In case 9419 / 2021 DECISION No. 7868 Sofia, 14/09/2022 IN THE NAME OF THE PEOPLE The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the nineteenth of January two thousand and twenty-two composed of: CHAIRMAN: DIANA DOBREVA MEMBERS : EMANOIL MITEV EMIL DIMITROV with secretary Madeleine Dukova and with the participation of the prosecutor Vladimir Yordanov listened to what was reported by judge Emanoil Mitev in administrative case No. 9419 / 2021. The proceedings are under Art. 208 et seq. of the APC. It was formed based on the cassation appeal of Z. Kishishev submitted through a procedural representative - Adv. Valova, against decision No. 4198/25.06.2021 issued under adm. case No. 4156/2021 on the inventory of the Administrative Court of Sofia - city /ASSG/, which rejected the appeal of the assessee against decision No. PPN-01-38/25.02.2021 of the Commission for the Protection of Personal Data (PCPD). In the cassation appeal, complaints of irregularity due to a violation of the substantive law and unfoundedness - the annulment grounds under Art. 209, para. 3 of the APC. Requests a reversal and an award of costs in accordance with the list presented. The respondent, the Commission for the Protection of Personal Data /KPLD/, does not submit an opinion on the cassation appeal. The defendant D. Hristov also did not submit an opinion on the cassation appeal. The defendant D. Popova, through Adv. Baidanova, contested the cassation appeal as groundless. He claims an award of attorney's fees, according to the list presented. The defendant, A. Kishisheva, does not submit an opinion on the cassation appeal. The representative of the Supreme Administrative Prosecutor's Office gives a conclusion on the merits of the cassation appeal. The Supreme Administrative Court, fifth department, taking into account that the cassation appeal was filed within the term under Art. 211, para. 1 APC, on its part, finds the same admissible. Considered in substance, the same is unfounded for the following reasons: The proceedings before the Administrative Court of Sofia-city were initiated on the complaint of Z. Kishishev against decision No. PPN-01-38/2020 of 25.02.2021 of the CPLD, which basically. Art. 32, para. 4 of the Personal Data Protection Act (PDPA) the Personal Data Protection Commission has announced consolidated appeals with reg. No. PPN-01-38/16.01.2019 and No. PPN-01-39/16.01.2019 filed by Z. Kishishev and A. Kishisheva as obviously unfounded and the same were left without consideration. In the filed complaints, it is stated that the rights of the complainants arising from Regulation (EU) 2016/679 were violated, as by the attorney. D. Popova and D. Hristov, in connection with city case No. 70708/2018, 117 c-v of the Sofia District Court, were provided with references by the Registration Agency containing their personal data, without their consent. It is indicated that with the information provided by Adv. Popova consulted the personal data of the applicants, the same became available to the court, and hence to any third party examining the case. On the legal

side, the court accepted that the contested administrative act was issued by a competent authority - the Commission for the Protection of Personal Data, in the legally established form, according to Art. 59 of the APC. When issuing the commission's decision, no significant administrative-procedural violations were committed, there is no contradiction of the disputed act with the substantive law and it is in accordance with the purpose of the law. The decision of the authority was made after the parties were given the opportunity to express their opinion and submit written evidence. Reasons have been presented proving the fact in the case that there was no unlawful use of personal data of the applicants by the attorney. D. Popova and D. Hristov - three names, social security number, address where they live and their properties, contained in provided references issued by the Registration Agency. The latter were presented in response to a claim submitted by the daughter of the assessee, in connection with a claim for "maintenance and determining the regime of personal contacts with a minor child". In the documents to the claim, the plaintiff has attached a notarial deed in which the personal data of her parents appear, without the same data having been deleted. The court of first instance accepted that the processing of personal data of the applicant and his wife was carried out lawfully on the basis of the provision of Art. 6, § 1, b. "c" of Regulation (EU) 2016/679 of April 27, 2016 and therefore the consent of the individuals is excluded. He justifies that as the defendant's lawyer in the case before the SRC, Adv. Popova, in the performance of her official duties, namely to provide protection, has the right to process personal data of natural persons, which are related to the tasks assigned to her. The court accepts that the processing of the data by the lawyer took place on a legal basis, in connection with her professional engagement and solely and only for the implementation of the official powers granted to her within the framework of the developed claim proceedings. Regarding the claims of the applicants that their personal data were distributed to an unlimited circle of people, including the court, clerks and other third parties, the administrative court considers them unfounded, since the data were used for the purposes and within the framework of the claim by the assessee's daughter. Access to court cases is not free and unlimited, which is why it was correctly accepted by the administrative body that there was no violation of the PPE and Regulation (EU) 2016/679 of April 27, 2016. The decision is valid, admissible and correct. The dispute in the case before the court of first instance concerns the legality of the personal data of the assessee used by the attorney. D. Popova and D. Hristov. The court has accurately established the facts and, based on them, has reached correct factual and legal conclusions, which are shared by the present instance. Practicing the legal profession is an activity (Article 2 of the ZA), provided for in the Constitution, for legal assistance and protection of the freedoms, rights and legal interests of individuals and legal entities. It is carried out in accordance with the principles of

independence, exclusivity, self-management and self-support. In exercising the legal profession, the lawyer or the European Union lawyer is guided by the legal interests of the client, which he is obliged to protect in the best way by legal means. The norm of Art. 134 of the Constitution of the Republic of Bulgaria establishes that the bar is free, independent and self-governing. It assists citizens and legal entities in protecting their rights and legitimate interests. The court correctly accepted that the use of personal data of the assessee by Adv. D. Popova, fall within the scope of her official duties related to submitting a response to a claim, as she did not process personal data in a manner incompatible with the purposes of the specific case. The court correctly paid attention to the fact that the presented notarial deed was attached as evidence by the plaintiff, and it did not have personal data deleted. The same evidence was accepted and added to the other evidence in the case by the civil court. In Art. 6, § 1, b. "a"-"f" of Regulation (EU) 2016/679 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 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. The court correctly accepted that the processing falls within the scope of the provisions of Art. 6, § 1, b. "c" of the GDPR - the processing is necessary to comply with a legal obligation that applies to the administrator. The court's conclusions are correct, that there was no public disclosure of the data of the assessee, as a result of the references submitted by the Registration Agency with the response to the claim, and thus the data became known to the court, clerks and other lawyers. According to Art. 73, para. 1 of the Rules for the Administration of the Courts, inquiries in cases are made only by the parties to the cases and their representatives and lawyers, exercising their right of access to information in proceedings in accordance with procedural laws. Therefore, the arguments of the assessee in this part are also groundless. Regarding the request for a preliminary inquiry to the CJEU: The cassation court panel finds that, in view of the questions formulated in the cassation appeal and given the subject matter of the legal dispute, there is no reason to issue a preliminary inquiry in accordance with Art. 267 TFEU and Art. 628 of the Civil Code, in conjunction with Art. 144 APC to the

Court of the European Union. The national jurisdiction makes a preliminary inquiry to the Court of Justice of the EU in order to verify the validity of an act of the institutions, bodies, offices or agencies of the Union or in the case of the need to interpret a provision of Union law, when this interpretation is relevant for the correct decision of the case. The analysis of Art. 267 of the Treaty on the Functioning of the European Union, in conjunction with Art. 628 and Art. 629 of the Civil Procedure Code imposes the conclusion that the preliminary inquiry should have as its subject either the establishment of the validity of a secondary act of EU law, or the interpretation of a specific community law norm in the context of a specific national legal regulation, in order to establish, on the basis of this interpretation, the presence or absence of a contradiction of national law with norms of EU law. The provisions of EU law, the interpretation of which is requested, should be relevant to the specific legal dispute considered by the national jurisdiction, and their meaning and significance should give rise to ambiguity regarding their correct interpretation .The non-EU Court does not rule on the merits of national legal disputes, for the resolution of which the correct interpretation of the applicable Community provisions is relevant.

In the trial case, the questions formulated by the assessee do not point to specific provisions of Community law, for which ambiguity regarding their meaning and meaning can be claimed, and do not point to a specific contradiction between norms of national law and norms of EU law. From the content of the questions, problems relating to the verification of the substantive legality of the administrative act can be partially derived, within which the competent court should determine the applicable law by bringing the legally relevant facts established in the process to the hypothesis of the relevant substantive legal norms. The competence for this lies with the national court, which is why sending a preliminary inquiry to the CJEU with the content indicated by the plaintiff is not only unfounded, but also inadmissible.

In view of the foregoing, the appealed first-instance decision was rendered in compliance with the procedural rules, as contrary to the plaintiff's claims, the court rendered its act after clarifying the facts relevant to the dispute, and the legal conclusions drawn were based entirely on the evidence collected during the proceedings . The legality check of the act was carried out in strict compliance with the provisions of Art. 168, paragraph 1 APC, and the conclusions of the court are presented in detail and reasoned, in which the decision is also justified.

In view of the foregoing, the present judicial composition of the Supreme Court of Appeals accepts that the appealed decision is correct and should be left in force, as having been issued in the absence of cassational grounds for annulment.

In view of the outcome of the dispute, the assessee should be ordered to pay the defendant - Adv. D. Popova, the incurred

costs of BGN 800.00 representing a lawyer's fee.

For the stated reasons and on the basis of Art. 221, para. 2 of the APC, the Supreme Administrative Court, fifth department,

RESOLVE:

REMAINS IN FORCE decision No. 4198/25.06.2021, issued under adm. d. No. 4156/2021 according to the inventory of the Administrative Court Sofia - city.

JUDGMENT Z. Kishishev, city of Sofia, [residential district], to pay Adv. D. Popova with court address Sofia, 17 "Lavele" St., 2nd floor, lawyer's fee in the amount of BGN 800/eight hundred/.

The decision is final.

True to the original, CHAIRPERSON: /n/ DIANA DOBREVA

secretary: MEMBERS: /p/ EMANOIL MITEV

/p/ EMIL DIMITROV