

In case 13088 / 2020

ANSWER

No. 8855

Sofia, 26.07.2021

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

DIANA DOBREVA

MEMBERS:

VIOLETA GLAVINOVA

EMANOIL MITEV

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Asya Petrova

listened to what was reported

by the judge

EMANOIL MITEV

by adm. case no

13088/2020

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

It was formed based on a cassation appeal filed by the "Ataka" Political Party, through a procedural representative, Adv.

Sarandeva - Such, against decision No. 4632/17.08.2020 under adm. case No. 5107/2020 of the Administrative Court

Sofia-city/ASSG/, in the part of which her appeal against Decision No. PPN-01-1793/11.05.2020 was rejected. of the

Commission for the Protection of Personal Data /KPLD/.

The cassator presents reasons for the incorrectness of the appealed decision as being issued in violation of the substantive law, a substantial violation of the rules of judicial procedure and unreasonableness - grounds for annulment according to Art. 209, item 3 of the APC. He is asking for its cancellation. He presents detailed considerations in the cassation appeal. Claims an award of costs.

The defendant - CPLD, through legal representative Jurk. Parvanova, in a written statement, requests that the decision be left in force. Claims legal fees.

The defendant - M. Tsaneva, does not express an opinion on the cassation appeal. Claims no expenses.

The representative of the Supreme Administrative Prosecutor's Office expresses an opinion that the cassation appeal is groundless.

The Supreme Administrative Court, fifth department, having assessed the admissibility of the cassation appeal and the annulment cassation grounds cited in it, according to Art. 209 of the APC, accepts the cassation appeal as procedurally admissible, as filed in time and by the proper party, and examined in substance as unfounded.

In order to issue the appealed decision, the ASSG accepted as established that with the appealed decision of the CPLD, on the basis of Art. 58, §2, b. "i" of Regulation /EU/2016/2019, it imposes an administrative penalty on the political party "Ataka" - a pecuniary sanction, in the amount of BGN 10,000, for an established violation of Article 6, §1 of the Regulation, expressed in the unlawful processing of the personal data of the person M. Tsaneva.

The court considered that the contested decision before it was issued by a competent authority, in the form prescribed by law, in compliance with the rules of administrative procedure, the substantive legal provisions and the purpose of the law, as PP "Ataka" in its capacity as a personal data administrator committed the specified violation, having submitted an application for registration in OIC-Yambol, a list of authorized representatives of the party, with specified three names, a uniform civil number/TIN/ and authorization data. Under number 55 in the list are the personal data of M. Tsaneva-Kozhuharova. The list, without the personal identification number contained in it, is published and available on the OIC-Yambol website. The actions were carried out in connection with local elections held on 27.10.2019.

There is no consent of Tsaneva-Kozhuharova for his personal data to be processed for a specific purpose - registration as an authorized representative of PP "Ataka" during local elections in 2019.

The court has given reasons that the amount of the imposed property sanction should be reduced from BGN 10,000 to BGN 8,000.

The decision is correct.

The judgment of the ASSG is legitimate, that the "Ataka" PE has the status of administrator of personal data, insofar as it submitted a list to the Municipal Election Commission/OIC/-Yambol.

Pursuant to § 1, item 1 and § 1a of the DR of LLLD/ in annex. edition/ introducing the provisions of Directive 95/46/EU of the European Parliament. Where the provision of art. is directly applicable. 2, b. "d" of the same directive, containing a legal definition of "administrator" of personal data, allowing when determining the purposes and means of data processing by special national laws and the specific criteria to which the administrator must respond to be determined by national law - in the case of art. 118 of the Electoral Code, regulating the requirements for the lists for registration of advocates under Art. 117, para. 1 of IC.

According to Art. 122 of the IC, these personal data are processed and provided in compliance with the GDPR, and the party processing them for the purposes of registration has the capacity of a personal data administrator. In this case, the personal data of Tsaneva-Kozhuharova were unlawfully included in the list under Art. 124, para. 4 of the Criminal Code, specifically from the "Ataka" PP, as in the case of the indisputably established and proven violation, a sanction of BGN 10,000 was imposed.

The arguments of the assessee, repeated from the original complaint, are not credited. ASSG has presented reasons that are fully shared by the present instance, and the violation committed as noted above has been established beyond doubt, and the motivation of PP "Attack" for committing it is irrelevant.

The main cassation challenge is directed against the choice and amount of the imposed sanction.

The present instance shares the findings of the first instance that the pecuniary sanction was chosen because of its effectiveness and disciplinary effect. The amount of the sanction is consistent with the nature, severity and duration of the violation. In order to reduce the amount of the sanction, the court considered that although no minimum was provided; apparently uncritically accepted by the party previously imposed property sanctions of BGN 2,000, do not achieve the desired effect - the amount should be increased. Considering all the signs of sanctioning correctly, the court of first instance accepted that in the specific case the sanction of BGN 8,000 was proportionate.

No significant procedural violations committed by the administrative court were found. In accordance with the provision of Art.

168, para. 1 of the APC, the court verified the legality of the contested act. The burden of proof in the trial is distributed according to the requirements of Art. 170 of the APC, in case of procedural activity shown by the judicial panel according to Art. 171, para. 4 of the APC. The court's decision was made after collecting the admissible evidence relevant to the subject of the court proceedings and after their discussion, including the arguments of the parties.

The first-instance decision was not found to be unfounded. The conclusions of the court panel correspond with the evidence collected in the case and were formed after their correct assessment.

On the basis of the above, the current court panel accepts that when the appealed court decision was rendered, the violations pointed out by the plaintiff under Art. 209, item 3 of the APC, therefore the same should be left in force.

In view of the outcome of the dispute and in accordance with the claimed and proven expenses, in view of the fact that the defendant party - CPLD is represented by a legal consultant in the court proceedings, on the basis of Art. 143, para. 4 of the Administrative Code of Administrative Procedure No. 3/13.05.2010 of the General Assembly of the Boards of the Supreme Administrative Court, and according to Art. 78, para. 8 of the Code of Civil Procedure, cf. Art. 144 of the APC, this defendant should be awarded legal fees in the amount of BGN 100.

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

RESOLVE:

REMAINS IN FORCE decision No. 4632/17.08.2020 by adm. case No. 5107/2020 of the Administrative Court Sofia-city.

CONDEMNED Political Party "Ataka" to pay to the Commission for the Protection of Personal Data the amount of BGN 100/hundred, costs of the case for the present instance.

The decision is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Diana Dobрева

Secretary:

MEMBERS:

/p/ Violeta Glavinova

/p/ Emanoil Mitev