

In case 10412 / 2017

DEFINITION

No. 3091

Sofia, 12.03.2018

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a closed session, composed of:

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

DIANA DOBREVA

EMANOIL MITEV

to secretary

and with participation

to the prosecutor

listened to what was reported

by the judge

DIANA DOBREVA

by adm. case no

10412/2017

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

It was formed based on a cassation appeal of the executive director of [company] - [town], through legal representative D. Ts., filed against decision No. 4364 of 29.06.2017 under Adm. case No. 4067/2017 on the list of the Administrative Court of Sofia - city (ACSG), which rejected the appeal of [company] against decision No. Ж-525/2016 of 22.03.2017 of the Commission for the Protection of Personal data and the applicant was sentenced to pay the sum of BGN 100 costs.

In the cassation appeal, it is claimed that the court decision is incorrect on the grounds of Art. 209, item 3 of the APC and its cancellation is requested.

The defendant P. E. E. – P. (an interested party in the proceedings before the ASSG) in his written response disputes the

cassational appeal against the first-instance decision as groundless.

By Resolution No. 12311 of 16.10.2017 on the basis of Art. 215, item 1 of the APC, the cassation appeal was left without consideration, and the proceedings were terminated. This judicial act of the three-member panel was annulled by decision No. 2273 of 20.02.2018 under Adm. case No. 13049/2017, decided by a five-member panel, and the case was returned for the continuation of judicial proceedings. In accordance with the reasons for the annulment decision, the current panel has left the cassation appeal motionless and ordered it to be specified within 7 days from the announcement on whose behalf the appeal was filed - on behalf of the executive director or on behalf of [company] and if the same originates the company to provide evidence of the presence of representative authority in relation to it. These instructions are given in view of the fact that, both in the first instance case (art. 7), and before the cassation instance (art. 9) and in the proceedings before the five-member panel (art. 5), the power of attorney presented to legal counsel C. gives her the authority to represent before the judicial authorities only the executive director of [company] in all proceedings instituted by and against the commercial company. As indicated by the five-member panel, in order for the cassation appeal to be admissible, the company represented by the executive director, or by a procedural representative authorized by him, should be indicated as its submitter.

The instructions given by the current composition were communicated on 28.02.2018. However, the ambiguity regarding who filed the cassation appeal was not resolved in time. It is procedurally inadmissible according to Art. 215, item 1 in connection with Art. 210 of the APC, if the cassation appellant is the executive director of [company]. Only on the condition that it emanates from [firm], which participated as a party in the first-instance proceedings, the complaint should be considered on its merits, but in this case, due to the failure to comply with the instructions, such a statement is missing, as well as evidence of proper representative authority regarding of the company itself.

Taking into account the above, the present composition finds that the provision of Art. 216 in connection with Art. 158, para. 1 of the APC, therefore the cassation appeal should be left without consideration, and the proceedings in the case should be terminated.

For these reasons, the Supreme Administrative Court, Fifth Division,

DEFINES:

THE cassation appeal of the executive director of [company] - [town], submitted through legal representative D. Ts., against decision No. 4364 of 29.06.2017 under Adm. case No. 4067/2017 according to the inventory of the Administrative Court Sofia -

city, by which the appeal of [company] against decision No. Ж-525/2016 of 22.03.2017 of the Commission for the Protection of Personal Data and the applicant was rejected was sentenced to pay BGN 100 costs.

DISCONTINUES the proceedings under the adm. case No. 10412/2017 on the inventory of the Supreme Administrative Court, fifth department.

The ruling can be appealed to a five-member panel of the Supreme Administrative Court within 7 days of the notification of the parties.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Diana Dobрева

/p/ Emanoil Mitev