In case 11984 / 2016

ANSWER

No. 3692

Sofia, 22.03.2018

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

EMANOIL MITEV

VLADIMIR NIKOLOV

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Vladimir Yordanov

listened to what was reported

by the chairman

DIANA DOBREVA

by adm. case no

11984/2016

The production is Art. 208 et seq. of the Administrative Procedure Code (APC) in connection with Art. 38, para. 6 of the Personal Data Protection Act (PAPA).

It was formed based on a cassation appeal of [company], submitted through a legal representative against decision No. 5732 of 25.08.2016, issued under adm. case No. 489/2016 of the Administrative Court of Sofia - city (ASSG), which rejected the

appeal of the assessee against decision No. Ж-114/2015 of 09.12.2015 of the Commission for the Protection of Personal Data (KPLD/Commission). With this decision of hers, the complaint with reg. No. Ж-114/18.03.2015, submitted by G.I.M. in its part for violation committed by [company] of Art. 4, para. 1 of the Labor Code, given the absence of any of the conditions specified in the same provision for the admissibility of the processing of the applicant's personal data by the company, as on the basis of Art. 42, para. 1 of the Labor Code in connection with item 1 of the decision, an administrative penalty was imposed on [company] - a "property penalty" in the amount of BGN 11,000.

The annulment of the court decision is requested as incorrect due to a violation of the substantive law and unreasonableness - grounds under Art. 209, item 3 of the APC.

The main complaints in the cassation appeal are about the incorrect application of the substantive law, since the processing of personal data was carried out in the presence of a contractual basis - a contract for the transfer of claims (assignment), which also includes the obligation that G. M. had to the transferor [company]. In this case, according to the assessor, the provision of Art. 4, para. 1, item 3 of the GDPR, which allows the processing of personal data when this is necessary for the fulfillment of obligations under a contract to which the natural person to whom the data relates is a party. The conclusions drawn in the appealed decision are also in contradiction with Art. 99 of the Civil Code governing the contract of assignment, insofar as the transfer of personal data of the debtor during the transfer of the claim from the assignor to the assignee is unavoidable.

The defendants - the Commission for the Protection of Personal Data, through their legal representative and G.I.M. personally challenge the cassation appeal as unfounded.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion confirming the decision.

The present instance finds the cassation appeal to be procedurally admissible as filed in time and by the proper party. In examining it, it essentially found the following:

In order to establish this legal result, the court accepted that the contested decision of the CPLD is a valid and lawful administrative act that does not suffer from the vices under Art. 146 of the APC. On the basis of the accepted administrative file, the court responded to the arguments of the contesting commercial company and concluded that there was a violation under Art. 4, para. 1, item 2 of the GDPR - processing of personal data without the consent of the person to whom they refer.

According to Art. 218, para. 1 and 2 of the APC, in the cassation proceedings, the court reviews the appealed judgment in accordance with its defects indicated in the complaint, and it is obliged to monitor the validity, admissibility and compliance of

the decision with the substantive law ex officio. The court assesses the application of substantive law based on the facts established by the trial court. Accordingly, taking into account the arguments of the parties and verifying the appealed decision, the court of cassation finds that the same is valid, admissible and correct. This conclusion is drawn by the present panel after discussion of the evidence collected in the case, finding the following from a factual and legal point of view in relation to the committed violation within the meaning of Art. 4, para. 1 of ЗЗЛД:

In the reasons for the decision of the CPLD, it is stated that the personal data of M. were transferred from [company] to [company] on the basis of a contract for the transfer of receivables with No. 32995 dated 17.05.2013 and a transfer protocol dated 12.08. 2013. In the course of the administrative proceedings before the CPLD, although it was repeatedly requested, an individual contract concluded between [company] and G.M. was not presented, from which it is evident that the same gave consent to his personal data being collected, processed and provided to third parties. Proceeding from the legal definition contained in item 13 of the DR of the LLDP of the concept of "consent of the natural person", the Commission has accepted that without the presentation of an individual contract, it cannot be concluded that the natural person to whom the personal data refer data, has agreed to their collection, processing and transfer to third parties. [company] did not prove the conclusion of a contract between the parties and therefore the collection of personal data for G. M. is in violation of Art. 4, para. 1, items 1 - 7 of the GDPR, i.e. in the absence of a legal basis for their processing.

According to item 7 of Section I of the General Terms and Conditions for the relationship between [company] and the subscribers, the contract that is concluded for the provision of the telecommunications service is in writing, which is a generally known fact. Its existence and authenticity can only be established when this contract is presented and the admissible means of evidence are used.

The present composition shares the conclusion of the ASSG that it has not been established that the procedural contract was concluded in order to have a lawful processing of personal data in the presence of consent and/or in fulfillment of a contractual obligation. The burden of proof for the existence of such a contract and the identity of the signatories is borne by [company], and no such proof has been made.

The complaint in the cassation appeal that the decision is illegal because it contradicts Art. 99 of the ZZD. Indeed, with the transfer of the claim from the assignor to the assignor, personal data is also provided to the debtor, but their legal collection, processing and provision is regulated by the special law - ЗЗЛД, which requires a freely expressed, specific and informed

declaration of will, with which the natural person, to which this data relates, unequivocally consents to this being done.

As for the amount of the imposed pecuniary sanction, the ASSG has correctly indicated that it is consistent with the nature and degree of the committed violation and is close to the minimum established in the provision of Art. 42, para. 1 of the Labor Code.

In view of the above, there are no grounds for annulment of the first-instance decision and it should be left in force.

Led by the above and pursuant to Art. 221, para. 2 of the APC, the Supreme Administrative Court, composition of the fifth department,

RESOLVE:

REMAINS IN FORCE decision No. 5732 of 25.08.2016, issued under adm. case No. 489/2016 of the Administrative Court Sofia - city.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Diana Dobreva

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Vladimir Nikolov