

In case 9837 / 2020

ANSWER

No. 551

Sofia, 18.01.2021

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the twenty-third of November, composed of:

CHAIRMAN:

ANNA DIMITROVA

MEMBERS:

GALINA KARAGYOZOVA

JULIA KOVACHEVA

to secretary

Madeleine Dukova

and with participation

to the prosecutor

Marinela Toteva

listened to what was reported

by the judge

JULIA KOVACHEVA

by adm. case no

9837/2020

The proceedings are under Art. 208 et seq. of the Administrative Procedure Code.

It was formed on a cassation appeal of "Bulgarian Telecommunications Company" EAD against decision No. 2905 of 12.06.2020 under Adm. case No. 721/2020 of the Administrative Court Sofia - city. It contains complaints about the incorrectness of the judicial act due to its being issued with incorrect application of the substantive law and groundlessness -

cassation grounds for annulment under Art. 209, item 3 APC.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data, through its legal representative, expresses the opinion that the appealed decision is correct and the cited cassation grounds for its cancellation are not present.

The defendant - S. Nikolaev, did not express an opinion on the cassation appeal.

The prosecutor from 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, finds that the cassation appeal is procedurally admissible as filed within the legal term and by the proper party. Considered in substance, it is unfounded, for the following reasons:

With the appealed decision, the Sofia City Administrative Court rejected the appeal of "Bulgarian Telecommunications Company" EAD against decision No. PPN-01-49 of 19.11.2019 of the Commission for the Protection of Personal Data.

With the disputed decision No. PPN-01-49 of 19.11.2019 of the Commission for the Protection of Personal Data contested before the court of first instance, appeal with reg. No. PPN-01-49 of 17.01.2019, submitted by S. Nikolaev against "Bulgarian telecommunications company" EAD, was declared justified and an administrative penalty was imposed on the administrator "Bulgarian Telecommunications Company" EAD, on the basis of Art. 58, § 2, b. "and" in accordance with Art. 83, § 4, b. "a" of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of natural persons in relation to the processing of personal data and on the movement of such data and on the repeal of Directive 95/46/ EC (General Data Protection Regulation, GDPR), for violation of Art. 32, § 4 of the GDPR - a pecuniary sanction in the amount of BGN 2,000. The Commission has issued an official warning to the administrator "Bulgarian Telecommunications Company" EAD for exceeding the technical and organizational measures in the processing of personal data in the company.

In deciding the dispute, the court has correctly established the relevant factual circumstances of the case and, based on an accurate analysis, has reached justified legal conclusions.

The court correctly found that "Bulgarian Telecommunications Company" EAD is the administrator of personal data and in that capacity processed the personal data of S. Nikolaev, and it was established that he is a client of the company. The court found that on 23.10.2018 at 15:49 and on 24.10.2018 at 14:47, an employee of the company in the position of "sales associate in the store network", zone East - Burgas 2 loaded a page with the list of monthly bills for Nikolaev's customer code, under which his

mobile service [number] is also located. The employee of the company - P. Dushkov, disclosed information from Nikolaev's invoice to a third party, containing three names, an exact address, a telephone number and telephone numbers with which he had made telephone calls, indicating the date and time. In the case, printouts of calls made from the process phone number are presented, from which the three names and exact address of Nikolaev are visible, as well as photos of communication between Nikolaev and a third natural person, who is alleged to have gained access to the personal data of Nikolaev.

With these factual findings, the court reasonably accepted that the appellant "Bulgarian Telecommunications Company" EAD, in its capacity as a personal data administrator, within the meaning of Art. 4, § 7 of the GDPR processed personal data of S. Nikolaev, without the existence of a legal basis for this. He did not consent to the processing of his personal data, which is illegal, as none of the conditions for processing personal data under Art. 4, para. 1 of the Labor Code (repealed), respectively Art. 6, § 1, letters "a" to "e" of the GDPR. The court accepted that in this case, from the evidence in the case, including from the Notification of breach of personal data security before the Commission, filed with reg. No.PPN-01-49/06.03.2019, regarding an internal audit carried out by the company, it can be concluded that the controller and the processor of personal data have not taken secure and reliable steps any natural person acting under the direction of the controller or the processor of personal data who has access to personal data to process such data only on instruction of the administrator, unless the person in question is required to do so by virtue of the law of the Union or the law of a Member State, due to which the court has drawn a correct conclusion that there is a violation of Art. 32, § 4 of the GDPR. In this situation, the court considered that the Commission lawfully imposed on the applicant the penalty provided for in Art. 58, § 2, b. "and" in accordance with Art. 83, § 4, b. "a" of the GDPR imposed a pecuniary sanction in the amount of BGN 2,000 and issued an official warning to the administrator "Bulgarian Telecommunications Company" EAD for exceeding the technical and organizational measures in the processing of personal data in the company.

The decision is correct.

The court correctly accepted that "Bulgarian Telecommunications Company" EAD is the administrator of personal data within the meaning of Art. 4, § 7 of the GDPR, to whom obligations are attributed, the fulfillment of which guarantees the lawful processing of personal data.

In relation to the administrator of personal data, it is necessary to have a legitimate basis for processing personal data of natural persons, and this right does not arise for them only as a result of their capacity as administrators in relation to unlimited

personal data in terms of type and volume.

In Art. 6, § 1, b. "a" to "f" of the GDPR list the grounds for lawful processing, namely only if and to the extent that at least one of the following conditions is applicable: a) the data subject has given consent to the processing of his personal data for one or more specific purposes ; b) the processing is necessary for the performance of a contract to which the data subject is a party; c) the processing is necessary for compliance with a legal obligation that applies to the administrator; d) the processing is necessary to protect the vital interests of the data subject or another natural person; e) the processing is necessary for the performance of a task of public interest or in the exercise of official powers granted to the administrator; f) the processing is necessary for the purposes of the legitimate interests of the controller or a third party, except when such interests are overridden by the interests or fundamental rights and freedoms of the data subject that require the protection of personal data, in particular when the data subject is kid. In this case, contrary to the cited texts, "Bulgarian Telecommunications Company" EAD, in its capacity as an administrator, has unlawfully processed personal data of S. Nikolaev, without the existence of a legal basis for this, since none is applicable from the conditions under Art. 4, para. 1 of the Labor Code (repealed), respectively Art. 6, § 1, letters "a" to "e" of the GDPR.

In the case, it was undisputedly established that on 23.10.2018 at 3:49 p.m. and on 24.10.2018 at 2:47 p.m., an employee of the company in the position of "sales associate in the store network", zone Iztok - Burgas 2 was loaded a page with the list of monthly bills for Nikolaev's client code, under which his mobile service [number] is also located, as the company's employee, namely the person P. Dushkov, disclosed information from Nikolaev's invoice to a third party , containing three names, an exact address, a telephone number and the telephone numbers with which the same person made telephone calls, indicating the date and time. The essential thing in this case is that the data was unlawfully provided by an employee of the company to a third party without the latter having the right to provide them, i.e. to process them, as he had no reason to do so. With its behavior, the company committed a violation of Art. 32, § 4 of the GDPR, in its capacity as a personal data controller has not fulfilled its obligation to take steps for any natural person acting under the authority of the controller or the personal data processor who has access to personal data to process such data only at the direction of the controller, unless the person in question is required to do so by virtue of Union law or the law of a Member State. In this case, even assuming that such steps were taken by the personal data controller, they were not sufficient to prevent unlawful processing. In the context of the above, the court correctly accepted that the processing of the data by "Bulgarian Telecommunications Company" EAD is not

admissible, since none of the conditions under Art. 4, para. 1 of the Labor Code (repealed), respectively Art. 6, § 1, letters "a" to "e" of the GDPR.

With a correct interpretation and application of the law, the court of first instance reasonably accepted that the applicant company, as it did not take safe and reliable steps, any natural person acting under the direction of the controller, who has access to personal data, should only process such data under the conditions according to Art. 4, para. 1 of the Labor Code (repealed), respectively Art. 6, § 1, letters "a" to "f" of the GDPR, with which he allowed unlawful access and processing of personal data of S. Nikolaev in the manner described above. Therefore, the appellant "Bulgarian Telecommunications Company" EAD committed a violation of Art. 32, § 4 of the GDPR, for which the administrative body legally committed its responsibility under Art. 58, § 2, b. "and" in accordance with Art. 83, § 4, b. "a" of the GDPR and issued an official warning to the company for increasing the technical and organizational measures when processing personal data in the company. Given the above, the appealed decision is correct and there are no cassation grounds under Art. 209, item 3 APC for cancellation, therefore the same should be left in force.

In view of the outcome of the dispute and the stated claim for the award of costs by the procedural representative of the defendant on cassation, the cassation appellant "Bulgarian Telecom

In view of the outcome of the dispute and the stated claim for the award of costs by the legal representative of the defendant on cassation, the cassation appellant "Bulgarian Telecommunications Company" EAD should pay to the Commission for the Protection of Personal Data the sum of BGN 100 in total, costs for legal consultancy fee based on Art. 78, para. 8 of the Code of Civil Procedure, in view of the referring norm of Art. 144 of the APC.

We are led by the above, the Supreme Administrative Court, Fifth Department,

RESOLVE:

REMAINS IN FORCE decision No. 2905 of 12.06.2020 by adm. case No. 721/2020 of the Administrative Court Sofia - city.

ORDERS "Bulgarian Telecommunications Company" EAD to pay the Commission for the Protection of Personal Data the sum of BGN 100, expenses for the present court instance.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Anna Dimitrova

Secretary:

MEMBERS:

/p/ Galina Karagyzova

/p/ Yulia Kovacheva