

MARIA NIKOLOVA

to secretary

Madeleine Dukova

and with participation

to the prosecutor

Lyubka Stamova

listened to what was reported

by the chairman

GALINA KARAGYOZOVA

by adm. case no

11405/2020

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

It was formed on a cassation appeal filed by "Telenor Bulgaria" EAD, through the legal representative A. Deyanov, against decision No. 3804 of 13.07.2020, issued under Adm. case No. 12791/2019 by the Administrative Court of Sofia-city (ASC), Second Department, 58 Chamber, which rejected the company's appeal against decision No. Ж-309/29.07.2019 of the

Commission for the Protection of Personal Data (CPLD).

In the cassation appeal maintained in the s. z. by legal consultant Gizdashka, arguments were developed for the incorrectness of the contested first-instance decision due to an admitted substantial violation of the procedural rules and a violation of the substantive law - cassation ground under Art. 209, item 3 APC. It is claimed that the court incorrectly accepted the applicability of the norms of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of natural persons in connection with the processing of personal data and the free movement of such data (Regulation, General Regulation for the Protection of Personal Data, GDPR). The court's conclusion that it is a continuing violation is disputed, it is claimed that the absolute statute of limitations has expired for the same, respectively for the incorrectness of the decision, which rejected the appeal against the decision of the CPLD. It is requested that it be annulled and that instead of it, a decision on the merits be issued, which canceled the decision of the CPLD, which imposed a property sanction on the company in the amount of BGN 37,000. No expenses are claimed.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data, through its legal representative D. Angelov, in a written opinion disputes the same as unfounded and asks that it be rejected, and that the disputed court decision be left in force. If the cassation appeal is upheld, he objects to the excessiveness of the costs for attorney's fees, if such are claimed. No claim for an award of costs has been made.

The defendant in the cassation appeal - N. Slavcheva does not express an opinion.

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

The Supreme Administrative Court (SAC), a composition of the fifth department, after assessing the facts of the case and the opinions of the parties and after conducting an official inspection in accordance with Art. 218, para. 2 of the APC accepts the following as established:

The cassation appeal was filed by an actively legitimized party, within the period under Art. 211, para. 1 APC, against a contestable judicial act, which is unfavorable to her, which is why it is procedurally admissible.

Considered in substance, it is unfounded, for the following reasons:

With the appealed decision, the ASSG rejected the challenge of the current assessor against decision No. Ж-309/29.07.2019 of the CPLD, with which, on the basis of 38, para. 3 of the Personal Data Protection Act (PDPA) in conjunction with Art. 83,

paragraph 5, b. "a", in relation to Art. 58, paragraph 2, b. "and" of the Regulation, N. Slavcheva's complaint was declared well-founded and Telenor Bulgaria EAD was imposed, in its capacity as a personal data administrator, an administrative penalty - a property sanction in the amount of BGN 37,000 for processing N.'s personal data. Slavcheva in violation of Art. 4, para. 1 of the Labor Code, in the applicable version, as well as in violation of Art. 6, paragraph 1 of the Regulation.

The court has discussed the evidence relevant to the dispute gathered in the administrative proceedings and has correctly established the facts of the case, which are not currently in dispute. The court's conclusions regarding their legal significance are contested.

It was established that N. Slavcheva appealed to the CPLD, as in her complaint filed on 13.07.2017, she claimed that on 31.01.2017 she terminated her contract with the mobile operator, but despite that she received on 11.07. 2017 extract from an invoice for payment of the amount of BGN 1594.75. During a conversation with the operator, she found out that her contract was not terminated, but was re-signed on 06.02.2017, and a mobile device was also taken on her behalf, accordingly, the fees for the month of February were not paid.

CPLD has requested an opinion from the respondent operator. On 09/08/2017, he submitted an opinion stating that Slavcheva is a subscriber of mobile services, and three additional agreements and two contracts for the lease of devices, with a two-year term for services and for payment. In the course of the proceedings before the CPLD, a report was presented by the operator, from which it is established that the defendant company stopped collecting the amount owed on 01.04.2019, within the proceedings before the CPLD, after receiving the conclusion of the required handwriting expertise. The CPLD appointed a handwriting expert, but it was unable to answer the questions, which is why the administrative body requested materials from the pre-trial proceedings No. 215/2017 established in the case according to the inventory of RP Kozloduy, attached according to Nokhd No. 39/2018 according to the inventory of RS Kozloduy, including a protocol for a handwriting examination. From the expert opinion, it is established that the signatures on the concluded additional agreements and the lease contract dated 06.02.1017 in the columns "consumer" and "lessee", respectively, were not signed by Slavcheva.

On the basis of the findings, the court reasonedly accepted that the decision of the CPLD is a lawful administrative act - issued by a competent authority in fulfillment of its legal powers, in the prescribed written form, without significant violations of the administrative production rules, subject to compliance with the substantive legal provisions . He accepted that the CPLD correctly considered that there was illegal processing - collection, use and storage of N. Slavcheva's personal data, since she

did not conclude the contracts for the provision of electronic services, as well as for leasing, accordingly it was not present none of the grounds for admissibility of the processing under Art. 4, para. 1 of the Labor Code (repealed, SG No. 17/2019). There is no relationship between her and the company - bond or otherwise, she did not consent to the processing of her personal data. The court indicated that the unlawful processing of the data began on 06.02.2017, the complaint was filed on 13.07.2017, and the decision of the CPLD was issued on 29.07.2019. As of the first two moments, the ZZLD was active, as amended by SG No. 81/14.10.2016, respectively, the CPLD correctly qualified the violation as such under Art. 4, para. 1 of the WPLD, and at the time of the decision, the version of the WPLD from SG No. 17 of 26.02.2019 and the correct legal qualification is according to Art. 6, § 1 of the Regulation. The court indicated that at the moment when the Regulation was applied - 25.05.2018, the factual circumstances constituting the executive act of the procedural violation continued to exist, and a basic principle in law is that the assessment of proportionality is made in accordance with those in force at the moment of committing the violation of material legal norms. The court also accepted that the norm of Art. 38, para. 3 of the Labor Code, in the version at the time of the administrative act's enactment, enables the CPLD to apply the measures under Art. 58, paragraph 2, b. "a" to "h" and "j" of the Regulation or under Art. 80, para. 1, items 3, 4 and 5 and in addition to these measures or instead of them to impose an administrative penalty in accordance with Art. 83 of the Regulation, as well as under chapter nine. CPLD correctly imposed on "Telenor Bulgaria" EAD, in its capacity as a personal data controller, an administrative penalty - a property sanction in the amount of BGN 37,000, after having discussed in detail all the elements under Art. 83, § 2 of the Regulation. In accordance with the law, N. Slavcheva's complaint was declared well-founded and the imposed administrative penalty was determined correctly. The type and amount of the pecuniary sanction, which is consistent with the severity of the violation and the purpose of the law, has been determined in a lawful and justified manner. In this regard, the court has presented detailed reasons regarding the type and amount of the imposed sanction. For these reasons, he considered the complaint unfounded and, after discussing all the objections in it, rejected it.

The judgment thus rendered is valid, admissible and correct.

The court of first instance correctly referred to the factual situation established in the administrative proceedings and described in the disputed decision of the CPLD, which was not refuted during the court proceedings. The applicant company has not submitted evidence to refute the factual findings of the administrative body. The unlawful processing of Slavcheva's personal data has been undisputedly established - in the additional agreements for the mobile service, the lease agreement, as well as

in the invoices and documents for the collection of receivables, the name, social security number and address of the complainant appear, which were processed without her consent. The above has been accepted by the administrative body as a violation of the LLDP and the Regulation, expressed in actions to collect, use and store Slavcheva's personal data, without her consent to processing, respectively in the absence of the grounds under Art. 4, para. 1 of the GDPR for the admissibility of the processing, and these conclusions are correctly shared and explained in detail by the deciding court.

The processing is unlawful. The assessee is a personal data administrator and since it has been indisputably proven by the factual side an action on personal data processing, in the sense of the legal definition of paragraph 1, item 1 of the Additional provisions of the GDPR, which was found to have been carried out without consent of the natural person and in the absence of the grounds under Art. 4, para. 1 of the Labor Code (repealed), the same was correctly accepted as a violation, accordingly it was correctly sanctioned by imposing an administrative penalty - a property penalty.

The objection in the cassation appeal that the court violated the substantive law by accepting that the Regulation is applicable to the present case is groundless. The cassation appeal states that the violation was committed before 25.05.2018, i.e. the Regulation is not applicable. The objection is also related to the claim that the court "added" to the administrative act by accepting that the committed violation was ongoing - it started when the Labor Law came into force, and was completed after 25.05.2018.

The objection is not supported by the data in the case. The administrative body, in its reasons for the description of the executive act, has explicitly indicated that the same is expressed through actions on the use of personal data, for the continuation of the contractual relationship with the applicant and for the purchase of a mobile device, as well as through subsequent actions on the accrual of liabilities and the preparation of invoices. Therefore, the administrative body has accepted that the violation was also carried out through the specified actions to collect the obligations, in which the personal data were also processed, and since the last actions were found to have been suspended only on 01.04.2019, the administrative body has accepted continuation of the offense until that date. CPLD has accepted as the final moment of the time period of the violation a date after 25.05.2018, from which time the Regulation is a valid law in the Republic of Bulgaria, as well as in the other EU member states, according to Art. 99, item 2 of the same. In addition, the administrative body has discussed this final moment of the violation - 01.04.2019 and in the context of discussing the elements under Art. 83, § 2 of the Regulation, as in relation to the circumstances under b. "c" has indicated that in the course of the proceedings a sample from

the mobile operator's electronic system was presented, which testifies that the latter has stopped collecting any claims under the contracts, after receiving a copy of the handwriting examination performed - on 04/01/2019. , i.e. once again the administrative body outlined the period of the violation, assuming, justified in view of the data in the case, that the same was suspended after 25.05.2018. As a result, the applicability of the norms of the Regulation was correctly accepted. In accordance with the stated circumstances, the court did not "endorse" the administrative act. In addition, in its decision, the court did not introduce new factual findings in order to assume that it added and motivated the administrative act inadmissibly. The violation continued after 25.05.2018, accordingly the norms of the Regulation are also applicable, as was correctly accepted by the deciding court. The same has correctly taken into account the fact that at the time of the decision of the CPLD, the version of the CPLD from SG No. 17 of 26.02.2019, as the norm of Art. 38, para. 3 of the Labor Code allows the administrative body, under conditions of operational autonomy, to choose and apply the measures under Art. 58, paragraph 2, b. "a" to "h" and "j" of the Regulation or those under Art. 80, para. 1, items 3, 4 and 5 and in addition to these measures or instead of them to impose an administrative penalty in accordance with Art. 83 of the Regulation, as well as under chapter nine. In fulfillment of these powers, the CPLD imposed an administrative penalty - a property sanction.

The objection in the cassation appeal that the company acted in good faith from 06.02.2017 - the date of drawing up the additional agreements and lease contract until the moment it learned that they were not signed by Slavcheva - the moment cannot be accepted either. of receiving the handwriting expertise during the proceedings through the CPLD. The objection is groundless both in view of the facts of the case and in view of the normative regulation. The complainant terminated her contract with the company on 31.01.2017, i.e. at the time of signing the additional agreements and the lease contract, the company owed a check, according to its own rules for protecting the personal data of customers, who found expression so called Corporate policies, and in particular in the Instruction for working with personal data of customers, that it does not have a contract, accordingly, no additional agreement can be signed. Rules for the presence of the respective holder when concluding any contracts or changing their terms, as well as control rules in accordance with the procedures of "Telenor Bulgaria" EAD, are explicitly listed. Such control was not carried out, which is why personal data was illegally processed. There is no bona fide processing, as the grounds under Art. 180 of the Civil Code, as objected in the cassation appeal, since the private documents were not signed by the person.

The objection that the very proceedings before the CPLD and before the court makes the processing admissible cannot be

accepted either. The processing of the personal data of N. Slavcheva, which is considered to constitute a violation, is not related to the administrative and judicial proceedings, respectively, all arguments concerning the claim of good faith processing in connection with the establishment, exercise and defense of legal claims are irrelevant .

The conclusions of the administrative body, respectively of the court, that there is a violation of the LLDP and the Regulation are correct and the complaint of the natural person is correctly declared to be well-founded. The objection in the cassation appeal that the court of first instance incorrectly applied the substantive law is groundless.

Undoubtedly, it is true what was stated in the cassation appeal, that the Regulation is an effective law in the Republic of Bulgaria, as of 25.05.2018, and it lacks a norm for giving retroactive effect to its substantive legal norms, respectively, the same is applicable to those legal facts , which occurred after its entry into force. The same is applicable, however, in cases where these facts continue to manifest in reality even after its entry into force. Such is the current case, in which it was established that the violation continued until 01.04.2019, i.e. long after the entry into force of the Regulation. Only after 01.04.2019 was the processing of personal data terminated, and until that moment the same were unlawfully processed, through storage and use, without the consent of the person and without the presence of conditions that make the processing permissible. Given these data, both the administrative body and the court of first instance correctly accepted that the norms of the Regulation are applicable. The executive act that led to the unlawful processing of Slavcheva's personal data began on 06.02.2017, when the protection of the rights of natural persons processing of their personal data was regulated by the Federal Data Protection Act, but it continued after the date of 25.05.2018, which is why the administrative body and the adjudicating court correctly considered and applied the substantive legal provisions in force at the time of the violation, and the same was qualified as such and under the LLDP, in the applicable version, and under the Regulation. In this sense, the judgment of the administrative authority and the court is also correct, and in relation to the legal basis for imposing the corresponding administrative penalty. In accordance with the law applicable to the case, in the circumstantial part of the decision of the CPLD, detailed considerations are presented in relation to the type and size of the specific sanction measure - a property sanction. The administrative act, as issued under the conditions of operational autonomy, contains specific and clear reasons for the choice of the most effective, expedient and proportionate corrective measure. The amount of the pecuniary sanction - BGN 37,000 is justified, in determining which the relevant aggravating circumstances clarified in the case were taken into account, including the presence of sanctions previously imposed on the administrator for similar violations, the latter in the amount of

BGN 21,000. For these reasons, having accepted that the decision of the CPLD and in its sanctioning part was issued in accordance with the law and rejected the appeal, the deciding court issued a lawful judicial act, with a correct interpretation and application of the substantive legal provisions. The chosen measure is appropriate and corresponds to the sanctioning, disciplinary and warning effect envisaged by its imposition, it does not exceed what is necessary to achieve these goals, i.e. the goal of the law to ensure effective protection during processing and storage of personal data is achieved data, and the same is not violated.

The objection that the absolute statute of limitations has expired under Art. 81, para. 3 of the Criminal Code (NC), in conjunction with Art. 34, para. 1 of the Law on Administrative Violations and Penalties (ZANN), subject to interpretation and TR No. 1 of 27.02.2015 pursuant to No. 1/2014 of the Supreme Court and Supreme Court. The terms under Art. 34, para. 1 of the ZANN, upon expiry of which no administrative criminal proceedings are initiated, are not applicable in the present case, due to the presence of special terms for initiating proceedings before the CPLD, referred to in the special law - art. 38 of the Labor Code, derogating from the general text of the ZANN. In this case, the text of § 44, para. 1 and 2 of the PZR of the ZID of the LLLD, SG No. 17 of 26.02.2019, according to which the proceedings for violations of the law that were initiated until May 25, 2018 and were not completed until the entry into force of this law (ZID of LLLD) are completed according to the previous order, (para. 1), and according to para. 2 for violations of the law and the Regulation committed before the entry into force of this law, the deadline for referral to the commission under Art. 38 is one year from the discovery of the violation, but no later than 5 years from its commission, accordingly, one cannot speak of an expired absolute statute of limitations.

The appeal in cassation is unfounded, the indicated grounds for annulment under Art. 209, item 3 of the APC, accordingly, the court decision as correct should be left in force.

The defendants in cassation do not claim costs.

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

RESOLVE:

decision No. 3804 of 13.07.2020, issued under adm., REMAINS IN FORCE. case No. 12791/2019 from the Administrative Court of Sofia-city, Second Department, 58 Chamber.

The decision is not subject to appeal.

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

It was formed on a cassation appeal filed by "Telenor Bulgaria" EAD, through the legal representative A. Deyanov, against decision No. 3804 of 13.07.2020, issued under Adm. case No. 12791/2019 by the Administrative Court of Sofia-city (ASC), Second Department, 58 Chamber, which rejected the company's appeal against decision No. Ж-309/29.07.2019 of the Commission for the Protection of Personal Data (CPLD).

In the cassation appeal maintained in the s. z. by legal consultant Gizdashka, arguments were developed for the incorrectness of the contested first-instance decision due to an admitted substantial violation of the procedural rules and a violation of the substantive law - cassation ground under Art. 209, item 3 APC. It is claimed that the court incorrectly accepted the applicability of the norms of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of natural persons in connection with the processing of personal data and the free movement of such data (Regulation, General Regulation for the Protection of Personal Data, GDPR). The court's conclusion that it is a continuing violation is disputed, it is claimed that the absolute statute of limitations has expired for the same, respectively for the incorrectness of the decision, which rejected the appeal against the decision of the CPLD. It is requested that it be annulled and that instead of it, a decision on the merits be issued, which canceled the decision of the CPLD, which imposed a property sanction on the company in the amount of BGN 37,000. No expenses are claimed.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data, through its legal representative D. Angelov, in a written opinion disputes the same as unfounded and asks that it be rejected, and that the disputed court decision be left in force. If the cassation appeal is upheld, he objects to the excessiveness of the costs for attorney's fees, if such are claimed. No claim for an award of costs has been made.

The defendant in the cassation appeal - N. Slavcheva does not express an opinion.

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

The Supreme Administrative Court (SAC), a composition of the fifth department, after assessing the facts of the case and the opinions of the parties and after conducting an official inspection in accordance with Art. 218, para. 2 of the APC accepts the following as established:

The cassation appeal was filed by an actively legitimized party, within the period under Art. 211, para. 1 APC, against a

contestable judicial act, which is unfavorable to her, which is why it is procedurally admissible.

Considered in substance, it is unfounded, for the following reasons:

With the appealed decision, the ASSG rejected the challenge of the current assessor against decision No. Ж-309/29.07.2019 of the CPLD, with which, on the basis of 38, para. 3 of the Personal Data Protection Act (PDPA) in conjunction with Art. 83, paragraph 5, b. "a", in relation to Art. 58, paragraph 2, b. "and" of the Regulation, N. Slavcheva's complaint was declared well-founded and Telenor Bulgaria EAD was imposed, in its capacity as a personal data administrator, an administrative penalty - a property sanction in the amount of BGN 37,000 for processing N.'s personal data. Slavcheva in violation of Art. 4, para. 1 of the Labor Code, in the applicable version, as well as in violation of Art. 6, paragraph 1 of the Regulation.

The court has discussed the evidence relevant to the dispute gathered in the administrative proceedings and has correctly established the facts of the case, which are not currently in dispute. The court's conclusions regarding their legal significance are contested.

It was established that N. Slavcheva appealed to the CPLD, as in her complaint filed on 13.07.2017, she claimed that on 31.01.2017 she terminated her contract with the mobile operator, but despite that she received on 11.07. 2017 extract from an invoice for payment of the amount of BGN 1594.75. During a conversation with the operator, she found out that her contract was not terminated, but was re-signed on 06.02.2017, and a mobile device was also taken on her behalf, accordingly, the fees for the month of February were not paid.

CPLD has requested an opinion from the respondent operator. On 09/08/2017, he submitted an opinion stating that Slavcheva is a subscriber of mobile services, and three additional agreements and two contracts for the lease of devices, with a two-year term for services and for payment. In the course of the proceedings before the CPLD, a report was presented by the operator, from which it is established that the defendant company stopped collecting the amount owed on 01.04.2019, within the proceedings before the CPLD, after receiving the conclusion of the required handwriting expertise. The CPLD appointed a handwriting expert, but it was unable to answer the questions, which is why the administrative body requested materials from the pre-trial proceedings No. 215/2017 established in the case according to the inventory of RP Kozloduy, attached according to Nokhd No. 39/2018 according to the inventory of RS Kozloduy, including a protocol for a handwriting examination. From the expert opinion, it is established that the signatures on the concluded additional agreements and the lease contract dated 06.02.1017 in the columns "consumer" and "lessee", respectively, were not signed by Slavcheva.

On the basis of the findings, the court reasonedly accepted that the decision of the CPLD is a lawful administrative act - issued by a competent authority in fulfillment of its legal powers, in the prescribed written form, without significant violations of the administrative production rules, subject to compliance with the substantive legal provisions . He accepted that the CPLD correctly considered that there was illegal processing - collection, use and storage of N. Slavcheva's personal data, since she did not conclude the contracts for the provision of electronic services, as well as for leasing, accordingly it was not present none of the grounds for admissibility of the processing under Art. 4, para. 1 of the Labor Code (repealed, SG No. 17/2019). There is no relationship between her and the company - bond or otherwise, she did not consent to the processing of her personal data. The court indicated that the unlawful processing of the data began on 06.02.2017, the complaint was filed on 13.07.2017, and the decision of the CPLD was issued on 29.07.2019. As of the first two moments, the ZZLD was active, as amended by SG No. 81/14.10.2016, respectively, the CPLD correctly qualified the violation as such under Art. 4, para. 1 of the WPLD, and at the time of the decision, the version of the WPLD from SG No. 17 of 26.02.2019 and the correct legal qualification is according to Art. 6, § 1 of the Regulation. The court indicated that at the moment when the Regulation was applied - 25.05.2018, the factual circumstances constituting the executive act of the procedural violation continued to exist, and a basic principle in law is that the assessment of proportionality is made in accordance with those in force at the moment of committing the violation of material legal norms. The court also accepted that the norm of Art. 38, para. 3 of the Labor Code, in the version at the time of the administrative act's enactment, enables the CPLD to apply the measures under Art. 58, paragraph 2, b. "a" to "h" and "j" of the Regulation or under Art. 80, para. 1, items 3, 4 and 5 and in addition to these measures or instead of them to impose an administrative penalty in accordance with Art. 83 of the Regulation, as well as under chapter nine. CPLD correctly imposed on "Telenor Bulgaria" EAD, in its capacity as a personal data controller, an administrative penalty - a property sanction in the amount of BGN 37,000, after having discussed in detail all the elements under Art. 83, § 2 of the Regulation. In accordance with the law, N. Slavcheva's complaint was declared well-founded and the imposed administrative penalty was determined correctly. The type and amount of the pecuniary sanction, which is consistent with the severity of the violation and the purpose of the law, has been determined in a lawful and justified manner. In this regard, the court has presented detailed reasons regarding the type and amount of the imposed sanction. For these reasons, he considered the complaint unfounded and, after discussing all the objections in it, rejected it.

The judgment thus rendered is valid, admissible and correct.

The court of first instance correctly referred to the factual situation established in the administrative proceedings and described in the disputed decision of the CPLD, which was not refuted during the court proceedings. The applicant company has not submitted evidence to refute the factual findings of the administrative body. The unlawful processing of Slavcheva's personal data has been undisputedly established - in the additional agreements for the mobile service, the lease agreement, as well as in the invoices and documents for the collection of receivables, the name, social security number and address of the complainant appear, which were processed without her consent. The above has been accepted by the administrative body as a violation of the LLDP and the Regulation, expressed in actions to collect, use and store Slavcheva's personal data, without her consent to processing, respectively in the absence of the grounds under Art. 4, para. 1 of the GDPR for the admissibility of the processing, and these conclusions are correctly shared and explained in detail by the deciding court.

The processing is unlawful. The assessee is a personal data administrator and since it has been indisputably proven by the factual side an action on personal data processing, in the sense of the legal definition of paragraph 1, item 1 of the Additional provisions of the GDPR, which was found to have been carried out without consent of the natural person and in the absence of the grounds under Art. 4, para. 1 of the Labor Code (repealed), the same was correctly accepted as a violation, accordingly it was correctly sanctioned by imposing an administrative penalty - a property penalty.

The objection in the cassation appeal that the court violated the substantive law by accepting that the Regulation is applicable to the present case is groundless. The cassation appeal states that the violation was committed before 25.05.2018, i.e. the Regulation is not applicable. The objection is also related to the claim that the court "added" to the administrative act by accepting that the committed violation was ongoing - it started when the Labor Law came into force, and was completed after 25.05.2018.

The objection is not supported by the data in the case. The administrative body, in its reasons for the description of the executive act, has explicitly indicated that the same is expressed through actions on the use of personal data, for the continuation of the contractual relationship with the applicant and for the purchase of a mobile device, as well as through subsequent actions on the accrual of liabilities and the preparation of invoices. Therefore, the administrative body has accepted that the violation was also carried out through the specified actions to collect the obligations, in which the personal data were also processed, and since the last actions were found to have been suspended only on 01.04.2019, the administrative body has accepted continuation of the offense until that date. CPLD has accepted as the final moment of the

time period of the violation a date after 25.05.2018, from which time the Regulation is a valid law in the Republic of Bulgaria, as well as in the other EU member states, according to Art. 99, item 2 of the same. In addition, the administrative body has discussed this final moment of the violation - 01.04.2019 and in the context of discussing the elements under Art. 83, § 2 of the Regulation, as in relation to the circumstances under b. "c" has indicated that in the course of the proceedings a sample from the mobile operator's electronic system was presented, which testifies that the latter has stopped collecting any claims under the contracts, after receiving a copy of the handwriting examination performed - on 04/01/2019. , i.e. once again the administrative body outlined the period of the violation, assuming, justified in view of the data in the case, that the same was suspended after 25.05.2018. As a result, the applicability of the norms of the Regulation was correctly accepted. In accordance with the stated circumstances, the court did not "endorse" the administrative act. In addition, in its decision, the court did not introduce new factual findings in order to assume that it added and motivated the administrative act inadmissibly. The violation continued after 25.05.2018, accordingly the norms of the Regulation are also applicable, as was correctly accepted by the deciding court. The same has correctly taken into account the fact that at the time of the decision of the CPLD, the version of the CPLD from SG No. 17 of 26.02.2019, as the norm of Art. 38, para. 3 of the Labor Code allows the administrative body, under conditions of operational autonomy, to choose and apply the measures under Art. 58, paragraph 2, b. "a" to "h" and "j" of the Regulation or those under Art. 80, para. 1, items 3, 4 and 5 and in addition to these measures or instead of them to impose an administrative penalty in accordance with Art. 83 of the Regulation, as well as under chapter nine. In fulfillment of these powers, the CPLD imposed an administrative penalty - a property sanction.

The objection in the cassation appeal that the company acted in good faith from 06.02.2017 - the date of drawing up the additional agreements and lease contract until the moment it learned that they were not signed by Slavcheva - the moment cannot be accepted either. of receiving the handwriting expertise during the proceedings through the CPLD. The objection is groundless both in view of the facts of the case and in view of the normative regulation. The complainant terminated her contract with the company on 31.01.2017, i.e. at the time of signing the additional agreements and the lease contract, the company owed a check, according to its own rules for protecting the personal data of customers, who found expression so called Corporate policies, and in particular in the Instruction for working with personal data of customers, that it does not have a contract, accordingly, no additional agreement can be signed. Rules for the presence of the respective holder when concluding any contracts or changing their terms, as well as control rules in accordance with the procedures of "Telenor

Bulgaria" EAD, are explicitly listed. Such control was not carried out, which is why personal data was illegally processed. There is no bona fide processing, as the grounds under Art. 180 of the Civil Code, as objected in the cassation appeal, since the private documents were not signed by the person.

The objection that the very proceedings before the CPLD and before the court makes the processing admissible cannot be accepted either. The processing of the personal data of N. Slavcheva, which is considered to constitute a violation, is not related to the administrative and judicial proceedings, respectively, all arguments concerning the claim of good faith processing in connection with the establishment, exercise and defense of legal claims are irrelevant .

The conclusions of the administrative body, respectively of the court, that there is a violation of the LLDP and the Regulation are correct and the complaint of the natural person is correctly declared to be well-founded. The objection in the cassation appeal that the court of first instance incorrectly applied the substantive law is groundless.

Undoubtedly, it is true what was stated in the cassation appeal, that the Regulation is an effective law in the Republic of Bulgaria, as of 25.05.2018, and it lacks a norm for giving retroactive effect to its substantive legal norms, respectively, the same is applicable to those legal facts , which occurred after its entry into force. The same is applicable, however, in cases where these facts continue to manifest in reality even after its entry into force. Such is the current case, in which it was established that the violation continued until 01.04.2019, i.e. long after the entry into force of the Regulation. Only after 01.04.2019 was the processing of personal data terminated, and until that moment the same were unlawfully processed, through storage and use, without the consent of the person and without the presence of conditions that make the processing permissible. Given these data, both the administrative body and the court of first instance correctly accepted that the norms of the Regulation are applicable. The executive act that led to the unlawful processing of Slavcheva's personal data began on 06.02.2017, when the protection of the rights of natural persons processing of their personal data was regulated by the Federal Data Protection Act, but it continued after the date of 25.05.2018, which is why the administrative body and the adjudicating court correctly considered and applied the substantive legal provisions in force at the time of the violation, and the same was qualified as such and under the LLDP, in the applicable version, and under the Regulation. In this sense, the judgment of the administrative authority and the court is also correct, and in relation to the legal basis for imposing the corresponding administrative penalty. In accordance with the law applicable to the case, in the circumstantial part of the decision of the CPLD, detailed considerations are presented in relation to the type and size of the specific sanction measure - a property sanction.

The administrative act, as issued under the conditions of operational autonomy, contains specific and clear reasons for the choice of the most effective, expedient and proportionate corrective measure. The amount of the pecuniary sanction - BGN 37,000 is justified, in determining which the relevant aggravating circumstances clarified in the case were taken into account, including the presence of sanctions previously imposed on the administrator for similar violations, the latter in the amount of BGN 21,000. For these reasons, having accepted that the decision of the CPLD and in its sanctioning part was issued in accordance with the law and rejected the appeal, the deciding court issued a lawful judicial act, with a correct interpretation and application of the substantive legal provisions. The chosen measure is appropriate and corresponds to the sanctioning, disciplinary and warning effect envisaged by its imposition, it does not exceed what is necessary to achieve these goals, i.e. the goal of the law to ensure effective protection during processing and storage of personal data is achieved data, and the same is not violated.

The objection that the absolute statute of limitations has expired under Art. 81, para. 3 of the Criminal Code (NC), in conjunction with Art. 34, para. 1 of the Law on Administrative Violations and Penalties (ZANN), subject to interpretation and TR No. 1 of 27.02.2015 pursuant to No. 1/2014 of the Supreme Court and Supreme Court. The terms under Art. 34, para. 1 of the ZANN, upon expiry of which no administrative criminal proceedings are initiated, are not applicable in the present case, due to the presence of special terms for initiating proceedings before the CPLD, referred to in the special law - art. 38 of the Labor Code, derogating from the general text of the ZANN. In this case, the text of § 44, para. 1 and 2 of the PZR of the ZID of the LLLD, SG No. 17 of 26.02.2019, according to which the proceedings for violations of the law that were initiated until May 25, 2018 and were not completed until the entry into force of this law (ZID of LLLD) are completed according to the previous order, (para. 1), and according to para. 2 for violations of the law and the Regulation committed before the entry into force of this law, the deadline for referral to the commission under Art. 38 is one year from the discovery of the violation, but no later than 5 years from its commission, accordingly, one cannot speak of an expired absolute statute of limitations.

The appeal in cassation is unfounded, the indicated grounds for annulment under Art. 209, item 3 of the APC, accordingly, the court decision as correct should be left in force.

The defendants in cassation do not claim costs.

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

RESOLVE:

decision No. 3804 of 13.07.2020, issued under adm., REMAINS IN FORCE. case No. 12791/2019 from the Administrative Court of Sofia-city, Second Department, 58 Chamber.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Galina Karagyozova

Secretary:

MEMBERS:

/p/ Yulia Kovacheva

/p/ Maria Nikolova