

In case 11794 / 2016

ANSWER

No. 3978

Sofia, 28.03.2018

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the seventh of March, two thousand and eighteen, composed of:

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

DIANA DOBREVA

EMANOIL MITEV

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Georgi Kamburov

listened to what was reported

by the judge

DIANA DOBREVA

by adm. case no

11794/2016

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

It was formed based on a cassation appeal of M.M.A. and P.G.A., filed against decision No. 5735 of 26.08.2016 under adm. case No. 2359/2016 according to the inventory of the Administrative Court of Sofia - city (ACSG), which rejected the appeal of the assessee against decision No. 9353/2010, issued on 25.01.2016 by the Commission for the Protection of Personal Data (

CPLD/commission). It is requested to cancel the court decision as incorrect on the grounds under Art. 209, item 3 of the APC.

The defendant CPLD contests the complaint through a legal representative.

The defendant mayor of the "Northern" region - [municipality] also contested the complaint with arguments in a written response. Claims legal fees.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion to leave the decision in force.

The present instance finds that the cassation appeal is procedurally admissible. To pronounce, consider the following:

M. and P. A. appealed to the CPLD with a complaint about the violation of Art. 23, para. 1 of the Personal Data Protection Act (PAPA). Their complaint was declared well-founded by the commission and according to Art. 38, para. 2 of the Labor Code, the body is issued a mandatory prescription, specified in the decision, to be implemented within one month of receiving it.

The decision of the CPLD was challenged before the ACSG by A., who were dissatisfied with the legal result before the CPLD and asked the court to impose the sanction provided for in the law on the personal data controller due to unlawful access to their personal data by an official of the municipality with right of access to the ESGRAO system.

The court considered that A.'s appeal is inadmissible due to lack of legal interest and by ruling No. 1875 of 31.03.2016 on the basis of Art. 159, item 4 of the APC terminated the proceedings in the case. A three-member panel of the Supreme Administrative Court issued ruling No. 6694 of 06.06.2016 under Adm. case No. 5922/2016, with which he annulled this ruling and returned the case for continuation of judicial proceedings.

Pursuant to the instructions given by the three-member panel, the ASSG examined A.'s appeal on the merits and issued the contested decision. The current cassation panel also considers that the court proceedings were inadmissible due to lack of legal interest in the challenge and in this regard shares the reasons of the first instance court in its final ruling. But according to Art. 235, para. 2 of the APC, the ruling was mandatory for the lower court, which is why this procedural issue cannot be re-decided.

The decision of the ASSG is correct. The factual situation in the case has been explained in detail. In the analysis of the oral and written evidence gathered during the administrative and judicial proceedings, the ASSG reached a justified conclusion that the contested decision of the CPLD before it was issued by a competent authority, in compliance with the rules of administrative proceedings and correct application of the substantive law.

Reproducing his complaints before the ASSG, the assessor unfoundedly maintains that the mandatory prescription and

incorrect application of the provision of Art. 38, para. 2 of the Labor Code.

During the control of the legality of the decision of the CPLD, in accordance with the instructions given to it, the court correctly determined and examined the subject of the dispute. He indicated that in accordance with the provision of Art. 38, para. 2 of the Labor Code, when a violation is detected, the commission has the following powers - to issue mandatory prescriptions, set a deadline for remedying the violation, or impose an administrative penalty. The authority's judgment regarding the choice of possible behavior is under the conditions of operational autonomy. Therefore, every decision of the commission should be motivated with specific considerations justifying the alternative preferred by the administrative body.

As can be seen from the contested decision of the CPLD in the first-instance proceedings, the administrative body presented arguments for the reasons why the personal data controller was given mandatory instructions to take the necessary technical and organizational measures to protect personal data when processing and storing official documentation. The other powers provided for in the law have not been exercised, including the imposition of a pecuniary sanction under Chapter Eight of the Labor Code, which is the request of the complainant. The court's conclusion on the legality of the mandatory prescription is substantiated due to its motivation in accordance with the requirement of Art. 59, para. 2, item 4 of the APC.

In view of the above, there are no cassation grounds for annulment of the judicial act under Art. 209, item 3 APC and the decision of the ASSG as correct should be confirmed.

With this outcome of the case, the request for the award of a legal consultancy fee in favor of [municipality] is justified and the plaintiffs should be ordered to pay it the sum of 100 BGN.

Thus motivated and based on Art. 221, para. 2 of the APC, the Supreme Administrative Court, composition of the fifth department,

RESOLVE:

REMAINS IN FORCE decision No. 5735 of 26.08.2016 by adm. case No. 2359/2016 according to the inventory of the Administrative Court Sofia - city.

ORDERS M. M. A. and P. G. A. to pay the [municipality] 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/ Emanoil Mitev