

In case 10423 / 2020

ANSWER

No. 15613

Sofia, 16.12.2020

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

DIANA DOBREVA

VIOLETA GLAVINOVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Camelia Nikolova

listened to what was reported

by the judge

DIANA DOBREVA

by adm. case no

10423/2020

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

It was formed on a cassation appeal of the National Revenue Agency (NAA), filed against decision No. 3569 of 03.07.2020, issued under Adm. case No. 12206/2019 according to the inventory of the Administrative Court Sofia - city (ACSG), which rejected the appeal of the assessee against Decision No. PPN-02-150 OF 03.09.2019, issued by the Commission for the

Protection of Personal Data (CPLD). Cancellation of the judicial act is requested as incorrect on all grounds under Art. 209, item 3 of the APC. Costs and attorney's fees are claimed.

The defendant CPLD contests the cassation appeal in a written statement. Claims an award of attorney's fees.

The defendant G. Ivanova also supports the complaint. Claims costs.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion to confirm the decision of the ASSG.

The present instance considers that the appeal is procedurally admissible as submitted by the proper party and within the time limit. Considered on its merits, it is unfounded.

The factual situation was correctly established by the trial court. Evidence relevant to the correct resolution of the dispute has been collected, which the court has discussed in their mutual relationship and in connection with the objections of the parties. Based on this, the court made justified legal conclusions, which are shared on the basis of Art. 221, para. 2, ex. second from APC.

With its decision, the CPLD, appealed by the defendant Ivanova, accepted a violation of the specified legal provisions by the tax collector in collecting and processing personal data, and imposed a property sanction on the NRA of BGN 50,000.

In the specific case, it is undisputedly established that on 02.01.2018, a request was received in the "Central Liaison Unit" Directorate for the collection of receivables from Germany via a protected CCN network of the persons Ivanova (first name) and G. (surname), with date of birth [date of birth], indicated as managing director of a company registered in Germany - "Dogus Food" GmbH. On 05.01.2018, the requested body, Directorate "Central Liaison Unit", in the person of the responsible employee B. Makarieva, requested the exchange of the names (first and last name) in the request form due to the obvious error. It is evident from the content of the form, however, that the submitted information is not complete, that is, there is no data that would indisputably identify the defendant G. Ivanova, [date of birth], against whom the enforcement proceedings were wrongly initiated. Only later was it established that it concerns another person named G. Ivanova, with a different address than the one indicated and a date of birth different from that of the person who appealed to the CPLD.

In the provision of Art. 4, para. 1 of the Personal Data Protection Act (PPA) stipulates that personal data may be processed only in cases where at least one of the conditions specified in items 1 - 7 is present. In the present case, the NRA as the administrator of personal data has the authority to process personal data of natural persons in the exercise of its functional activities and tasks. As a controller of personal data, the NRA should have taken the appropriate due actions to ensure that it

processes the data lawfully.

In view of the data submitted in Germany's request, the NRA official should have requested additional information from the competent authority of the member state that sent the request, in order to correctly identify the person according to 4.4.2 of Procedure No. C3B 8, Version D under Exchange of information on a request for mutual assistance. Instead, in violation of the procedure, the NRA employee took actions to identify the person by referring to ESGRAON based on the insufficient information available in the request - two names and the date of birth.

In view of what has been established, it was reasonably accepted by the court that the conditions for admissibility of the processing of the person's personal data were not present, therefore the administrative body correctly qualified what was done as a violation of Art. 4 of the Labor Code (repealed) and Art. 6, §1 of Regulation 2016/679. Neither the existence of admissibility of the collection of G. Ivanova's personal data nor their use for the initiation of an enforcement case against her for the collection of undue claims and the precautionary measures imposed in this direction have been established. Therefore, the judgment is correct and should be upheld.

As for the amount of the 55,000 BGN property sanction imposed on the NRA, it is several times smaller than the average amount foreseen. In this regard, the imposed corrective measure in terms of type and size undoubtedly meets the efficiency and deterrent effect sought by the EPA and Regulation 2016/679, while at the same time it does not violate the principle of proportionality and the requirement of proportionality to the violation found. Due to the above, there are no grounds for the reduction of the sanction.

With this outcome of the case, the request of the defendant Ivanova and the CPLD for an award of costs for the cassation proceedings is justified, therefore the NRA should be ordered to pay Ivanova the sum of BGN 1,000 for attorney's fees, and the CPLD the sum of BGN 100 for legal consultancy fees.

Thus motivated and based on Art. 221, para. 2, ex. first by the APC, the Supreme Administrative Court, Fifth Division,
RESOLVE:

Decision No. 3569 of 03.07.2020, issued under adm., REMAINS IN FORCE. case No. 12206/2019 according to the inventory of the Administrative Court Sofia - city.

ORDERS the National Revenue Agency to pay G. Ivanova the amount of BGN 1,000 (one thousand) in expenses.

ORDERS the National Revenue Agency to pay the Commission for the Protection of Personal Data the sum of 100 (one

hundred) BGN expenses.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Diana Dobрева

/p/ Violeta Glavinova