

In case 2618 / 2018

ANSWER

No. 6566

Sofia, 07.05.2019

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on April 10, composed of:

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

EMANOIL MITEV

MARIA NIKOLOVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Hristo Angelov

listened to what was reported

by the judge

MARIA NIKOLOVA

by adm. case no

2618/2018

The proceedings are in accordance with Art. 208 et seq. of the Administrative Procedure Code /APK/, in connection with § 149 of the Transitional and Final Provisions to the Law on Amendments and Supplements of the APC (promulgated SG No. 77/2018).

It was formed following a complaint of the Commission for the Protection of Personal Data /KPLD/ against decision No. 7843/18.12.2017. decided in administrative case No. 11749/2017. according to the inventory of the Administrative Court

Sofia-city /ACSG/.

The cassator appeals the court decision claiming that it is incorrect, issued in violation of the substantive law and unfounded, cassation grounds for annulment under Art. 209, item 3 APC. Disputes the court's conclusions regarding the existence of express consent for the processing of personal data. Considers that the court incorrectly accepted that the individual administrative act was not motivated. He wants the court to cancel the decision. Claims no expenses.

The defendant in cassation - "United Bulgarian Bank" AD /OBB AD/ contests the appeal on grounds set out in a written response. Considers that the decision is correct and justified, rendered in accordance with the substantive law and without violations of the rules of judicial procedure. He asks the court to dismiss the appeal and confirm the decision. Claims costs and attorney's fees.

The interested parties - "ASG Collection" OOD, I. Panayotov do not express an opinion on the complaint.

The representative of the Supreme Administrative Prosecutor's Office gives a reasoned conclusion on the merits of the cassation appeal.

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 cited and those under Art. 218, para. 2 of the APC, after consultation, finds the following from a factual and legal point of view:

The cassation appeal is procedurally admissible. It is submitted by mail within the statutory period, by a proper party for which there is a legal interest in the contestation and against a contestable judicial act.

Considered in substance, the cassation appeal is well-founded.

With the appealed decision, the composition of the ASSG canceled, on appeal of UBB AD, decision No. Ж-659/2016 of 27.06.2017. of the Commission for the Protection of Personal Data /KPLD/ and condemned the Commission to pay administrative expenses in the amount of BGN 250.

On the factual side, the court has established that the proceedings before the CPLD began on a complaint by Panayotov on 24.10.2016. for illegal provision/processing of his personal data by "ASG Collection" OOD. The court established that UBB AD and "ASG Collection" OOD are administrators of personal data and have a contract concluded on 12.11.2014. A credit line agreement was concluded between UBB AD and I. Panayotov on 07/06/2010. The contract was valid between the parties until 2016, when it was unilaterally terminated by Panayotov. After the termination of the contract, UBB AD charged Panayotov a

fee of BGN 8.44 and interest of BGN 30 for service, as it accepted that the contract was not validly terminated. In August 2016 Panayotov received a pre-trial summons from "ASG Collection" OOD and in September 2016. another such notice of voluntary discharge of this obligation.

On the basis of the facts thus established, the court accepted from a legal point of view that the contested act was issued by a competent authority, in the written form provided for by law, containing the information specified in Art. 159, para. 2 APK requisites. No significant administrative-procedural violations were committed when the act was issued. He indicated that the dispute was about this, correctly, i.e. whether personal data was legally submitted to a party under a credit line agreement to the processor, without there being and no evidence of the party's express written consent. After analyzing the reasons in the decision of the CPLD, the General Terms and Conditions /OU/ of UBB AD, the individual contract between Panayotov and the bank, the contract between UBB AD and "ASG Collection" OOD, the court accepted that it did not find a lack of express consent on the part of of Panayotov for processing his personal data. The court accepted the decision of the CPLD as illegal, stating that: 1. There is a signed contract for a credit line, with the terms of which the borrower agrees, incl. and with the provision of art. 29 of the contract when the requisites have been met - the GTC has been received and the signed contract has been signed as a guarantee and agreement that the GTC are known and valid for the contractual relationship, as well as their binding force. 2. There is no objection to the provision of Art. 47 of OU. 3. The processing of personal data has arisen out of necessity in the event of non-fulfillment of contractual obligations, whether justified or not. 4. The conditions of art. 24 of the Labor Code, given the existence of a written contract with agreed clauses on the processing of the personal data of obligated persons.

The decision is incorrect.

The court established a factual situation based on the evidence collected in the case, which is not disputed by the parties. It is correctly accepted that the contested administrative act was issued by a competent authority, in the written form provided for by law and without significant violations of administrative procedure rules. The dispute is about the validity of the decision and its compliance with the substantive law, in view of the cited cassation grounds.

The court's conclusion that the contested decision of the CPLD is illegal is incorrect. By decision No. Ж-659/2016 from 27.06.2017 CPLD, has announced a complaint reg. No. Ж-659/24.10.2016. filed by I. Panayotov against UBB AD and "ASG Collection" OOD for being justified against UBB AD and imposed on the bank a property sanction in the amount of BGN

10,000 on the basis of Art. 42, para. 1 of the Personal Data Protection Act for violation of Art. 4, para. 1, item 2 s. z. In the reasons for the decision of the CPLD, it is stated that in Art. 47.3 of the Terms and Conditions provided by UBB AD OU, a hypothesis for providing personal data to credit bureaus for the purpose of debt collection is indicated. In the individual credit line agreement dated 07.06.2007. there is no clause governing the consent of the individual to provide his personal data to a third party. In Art. 29.1 of the credit line agreement, the borrower unequivocally agrees to the General Terms and Conditions, in which there is a clause regarding the consent of natural persons when providing their personal data. But with a clause in the OU, it is not possible for the administrator to obtain the consent of the natural person for the processing of personal data and for it to fully meet the legal definition contained in § 1, item 13 DR of the Personal Data Protection Act. This conclusion of the administrative body is correct. The court incorrectly assumed that by signing the individual contract, when the OU was served, the borrower, in the case of Panayotov, agreed that his personal data would be provided to third parties.

ZZLD, in its relevant edition - SG no. 81 of 14.10.2016, in Art. 4, para. 1, items 1 – 7 indicates when the processing of the personal data of a person is permissible. § 1, item 1 of the DR provides that "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, adapt or modify, restore, consult, use, disclose by transmission, distribution, provision, update or combine, block, delete or destroy. In this case, the dispute boils down to whether UBB AD has lawfully provided the personal data of a person, its client, to a third party, in order to collect the bank's claim from that person. There is no dispute that UBB AD and the third party "ASG Collection" OOD are controllers of personal data and that there is a contract concluded between them - from 12.11.2014, pursuant to which the bank, in the capacity of the contracting authority, assigns, and " ASG Collection OOD, in the capacity of executor, undertakes to perform extrajudicial actions to assist the client in collecting his claims from his debtors. The provisions of Art. 4, para. 1, item 2 of the Labor Code, and of Art. 7, b. "a" of Directive 95/46/ EC of the European Parliament and of the Council of 24.10.1995 on the protection of natural persons in the processing of personal data and on the movement of such data, require the express, unequivocal and informed consent of the natural person, provided his data to a personal data controller, for any provision of his data to a third party. It should be informed in advance by the administrator on what occasion and for what purpose its data will be provided to the third party, so that it can make an informed judgment and give consent or refuse. It follows that the express consent of the individual is required for each specific case. According to §1, item 13 DR of the Personal Data Protection Act, "Consent of the individual" is any freely expressed, specific and informed

statement of will by which the individual to whom the personal data refers unequivocally agrees to their processing. LLPD in § 1, item 11 gives a legal definition of the concept of "Third party" - a natural or legal person, a body of state power or local self-government, different from the natural person to whom the data refers, from the personal data administrator, from the processor of personal data and by the persons who, under the direct supervision of the administrator or the processor, have the right to process personal data.

In this case, as the CPLD correctly accepted, the consent expressed in the individual contract with the bank's OU does not mean giving a freely expressed, specific and informed declaration of consent for the data to be processed by a third party. It is true that in Art. 29, para. 1 of the credit line agreement concluded between UBB AD and I. Panayotov on 07/06/2007. it is stipulated that the TOS of UBB AD are an integral part of the contract, and by signing this contract, the client confirms that the TOS have been handed over to him and accepts them. It is true that in OU, in Art. 47, item 4, it is provided that, on the basis of the LPA, by signing the Application and the Agreement for a bank card, the cardholder gives consent for the bank to provide personal data to a data processor, in order to provide a statement or make contact in the event of arrears of the cardholder's obligations . However, the consent given in this way for the processing of personal data cannot be assumed to meet the legal requirements, insofar as what is stated in the OU is very general and does not give the person, at the time of signing the contract, the opportunity to give or refuse to give consent in an informed manner for the processing of his data by a third party. Therefore, in the event of facts requiring the provision of personal data, in view of the provisions cited above, the express consent of the individual is required for each specific case, as consent in the present case was not found to have been given by I. Panayotov. The person's consent to the OU cannot be considered as freely expressed consent, since there is no mechanism by which the person, by signing the contract, can only express his disagreement to having his personal data provided to third parties. The absence of such a regulation means that individuals are forced to give their consent to processing, only by virtue of the obligation to accept OU, which contradicts the purpose of the law, that personal data be processed only by authorized persons under the legally established conditions and purposes.

The imposed pecuniary sanction is lawfully determined by the administrative body in the minimum provided for in the provision of Art. 42, para. 1 ZZLD size.

In view of the stated decision of the court of first instance, although valid and admissible, as incorrect - due to a contradiction with the substantive law, annulment grounds under Art. 209, item 3, proposal first APC, it will be canceled next. Since the

dispute has been clarified from a factual point of view, a new ruling will have to be issued instead, with which the appeal of UBB AD against decision No. Ж-659/2016 of 27.06.2017. of the Personal Data Protection Commission to be rejected.

The defendant does not claim costs, incl. for legal fees, which is why they are not awarded to him

Guided by the above and based on Art. 221, para. 2, proposition second from the APC, the Supreme Administrative Court, fifth department

RESOLVE:

AVOIDS decision No. 7843/18.12.2017. decided in administrative case No. 11749/2017. according to the inventory of the Administrative Court of Sofia-city AND INSTEAD IT DECIDES:

REJECTS the appeal of "United Bulgarian Bank" AD against decision No. Ж-659/2016 of 27.06.2017. of the Personal Data Protection Commission.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Diana Dobрева

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Maria Nikolova