

In case 4696 / 2018

ANSWER

No. 15634

Sofia, 18.11.2019

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

ANNA DIMITROVA

MEMBERS:

ILIANNA SLAVOVSKA

TINKA KOSEVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Lyubka Stamova

listened to what was reported

by the judge

ILIANNA SLAVOVSKA

by adm. case no

4696/2018

The proceedings are in accordance with Art. 208 -228 of the Administrative Procedure Code (APC).

It was formed based on a cassation appeal filed by the National Revenue Agency (NAA), through a legal representative, against decision No. 7704/13.12.2017 issued under Adm. d. No. 11453/2016 by the Administrative Court of Sofia-city (ASSG), which rejected the agency's appeal against decision No. Ж-48/2014 of the Commission for the Protection of Personal Data.

Based on the reasons given for the incorrectness of the decision, it is requested to cancel it and to issue a new one on the substance of the dispute, by which the appealed administrative act will be canceled, and the administrative expenses incurred will also be awarded to it.

The defendant in the cassation appeal - the Commission for the Protection of Personal Data (PCPD), through a procedural representative, contests the same in a court session and asks the court to issue a decision rejecting it as unfounded. It requests an award of legal fees.

The defendant S. Momchev, as the heir of K. Momchev, does not send a representative to the court session and does not take 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 (SAC), a composition of the Fifth Division, during the ex officio review of the contested decision pursuant to Art. 218, para. 2 of the APC and considering the arguments presented in the cassation appeal, considers the following established:

The cassation appeal was filed by an actively legitimized party, within the period under Art. 211 of the APC and is procedurally admissible, but examined in substance it is unfounded, due to the following considerations:

With the appealed decision, the National Revenue Agency rejected the contestation on the appeal of the National Revenue Agency against decision No. Ж-48/2014 of 06.10.2016 of the Commission for the Protection of Personal Data /KPLD/, by which, on the basis of Art. 38 para. 2 and Art. 42, para. 1 of the Law on the Protection of Personal Data imposes on the National Revenue Agency, with headquarters and management address Sofia, 1000, "Knyaz Dondukov" Blvd., an administrative penalty - a property sanction, in the amount of BGN 10,000 (ten thousand), for the fact that, in her capacity as a personal data administrator, she processed the personal data of K. Momchev in violation of Art. 2, para. 2, item 2 of the Labor Code. The ASSG has presented extremely detailed considerations, according to which the Commission's decision attacked before it is an actual administrative act, issued in compliance with the substantive law, without significant violations of the rules of administrative procedure and in accordance with the purpose of the law.

The judgment thus rendered is valid, admissible and correct.

On the factual side, the court accepted that K. Momchev had appealed to the CPLD for the fact that, in the course of carrying

out its activities, the TD of the NRA - a division of the NRA, had distributed Momchev's personal data (names, social security number, correspondence address, residential address, as and e-mail address) to third parties - the accounting offices "Denex" OOD, SK "Orion RG" and "Creston Bulmar" OOD, from which references were requested on the amount of the usual fees for the activity of accounting services for legal entities and sole traders, unregistered and registered for VAT for the period 2009 - 2011.

The first-instance court accepted that the contested act was issued by a competent authority, subject to compliance with the legal form and administrative production rules, and with proper application of the substantive law. The legislator did not introduce specific requirements to which the person submitting the complaint should meet, on the contrary - in Art. 38, para. 1 of the Labor Code, the expression "any natural person" is used.

The administrative court states reasons that the alleged violation is expressed in inadmissible processing of personal data in the form of their distribution to third parties - the accounting offices "Denex" OOD, SC "Orion RG" and "Creston Bulmar" OOD, i.e. in violation of Art. 4, para. 1 ЗЗЛД.

In view of the written evidence collected in the administrative proceedings, the ASSg finds the administrative body's conclusion that the processing of the applicant's personal data was inadmissible justified and lawful.

The decision is correct.

The specified cancellation grounds are not available.

The factual situation was correctly established by the trial court. Evidence relevant to the correct resolution of the dispute has been collected, which the court has discussed in their mutual relationship and in connection with the objections of the parties. Based on this, he made well-founded legal conclusions, which are fully shared by the present judicial composition.

In the provision of Art. 4, para. 1 of the GDPR stipulates that personal data may be processed only in cases where at least one of the conditions specified in items 1 - 7 is present. In the present case, the NRA, as a personal data controller, has the authority to process personal data of natural persons in the exercise of their functional activities and tasks. The processing of personal data is a function of the authority of the revenue authority and a condition for the performance of the activities assigned to them under Art. 12 of the Code of Criminal Procedure. In this sense, the processing of personal data by the revenue authorities is not necessary for the realization of legitimate interests of the controller of personal data or of a third party to whom the data is disclosed, except in case of an overriding interest. There is no data, and it is not claimed in the case,

that the disclosure of the applicant's personal data to third parties is related to the realization of their legitimate interests related to the protection of their fundamental rights and freedoms. In this aspect, the hypothesis of Art. 4, para. 1, item 7 of the Labor Code.

The inapplicability of Art. 4, para. 1, item 6 of the Labor Code.

The arguments for incorrect application of Art. 38, para. 2 of the Labor Code.

The Commission for the Protection of Personal Data is an independent state body specialized in the protection of individuals in the processing of their personal data, having the authority to carry out comprehensive control for compliance with the requirements of the GDPR. In accordance with that in Art. 38, para. 2 of the law stipulates that the Commission issues a decision with possible alternative hypotheses when a violation is established, to give a deadline for the elimination of the violation, mandatory prescriptions or the imposition of an administrative penalty. The choice of the appropriate measure for an established violation is within the operational autonomy of the Commission. Act issued under operational autonomy, according to Art. 169 of the APC is subject to judicial review as to whether the administrative body had operational autonomy and whether the requirement for the legality of the act was met. In this case, the administrative body has determined the imposition of a pecuniary sanction, and the considerations for choosing the possibility of applying this possibility of sanctioning are contained in the circumstantial part of the decision and are based on the facts and circumstances established in the course of the proceedings. When discussing the data in the case file, a conclusion was made about the specific behavior that constituted a violation of the rules of personal data processing.

The ASSG correctly concluded that with the provision by the revenue authorities of Momchev's personal data to third parties - accounting firms, a form of processing of the personal data listed in § 1, item 1 of the Personal Data Protection Act - distribution and/or provision was carried out. In Art. 2, para. 2 of the Personal Data Protection Act states the requirements for the processing of personal data: to be processed lawfully and in good faith; to be collected for specific, well-defined and lawful purposes and not to be further processed in a manner incompatible with these purposes; be relevant, related to and not exceeding the purposes for which they are processed.

In the trial case, the conclusion of the deciding court is substantiated, that when making an inquiry regarding the amount of usual fees for the activity of accounting services for legal entities and sole traders, registered and unregistered under VAT for the period 2009-2011, it was not necessary to process through distribution of K. Momchev's personal data, namely their

provision to third parties - accounting firms, it was sufficient to indicate in the request for the provision of documents and written explanations by third parties that the information is necessary on the occasion of an audit assigned by order No. 1301602 of 11.07.201 Zg., without including the personal data of the revised person in the request.

The established factual situation fulfills the composition of the violation under Art. 2, para. 2, item 2, paragraph § 1, item 1 of the Labor Code - distribution and/or provision of personal data about K. Momchev, which are unrelated, unrelated to and exceeding the purposes for which their processing was carried out by the employees of the NRA in the forms thus specified, for which, on the basis of the sanction norm of Art. 42, para. 1 LLPA, the agency bears administrative criminal responsibility. The ASAg sets out sufficient arguments for the measure taken regarding the behavior of the responsible entity in the processing of personal data, correctly qualified as a violation in the sense of the special law. The administrative act, as issued under the conditions of operational autonomy, the administrative body has set out reasons for the following violation of the requirements of the law, in the presence of which three equal hypotheses of taking measures are provided. Therefore, the choice of one of them, in this case the imposition of an administrative penalty - a property sanction, is a sufficiently effective measure to achieve the goals of the law under Art. 1, para. 2 of the Labor Code. The reasons presented are consistent, logical and in accordance with the gravity of the specific violation. In view of the violation already committed, which led to unlawful processing of the data, which circumstances are not in dispute and are discussed in the Commission's decision, it should be assumed that the choice of measure is justified with a view to achieving the intended preventive goal of its imposition. In this direction, the form of control undertaken by the administrative body - imposition of a property sanction, contributes to achieving the goal of the law to ensure protection during processing and storage of personal data, including illegal access. With this stated, the argument of lack of reasons in the decision is groundless.

In the trial case, given the violation committed, which is expressed in illegal data processing, the current court panel accepts that the choice of measure is justified with a view to achieving the intended preventive goal of its imposition

In view of the outcome of the dispute, the request of the defendant in cassation - the Commission for the Protection of Personal Data, for the award of costs representing legal fees provided for in the provision of Art. 78, para. 8 of the Civil Code.

According to Art. 24 of the Ordinance on payment of legal aid, in administrative cases the remuneration for one instance is from BGN 100 to BGN 200. For the proceedings in the present case, costs in the amount of 100 (one hundred) BGN should be awarded in favor of the defendant.

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

RESOLVE:

REMAINS IN FORCE decision No. 7704/13.12.2017 issued under adm. d. No. 11453/2016 from the Administrative Court of Sofia-city

CONDEMNED the National Revenue Agency to pay the Commission for the Protection of Personal Data, costs in the case in the amount of 100 /hundred/ BGN, representing a legal consultancy fee for the cassation instance.

The DECISION is not subject to appeal.

True to the original,

CHAIRMAN:

/p/ Anna Dimitrova

Secretary:

MEMBERS:

/p/ Iliana Slavovska

/p/ Tinka Koseva