

In case 3021 / 2018

ANSWER

No. 12182

Sofia, 10.09.2019

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

HEALTH SHUMENSKA

MEMBERS:

DONKA CHAKAROVA

EMIL DIMITROV

to secretary

Madeleine Dukova

and with participation

to the prosecutor

Marinela Toteva

listened to what was reported

by the chairman

HEALTH SHUMENSKA

by adm. case no

3021/2018

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

It was formed on the cassation appeal of Adv.S. Stoilova, in her capacity as the legal representative of G. Alexiev, against decision No. 7856 of 18.12.2017 in administrative case No. 4472 according to the inventory for 2017 of the administrative court - Sofia city. With it, his appeal against decision No. Ж-395/2016 of 27.03.2017 of the Commission for the Protection of

Personal Data (PCPD), issued in proceedings pursuant to Article 38 et seq. of the Law on the Protection of Personal Data, was rejected (ZZLD).

In the cassation appeal, arguments were developed for the incorrectness of the appealed decision as being issued in violation of the substantive and procedural laws, which constitutes a cassation ground for annulment under Art. 209, item 3 of the APC. It is requested that the decision be annulled and another decision be made on the merits of the dispute, with respect to the appeal, as well as an award of court costs.

The defendant in the cassation appeal - the commission for the protection of personal data disputes the same as unfounded through the procedural representative legal consultant K. Parvanova. Claims an award of legal costs.

The respondent - the mayor of "Asparuhovo" district, Varna municipality, does not engage in an opinion.

The defendant - the mayor of Varna municipality filed a written defense after the court hearing.

The defendant - "Technobuilding Invest" EOOD does not engage in an opinion on it.

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

The Supreme Administrative Court, fifth department, after assessing the admissibility of the cassation appeal and the grounds for annulment, and in view of Article 218 of the APC, considers the following to be established from a factual and legal point of view:

The cassation appeal is procedurally admissible as it was submitted in time and by the proper party, but considered in substance it is groundless.

The subject of judicial review in the proceedings before the administrative court was decision No. Ж-395/2016 of 27.03.2017 of the Commission for the Protection of Personal Data, issued in proceedings pursuant to Article 38 et seq. of the Law on the Protection of Personal Data (PLD). She was referred with a complaint regarding the posting on the bulletin board in the municipality building of statement of fact No. 4 and statement of fact No. 5 of 26.02.2016 on the inventory of the district "Asparuhovo", municipality of Varna, as well as about two letters sent from 01.04.2016, with attached two orders from 09.03.2016 and from 01.04.2016, to "Technobuilding Invest" EOOD, third party. In this way, his personal data (the three names, social security number and address) were processed in violation of the GDPR, without his knowledge and consent, and they became available to an unlimited number of people. The administrative body accepted that it was referred with an

inadmissible complaint regarding the allegations of unlawful processing of the personal data of G. Aleksiev's wife, due to a lack of legal interest. On the essence of the dispute, he accepted that the complaint in its remaining part is groundless and unproven.

In the grounds of the appealed court decision, the factual side of the dispute is set out and legal conclusions are made regarding the admissibility and merits of the complaint with which the court was referred. The court has correctly considered that it is admissible as submitted in time and by an actively legitimized party, as well as that the contested act is subject to judicial review. When it was issued, the requirements for its content and form were met, and it was also issued by a competent authority.

The first-instance court's assessment of the absence of violations of administrative procedure rules is correct. The main objection in this proceeding of the said nature is that the Commission has not fulfilled its obligation to gather all the evidence to clarify the facts and circumstances relevant to the dispute. The court has consistently argued that the administrative body has engaged sufficient and suitable evidence, and correctly it has not credited the collected oral evidence, because it is not accurate, consistent and does not establish in a categorical way the facts for which it was collected. Similar are the considerations regarding the provision of personal data to a third party, specifically to the indicated commercial company. In the case, it is not established that he was provided with originals of documents that contain the applicant's personal data. It should be pointed out that the court correctly distributed the burden of proof in the proceedings before it, and accordingly assessed the same in the administrative proceedings.

The judgment of the court regarding violation of the material provisions of the special law corresponds to the collected evidence, and when applying it, it correctly interpreted them. With the undisputed finding that the mayor of the "Asparuhovo" region is the controller of personal data within the meaning of Article 3, paragraph 1 of the Personal Data Protection Act, as well as the commercial company on the occasion of administrative proceedings under the order of the Administrative Procedure for the removal of a movable object, the court correctly has identified the main point of contention as to whether there was unlawful processing of G. Alexiev's personal data, for which he did not give his consent.

In order to draw a conclusion, reference should be made to Art. 2, para. 1 of the Personal Data Protection Act, as the specific data, namely the three names, social security number, home address and real estate ownership document constitute "personal data" in the sense of the provision. Pursuant to § 1, item 1 of the DR of the GDPR "processing of personal data" is any action

or set of actions that can be performed with regard to personal data by automatic or other means such as collection, recording, organization, storage, adaptation or modification, restoration, consultation, use, disclosure by transmission, distribution, provision, updating or combination, blocking, deletion or destruction. In this case, there is disclosure of personal data by distributing them on a bulletin board in the municipality building and sending the two orders to the mayor. This is processing, but with a view to the administrative proceedings provided for in the ZUT and specifically the obligation to deliver discovery protocols and exercise the powers of the mayor in this proceeding. As the court correctly pointed out, it is also in connection with realizing the legal interests of the municipality of Varna. There is the hypothesis of Art. 4, para. 1, item 1 and item 7 of the ZZDL, and this was done in good faith, according to Art. 2, para. 2, item 1 of the law, with a specific purpose. The fact that the data were processed without the consent of the person to whom it refers does not require a conclusion about the illegality of the actions of the administrator of personal data in the specified hypotheses of the provision of Art. 4 of the GDPR.

The appealed decision should be upheld as correct.

With this outcome of the dispute, the assessee should not be awarded court costs, but such costs should be awarded to the first defendant, on the basis of Art. 78, Para. 8 of the Civil Code, in connection with Art. 37 of the Law on Legal Aid and Art. .24 of the Ordinance on payment of legal aid, representing a legal consultancy fee for the cassation instance.

Pursuant to the foregoing and on the basis of Article 221, Paragraph 2 of the APC, the Supreme Administrative Court, Fifth Department

RESOLVE:

REMAINS IN FORCE decision No. 7856 of 18.12.2017 on administrative case No. 4472 on the inventory for 2017 of the administrative court - Sofia city.

ORDERS Mr. Alexiev to pay the Commission for the Protection of Personal Data the sum of BGN 100.00, court costs.

The decision is final and not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Zdravka Shumenska

Secretary:

MEMBERS:

/p/ Donka Chakarova

/p/ Emil Dimitrov