

In case 2317 / 2022 DECISION No. 5733 Sofia, 13/06/2022 IN THE NAME OF THE PEOPLE The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the fifth of May two thousand and twenty-two in the composition: CHAIRMAN: ANNA DIMITROVA MEMBERS : ILIANA SLAVOVSKA TINKA KOSEVA with secretary Svetla Paneva and with the participation of prosecutor Georgi Hristov listened to what was reported by judge Tinka Koseva in administrative case No. 2317 / 2022. 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 N. Nedelchev from the city of Varna, against decision No. 41 of 20.01.2022, issued under adm. case No. 1335/2021 according to the inventory of the Administrative Court - Varna, with which his appeal was rejected, against Decision No. PPN - 01 - 214/20 of 14.06.2021. of the Commission for the Protection of Personal Data, with which the claimant's complaint against "Salex" OOD was dismissed. The cassation officer develops arguments for the incorrectness of the decision, due to a violation of the substantive law and a substantial violation of the rules of judicial procedure - a cassation ground for annulment in the sense of art. 209, item 3 of the APC. He contests the court's conclusions about the unprovenness of his claims about the illegal provision of personal data to a third party by "Salex" OOD and considers that the burden of proof to establish these facts has been wrongly assigned to him. According to the reasons developed in detail in the cassation appeal and clarification request, it is considered that the court, in violation of the law, ignored the content of an official document presented - a prosecutor's decree, and instead referred to a private testifying document, which, according to the cassator, was deliberately created. Based on these and detailed written considerations, he requests that the decision of the AC - Varna and the CPLD be canceled and the file be returned to the CPLD for a new ruling and the imposition of a property sanction or fine. The defendant - Commission for the Protection of Personal Data, through legal representative M. Asyova, in a written opinion contests the cassation appeal as groundless and asks for the decision to remain in force. It does not claim production costs. The defendant - "Salex" OOD, regularly summoned, does not express an opinion on the cassation appeal. 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 Division, during the ex officio review of the contested decision pursuant to Art. 218, para. 2 of the APC and taking into account the cassation grounds cited and the facts established in the case, motivates the following legal conclusions: The cassation appeal was filed by an actively legitimized party within the period under Art. 211, para. 1 of the APC against a judicial act subject to cassation challenge, which is why it is procedurally admissible. Considered on its merits, it is unfounded. With the appealed

decision, the court of first instance rejected Nedelchev's appeal, against Decision No. PPN - 01 - 214/20 of 14.06.2021. of the Commission for the Protection of Personal Data, with which the claimant's complaint against "Salex" OOD for imposing a sanction on the company, due to the unlawful provision of the personal data of the claimant to a third party, without his consent, was dismissed. In order to rule on this result, the court accepted that the procedural decision of the CPLD was issued by a competent body within the scope of its powers, the written form prescribed by law was observed, the factual and legal grounds for issuing the decision were presented on the formal side and were not committed significant violations of the administrative procedure rules. The decision in its appealed part is judged to be in accordance with the substantive law. The court accepted as undisputedly established that "Salex" OOD is a personal data controller within the meaning of Article 4, §7 of Regulation (EU) 2016/679 to which Nedelchev provided his personal data, including three names and an address and is declared his consent for the same to be processed by the company for the purposes of the employment contract concluded between them. It is also undisputedly established that the court considered that the assessee did not withdraw the given consent and did not request the deletion of his personal data as of December 2019. As disputed in the case, the court accepted the question of whether the processing of personal data by the administrator "Salex" OOD, by providing it to a third party - P. Stoyanov, was illegal. To this question, the court gave a negative answer, sharing the CPLD's conclusions in the disputed decision about the lack of proof of this claim. In order to justify this conclusion, the court accepted that there was no contradiction in the testimony of the third party Stoyanov, given to the VRP and the CPLD, as he claimed to the prosecution that representatives of "Salex" OOD provided him with Nedelchev's phone number, and he stated before the CPLD that his phone number was provided to him by his former colleagues, and the company did not provide him with any personal data other than the phone number. In conclusion, the court considered that in both cases, the person indicated that he received Nedelchev's phone number from former colleagues and on a specific occasion - in connection with a filed complaint. In order to justify its final conclusion about the absence of an admitted violation and the legality of the disputed decision of the CPLD, the court considered that there were no statements or evidence, officials of "Salex" OOD, representing or managing the company, or specifically identified for those responsible for the storage and processing of the personal data of the employees, to have provided the third party - Stoyanov with personal data in volume - three names, social security number, telephone number and address of Nedelchev. He stated that the provision of the telephone number by individuals, former colleagues of his to a third party in a personal capacity and for his own use, cannot determine the responsibility of the administrator of personal data,

therefore the complaint was rejected as unproven and groundless.

. The cassation instance finds the decision of the Court of Cassation - Varna to be correct. Based on an overall assessment of the evidence accepted in the case and with a correct interpretation and application of the substantive law, the court reached the correct final conclusion that the decision of the CPLD was lawful. The facts relevant to the dispute are explained in detail and clearly. The factual findings made by the court, as corresponding to the evidence in the case, are fully shared by the cassation instance, which is why it is not necessary to repeat them in the reasons for the present court decision. In his complaint to the CPLD, Nedelchev claims that he is a former employee of "Salex" OOD, who without his consent provided his personal data in volume - telephone number, names, social security number and address of the person P. Stoyanov in violation of the CPLD. The claims of the assessee, presented to the CPLD, are for illegal processing of personal data in the sense of Art. 4, para. 1 of the Labor Code (repealed), resp. Art. 6, par. 1 of EU Regulation 2016/679. In the case, there is no dispute that "Salex" Ltd. is a personal data administrator within the meaning of Article 4, §7 of Regulation (EU) 2016/679, to whom the assessee provided his personal data on the occasion of an employment contract concluded between them. The question at issue in the case is, as the court of first instance correctly accepted, whether in this capacity the administrator has fulfilled his statutory obligation under Article 4, Paragraph 1, Item 1 of the LLDP, resp. Article 6, §1, b" c" of the Regulation or has violated it by providing personal data to the assessee in the volume specified in the complaint before the CPLD to a third party, without his express written consent. The conclusions of the administrative court are correct, that both in the course of the administrative proceedings before the Commission and in the court proceedings, these allegations of violations committed by the administrator were not proven by the plaintiff with the relevant evidence. The court fulfilled its obligation under Art. 171, para. 4 of the Code of Civil Procedure by assisting the parties by allocating the burden of proof, regarding the need to collect evidence, by expressly instructing the applicant with an order dated 19.11.2021 that he has the burden of establishing the facts set forth in the complaint and those from which he derives rights. In view of the procedural activity shown by the assessee and at his request, the court admitted to questioning as a witness - P. Stoyanov, the third person to whom Nedelchev claims that his personal data was provided, but due to Nedelchev's refusal to collection of oral evidence, the witness was deleted, evident from the minutes of the court session held on 07.12.2021. at the express request of the assessee. In the course of the court proceedings, no new evidence was submitted by the assessee, and given the provision of Art. 171, para. 1 APC, the court correctly referred to the evidence collected during the administrative proceedings, incl. the information of the person P.

Stoyanov, given to the VRP and a written statement by the same person sent to the CPLD. The factual findings in the appealed decision correspond to the collected evidentiary material, which is why the cassation instance accepts them in full and I should not repeat them. No evidence refuting the facts established by the court was presented before the present instance. Such evidence was not presented before the substantive instance. The correctly deciding court, with the burden of proof correctly distributed, established the facts relevant to the dispute, based on the evidence collected in the proceedings before the administrative body and the additional evidence requested in the course of the court proceedings. Contrary to what was stated in the cassation appeal, the court, based on the collected evidence, correctly perceived all the relevant facts and did not make any mistakes in forming its internal conviction. His conclusions are consistent and logical, do not contradict each other and are based on a proper analysis of the evidence. The court decision is not unreasonable. It is unfounded in the cassation appeal that the court committed a violation of the substantive law. The court correctly valued the information collected by P. Stoyanov in the course of the administrative proceedings, both given to the VRP and collected by the CPLD, and came to the correct conclusion regarding the absence of violations committed by the personal data administrator. From the same, it is necessary to conclude that the telephone number of the assessor was provided to him by individuals, former colleagues of Nedelchev and that in a personal capacity and for his own use - a complaint was filed against him, therefore there is no way to engage the responsibility of "Salex" Ltd. Despite the statements presented in the complaint to the CPC, as well as in the first instance and the current complaint, no evidence was provided by Nedelchev that his personal data, and in the amount specified in the initiating document, were provided by officials, a manager or a representative of the company to a third party. This conclusion is also relevant to the statement that his phone number was provided to Stoyanov by the persons mentioned above. No other conclusion can be drawn from the decree of 07.02.2020 presented in the case. of the prosecutor at the RP - Varna, which the assessor claims was not taken into account by the court. It reproduces the information of the person Stoyanov, given to the VRP, which were undoubtedly taken into account and discussed by the court and do not refute the conclusion that the telephone number was provided to the person by individuals, former colleagues of the assessor for personal use - a telephone conversation was held in connection with a complaint filed against Stoyanov. The extensive considerations presented in the cassation appeal and the clarification thereof repeat the claims of the cassator in the first-instance appeal, to which the court specifically responded in its decision. The conclusions are correct and are shared by the present instance on the basis of Art. 221, para. 2 APC, which is why it should not be repeated. The plaintiff's claim that the

decision of the AC - Varna is incorrect due to failure to discuss all the evidence in the case as a whole is unfounded. The complaint was stated blanketly, without specifying the specific facts and evidence that were not taken into account by the administrative court. The conclusions of the court for the issuance of the procedural act by a competent authority, in the relevant written form, in compliance with the rules of administrative procedure, with the correct application of the substantive provisions, are formed after assessing all the relevant evidence to the dispute, collected in the course of the administrative and judicial proceedings. No significant violations of the rules of judicial procedure were committed when the decision was rendered. In this case, the court clarified the facts of the case, discussed the arguments of the parties and ex officio verified the legality of the disputed administrative act on all grounds under Art. 146 of the APC. Based on the overall assessment of the evidence accepted in the case, it was concluded that the decision of the CPLD was lawful.

In the absence of the vices indicated as cassational grounds for annulment, the decision rendered by the court of first instance, as valid, admissible and correct, should be left in force.

Regardless of the outcome of the dispute, costs in favor of the defendant are not awarded because they have not been claimed.

Guided by the above and based on Art. 221, para. 2, proposition First APC, Supreme Administrative Court, Fifth Division

RESOLVE:

REMAINS in force decision No. 41 of 20.01.2022, issued under adm. case No. 1335/2021 according to the inventory of the Administrative Court - Varna.

The decision is not subject to appeal.

True to the original, CHAIRPERSON: /p/ ANNA DIMITROVA

secretary: MEMBERS: /n/ ILIANA SLAVOVSKA

/p/ TINKA KOSEVA