

In case 13537 / 2019

ANSWER

No. 9459

Sofia, 16.09.2021

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the twelfth of February,

composed of:

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

VIOLETA GLAVINOVA

EMANOIL MITEV

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Georgi Hristov

listened to what was reported

by the judge

EMANOIL MITEV

by adm. case no

13537/2019

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

It was formed on a cassation appeal filed by M. Karamihaleva against decision No. 1497 of 12.08.2019, decided on

administrative case No. 423/2019 of the Administrative Court - Burgas, which rejected her appeal against decision No. PPN-01

-120/18 years. from 09.01.2019 of the Commission for the Protection of Personal Data (PCPD).

In the cassation appeal, arguments were developed for the incorrectness of the court decision due to a violation of the substantive law and a substantial violation of the procedural rules. The decision accepted by the court that the Commission correctly applied the law qualifying the violation committed by the energy company and the sanction imposed is disputed. It is requested to cancel the court decision, to cancel the decision of the CPLD, and to return the file to the administrative body, indicating that the defendant company should be sanctioned with a fine or a pecuniary sanction; as well as to be awarded the costs incurred in the case.

The Defendant Commission for the Protection of Personal Data, through its legal representative Gladnikova, contests the cassation appeal and asks that it be rejected as unfounded, and that the contested decision be upheld as correct, in accordance with the substantive law and procedural rules. Claims payment of legal fees.

The defendant - "Elektrozaspradelenie Yug", EAD, through its legal representative. Radev, challenges the cassation appeal with arguments developed in a written statement and requests that it be rejected as unfounded. He claims costs for the cassation proceedings, for which he also submits a list of costs.

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

The Supreme Administrative Court, composition of the fifth department, after reviewing the appealed judgment, took into account the arguments and objections of the parties and discussed the cassation grounds and carried out an ex officio inspection on the basis of Art. 218, para. 2 of the APC, finds the following established: .

The subject of control for legality in the proceedings before the ASSG was initiated by M. Karamihaleva's appeal against decision No. PPN-01-120/18. of 09.01.2019 of the Commission for the Protection of Personal Data, with which the same has accepted that the complaint of M. Karamihaleva for an admitted violation of the LLDP is well-founded in relation to "EVN Elektrozaspradelenie Yug", EAD, as on the basis of 58, §2, b. "b" of the General Regulation on Data Protection issued an official warning to the company to comply with the processing of personal data of users when switching to independent measurement of electricity consumption with the principles laid down in the regulation and in the LLDP, in compliance with the legally established conditions for admissibility of processing the data of natural persons.

The first-instance court discussed the evidence and accepted as established that the proceedings before the CPLD were initiated on complaint reg. No. PPN-01-120/23.02.2018 filed by M. Karamihaleva, for a violation of the CPLD by the energy

company - her personal data were processed by entering them into documents accepted by the company without her signature, knowledge and consent.

CPLD issued decision No. PPN-01-120/18g. from 09.01.2019, with which the complaint was accepted as well-founded, and the personal data controller was given an official warning.

The court followed the procedure for examining the case file, finding that the parties were notified, an open court session was held, at which a decision was made to declare the complaint well-founded in relation to "Elektrozaspradelenie Yug", EAD and on the basis of § 58 2, b. "b" of the General Regulation on data protection issued an official warning to the company to comply with the processing of personal data of users when switching to self-measurement of electricity consumption with the principles laid down in the regulation and in the GDPR, subject to compliance of the legally established conditions for admissibility of processing the data of natural persons. Reasons for choosing the measure of issuing an official warning are presented.

With these factual data, from a legal point of view, the court accepted that the contested decision of the CPLD was issued by a competent administrative body, in view of the powers granted to it under Art. 38, para. 1 and para. 2, in connection with Art. 10, para. 1, item 7 of the Labor Code, when the administrative act was issued, there were no violations of the administrative procedural rules - the parties were constituted correctly, the requirements for their protection were met, the decision was taken unanimously. The administrative act was also issued in the form prescribed by law - a decision in which the reasons - factual and legal grounds - why the appeal was accepted as well-founded and respected.

The present judicial panel finds that the appealed decision was rendered inadmissible. In the case, it is undisputedly established that an administrative proceeding took place between the parties in the present court proceedings on the occasion of an admitted violation of the Labor Code. With the issued administrative act, the complaint of M. Karamihaleva was found to be fully justified, in the same sense as the contested decision.

However, the complaint with which the administrative court was referred is inadmissible due to the lack of legal interest in contesting it. This is so, because with the issued administrative act, the challenge of Karamihaleva, resp. he is favorable to her.

The sanction imposed on the company is a matter of the operational autonomy of the administrative body - the type and amount of the sanction imposed on the offender does not directly affect the interests of Karamihaleva.

The appealed decision should be annulled as inadmissible.

In this outcome of the dispute, the cassation officer should pay to the CPLD and to "Elektrozaspradelenie Yug" EAD sums of

BGN 100 (one hundred) each for legal fees, expenses incurred for the cassation instance

RESOLVE:

ANNULS decision No. 1497 of 12/08/2019, issued in administrative case No. 423/2019 of the Administrative Court - Burgas.

The appeal of M. Karamihaleva against decision No. PPN-01-120/18 is REMAINED without consideration. of 09.01.2019 of the Commission for the Protection of Personal Data and TERMS the proceedings in the case.

CONDEMNED M. Karamihaleva to pay to the Commission for the Protection of Personal Data and to "Electrorazpradelenie Yug" EAD sums of BGN 100 (one hundred) each for legal fees, expenses incurred for the cassation instance.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Diana Dobрева

Secretary:

MEMBERS:

/p/ Violeta Glavinova

/p/ Emanoil Mitev