

In case 3176 / 2022 DECISION No. 7538 Sofia, 01/08/2022 IN THE NAME OF THE PEOPLE The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the eighth of June two thousand and twenty-two, composed of: CHAIRMAN: DIANA DOBREVA MEMBERS : EMANOIL MITEV EMIL DIMITROV with secretary Madeleine Dukova and with the participation of the prosecutor Kamelia Nikolova listened to what was reported by the judge Emanoil Mitev in administrative case No. 3176 / 2022. The proceedings are under Art. 208 et seq. of the APC. It was formed based on the cassation appeal of the Minister of Internal Affairs, submitted through a legal representative. Tabakova, against rejection decision No. 7415/ 09.12.2021 issued under adm. case No. 8387/2021 on the inventory of the Administrative Court of Sofia-city/ASSG/. Requests the annulment of the decision due to material illegality, unreasonableness and, in case of substantial violations of the rules of judicial procedure, annulment of the decision of the Commission for the Protection of Personal Data. The respondent Commission for the Protection of Personal Data/KPLD/, through a legal representative. Gladnikova, contested the cassation appeal as groundless. He claims that the decision is correct and lawful. Claims an award of costs for this instance. Defendant M. Spasov, through Adv. Ferdinandova, also contested the cassation appeal as groundless. Claims, under the conditions of Article 38 of the Law on the Bar /ZA/ - award of attorney's fees. The representative of the Supreme Administrative Prosecutor's Office gives a conclusion that the cassation appeal is groundless. The Supreme Administrative Court, fifth department, taking into account that the cassation appeal was filed within the term under Art. 211, para. 1 APC, on its part, finds the same admissible. Considered in substance, it is unfounded for the following reasons: The subject of judicial review for legality before the court of first instance on the appeal of the Minister of the Interior is Decision PPN-01-722/20g. from 27.07.2021 of the CPLD, by which it was accepted that the complaint of 15.10.2020, filed by M. Spasov against the Ministry of the Interior is well-founded in relation to the Minister of the Interior - personal data administrator according to Art. 29, para. 1 of the Law for the Ministry of Internal Affairs/MIA/- for violation of the principles laid down in Art. 5, §1, b. "a", b. "b" and b. "c" of the General Data Protection Regulation/GDPR/; on the basis of Art. 83, §2, b. "and", in connection with Art. 83, §5, b. "a" of the GDPR, in view of the established unlawful processing of personal data, the Minister of the Interior has been imposed an administrative penalty "property penalty" in the amount of BGN 1000 for this, that, in his capacity as a personal data administrator, he processed the personal data of M. Spasov in violation of the principles laid down in Art. 5, §1, b. "a", b. "b" and b. "c" of GDPR; on the basis of Art. 58, §2, b. "d" of the same regulation, the applicant was issued an order to comply with the internal rules of the Ministry of the Interior - regarding the organization and activity of protection of the objects

of the Ministry of the Interior with the requirements of the GDPR and the Personal Data Protection Act/PLD/ - when processing the personal data of natural persons upon their admission to the buildings of the Ministry of the Interior. In order to reject the appeal with decision No. 7415/ 09.12.2021 according to administrative order No. 8387/ 2021 according to the inventory of the ASSG, the court of first instance accepted that the decision of the CPLD was issued by a competent authority, in the form prescribed by law and in accordance with the powers under Art. 38, para. 2 of the Labor Code. CPLD was referred with a complaint by M. Spasov, on which a file was created, an inspection was carried out and an administrative act was issued. On 08/04/2020, around 5:30 p.m., when, in his capacity as a lawyer, Spasov went to a meeting with a detainee at 03 RU-SDVR, he presented his personal and lawyer cards for registration, after which he asked for their return. their immediate return on the grounds that they will be detained until the lawyer leaves the detention facility. Spasov filed a report with the Minister of Internal Affairs. The latter notified Spasov that no violation of official discipline was found on the part of the police officer who temporarily detained the documents. In the case, it was established that the access regime in the buildings of the Ministry of the Interior is strictly regulated by Instruction No. 8121z-1415 of November 20, 2015 for the order and organization for the implementation of site security activities under Art. 14, para. 2. item 4 of the ZMVR. According to the same, the access of outsiders (visitors) to the buildings of the Ministry of the Interior is permitted after obtaining a pass allowing entry and exit from them, and art. 34, item 1 of the instruction stipulates that when visiting the objects of the Ministry of Internal Affairs, citizens present an identity document and announce the purpose of the visit. According to Art. 35 - the employees who carry out the transit regime check the transit documents when entering and leaving the site and pass their bearers after making sure of the regularity of the provided document and enter the omitted persons in the pass regime book. From the provisions of the cited instruction is concluded that after the issuance of a pass, the personal documents of the visitor who provided them should be returned to him without being detained, which is also imperative in view of his legitimization - as a citizen or as a lawyer - a confidant of a detained person, before the investigating police officer. It is also accepted that according to Art. 21 of the same instruction, as far as lawyers are concerned, they are admitted to Ministry of Internal Affairs facilities with a one-time pass, an entry in the pass regime book and with a companion, and the quality of a lawyer is certified by a lawyer's card certified for the year according to a model approved by the Supreme bar council. According to the reasons of the administrative body, the entry of the visitor in the transit regime book after presenting an identity document and announcing the purpose of the visit, resp. the entry of the lawyer - visitor, in a pass-through regime book - after certification as a lawyer with a sample lawyer's

card, falls within the scope of the provisions of art. 6, §1, b. "c" of the GDPR - the processing is necessary to comply with a legal obligation that applies to the administrator and to Art. 6, § 1, 6, "e" of the GDPR - the processing is necessary for the performance of a task of public interest or in the exercise of official powers granted to the administrator. The identity document and lawyer's card of M. Spasov contain his personal data and their holding and storage - after issuing a one-time pass and entering it in the pass regime book, however, constitutes additional processing of the applicant's data, carried out by the Minister of the Interior in a manner incompatible with the purpose of their processing in relation to the established transit regime in the buildings of the Ministry of the Interior. Since Art. 20 and Art. 21 of Instruction No. 8121h-1415 of November 20, 2015 on the order and organization for the implementation of activity on the protection of objects under Art. 14, para. 2, item 4 of the Ministry of Internal Affairs provide a different regime for the passage of citizens and lawyers in the objects of the Ministry of the Interior, it can be concluded that the entry in the book of the passage regime of the personal data contained in Spasov's identity document was not necessary and in this sense, it appears excessive, in view of the obligation to certify the lawyer's quality only with the relevant card. It is accepted that, even if it is accepted that the presentation of an identity document is required and the entry of the personal data contained in it is done, with a view to certifying the identity of the person, the retention of his identity card and lawyer's card constitutes processing of his data in contradiction with the principles objectified in art. 5, § 1, b. "a", b. "b" and b. "c" of the GDPR, namely with the principle of "lawfulness, good faith and transparency", with the principle of "limitation of purposes" and with the principle of "reducing data to a minimum". In its decision, the ASSG accepts as indisputable that in this case the personal data of the interested party were processed. The processing falls within the scope of the provisions of Art. 6, §1, b. "c" of the GDPR - the processing is necessary to comply with a legal obligation that applies to the administrator and to Art. 6, § 1, 6, "e" of the GDPR - processing is necessary for the performance of a task of public interest or in the exercise of official powers granted to the controller. The court further concludes that the principles laid down in Art. 5, § 1 of Regulation (EU) 2016/679, which are considered violated in this case, regulate that personal data are: processed lawfully, in good faith and in a transparent manner with respect to the data subject ("lawfulness, good faith and transparency" ); collected for specific, explicitly stated and legitimate purposes and not further processed in a manner incompatible with these purposes; further processing for the purposes of archiving in the public interest, for scientific or historical research or for statistical purposes is not considered, pursuant to Article 89(1), to be incompatible with the original purposes ("purpose limitation"); appropriate, related to and limited to what is necessary in relation to the purposes for which

they are processed ("data minimization"). Also, the ASSG points out that in view of what was established in the course of the conducted administrative proceedings, namely that the personal documents of the interested party were not returned to him in a timely manner, after the necessary data were entered in the relevant books, these principles were rightly considered violated. Certainly, in order to fulfill his official duties of entering the visitor in the relevant book and issuing a pass for entering the premises of the Ministry of Internal Affairs, the employee should have required the visitor to present the relevant identity documents. By not returning them in a timely manner, he violated the principle of legality, good faith and transparency. In this way, the second principle "limitation of purposes" is also violated, since after the relevant pass was issued, the purpose of providing the personal data was achieved and then the employee had an obligation to return it. Moreover, it was not established by the personal data administrator that the documents for those detained for another purpose, namely to make an inquiry as to whether the person was wanted. It was established, and it is not claimed to the contrary, that such an inquiry was not made. Considering this also violates the data minimization principle. ASSG substantiated the conclusion that the imposed sanction is lawful, insofar as the provision of Art. 83, § 5, b. "a" of Regulation (EU) 2016/679 is sanctioned specifically for violation of the basic principles of Art. 5 of the regulation. The amount of the sanction has also been correctly determined in the minimum compared to the maximum amount provided for in the regulation. The administrative act contains precise and clear reasons for the choice of the most effective, expedient and proportionate measure for the detected violation. The amount of the chosen measure - BGN 1,000 - is justified, taking into account the relevant circumstances clarified in the case. The reasons presented by the authority are consistent, logical and in accordance with the gravity of the committed violation.

The decision is correct.

In compliance with Art. 35 and 36 of the APC, all circumstances relevant to the dispute have been clarified by the Commission for the Protection of Personal Data.

It was clearly and indisputably established in the case that Spasov's personal documents were unreasonably withheld longer than necessary for their processing. The decisive conclusion of the court is substantiated and in accordance with the evidence in the case, that the withholding of M. Spasov's personal and attorney cards violated the principles laid down in Article 5, §1, b.a, b.b. and b. "c" of the General Data Protection Regulation. In accordance with the law applicable to the case, the reasons of the court set out detailed considerations for the measure applied as the most effective, expedient and in accordance with the principle of proportionality, an expression of the corrective authority granted to the CPLD, in relation to the admitted violation of

the rights of an individual, when processing his personal data. In this regard, the reasons of the first instance court are fully shared by the current cassation instance.

Given the outcome of the case, the costs incurred by the defendant in the cassation appeal CPLD in the amount of legal fees should be respected. The same was requested in a timely manner and is due, according to Art. 143, para. 3 and Art. 78, para. 8 in accordance with Art. 37, paragraph 1 of the ZPP in conjunction with Art. 24 of the Ordinance on the payment of legal aid and is due at the discretion of the court in the amount of BGN 150, given the factual and legal complexity of the dispute.

Pursuant to Art. 38, para. 2, paragraph para. 1, item 3 of the Law on the Bar and in conjunction with Art. 8, para. 3 of Ordinance No. 1 of 07/09/2004 regarding the minimum amounts of attorney's fees, the court determines an attorney's fee in the amount of BGN 500 for the present instance, which should be awarded in favor of the procedural representative of the defendant M. Spasov - attorney. Ts. Ferdinandova with court address Sofia, [street], floor 6, office 603.

Guided by the above and on the basis of Art. 221, para. 2, ex. first by the APC, the Supreme Administrative Court, Fifth Division,

RESOLVE:

REMAINS IN FORCE decision No. 7415/ 09.12.2021 issued under adm. case No. 8387/2021 on the inventory of the Administrative Court of Sofia-city/

ORDERS the Ministry of the Interior to pay to the Commission for the Protection of Personal Data the costs incurred in the case in the amount of 150/one hundred and fifty BGN/BGN, representing a legal consultancy fee, as well as to pay Adv. Ts. Ferdinandova with court address Sofia, [street], [address], remuneration in the amount of BGN 500 /five hundred/.

The decision is final.

True to the original, CHAIRPERSON: /n/ DIANA DOBREVA

secretary: MEMBERS: /p/ EMANOIL MITEV

/p/ EMIL DIMITROV