

In case 7002 / 2021

ANSWER

No. 13021

Sofia, 20.12.2021

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

ANNA DIMITROVA

MEMBERS:

ILIANNA SLAVOVSKA

TINKA KOSEVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Todor Merdzhanov

listened to what was reported

by the judge

TINKA KOSEVA

by adm. case no

7002/2021

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

It was formed on the cassation appeal of A. Kostov from the city of Plovdiv, against decision No. 914 of 29.04.2021, issued
under adm. case No. 3214/2020 of the Administrative Court - Plovdiv, with which his appeal was rejected, against decision No.
PPN -02 - 676/20.11.2020. of the Commission for the Protection of Personal Data (PCPD).

In the cassation appeal, arguments were developed for the incorrectness of the rendered court decision, due to a violation of the substantive law and a substantial violation of the rules of judicial procedure - grounds for annulment under Art. 209, item 3 of the APC. It is alleged that the court of first instance did not assess the balance between the right to information and freedom of expression, in the context of the journalistic activity carried out by the electronic media, whose publisher is "Plovdiv Media" OOD, and the right to the protection of personal data. It is argued that in the provision by the media of current and public relevant information, it was not necessary to provide photos of his private car or even if they were published, the registration number should have been hidden, as it is personal data on which it can be identified as a person within the meaning of the Personal Data Protection Act. States that the distribution of his personal data through print media is disproportionate to the subject of the article and its message and does not comply with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons in relation to the processing of personal data and regarding the free movement of such data and for the repeal of Directive 95/46/EC (Regulation (EU) 2016/679, GDPR, the Regulation) and in particular with the principle of reducing data to a minimum. He disputes the court's conclusion that he is a public figure and his tolerance for journalistic criticism should be wider. According to the reasons developed in detail in the cassation appeal, the court decision is requested to be annulled as incorrect and a decision on the merits of the cassation instance to be issued, with which the case will be returned to the Criminal Code with instructions to impose a sanction on "Plovdiv Media" OOD and **remove it from the Internet page of the procedural article, referring to the "right to be forgotten" under Article 17 of Regulation (EU) 2016/679.** Makes an alternative request for annulment of the decision and return of the case for a new consideration by another panel of the court.

The defendant - the Commission for the Protection of Personal Data, in a written statement, through a procedural representative, contests the cassation appeal and requests that the decision, as correct, remain in force. Claims an award of attorney's fees and objects to the excessiveness of attorney's fees, if the assessee claims one.

The defendant - "Plovdiv Media" Ltd., regularly summoned, does not appear at the court hearing and 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 and considers that the rendered court decision as correct should be left in force.

The Supreme Administrative Court, composition of the fifth department, after considering the facts of the case and the

arguments of the parties, accepts the following as established:

The cassation appeal was filed by a proper party, against a contestable judicial act that is unfavorable to it, as well as within the preclusion period under Art. 211 of the APC, which is why it is procedurally admissible. Considered on its merits, it is unfounded.

The subject of control for legality in the proceedings before the Court of Appeals - Plovdiv, initiated on Kostov's complaint, is Decision No. PPN-02-676/2019 of 20.11.2020 of the CPLD, which declared the appeal, ent. No. PPN-02-676/16.12.2019, filed by A. Kostov against "Plovdiv Media" Ltd. with the subject of illegal processing of his personal data, by publishing photos with a visible registration number of a car on the information platform [https:// plovdivmedia. com.](https://plovdivmedia.com) to an article with the title "Candidate for mayor parks as he pleases, the post about it on Facebook is threatened".

The court of first instance collected the evidence relevant to the dispute and, after discussing it in detail, established the facts truthfully and precisely, and its factual findings are not disputed.

The court accepted that the administrative act was issued by a competent administrative body, without significant procedural violations being committed, which would constitute an independent basis for its cancellation. He considered that the body's factual findings are supported by the collected evidence and, based on a correctly established factual situation, the body made justified conclusions regarding the application of the substantive and procedural law, which are fully shared by the court of first instance.

In order to assess the contested decision for compliance with the substantive law, the court accepted that in this case there was processing of personal data for "journalistic purposes" by a personal data administrator, such as "Plovdiv Media" OOD, the challenger in its capacity as a candidate for the mayor, he acquired the quality of "public figure", and the journalistic purpose in this case is justified by the fact that the provided personal data were not disclosed for their own sake, but for the needs of journalistic criticism in the form of an expressed position, regarding the behavior of the subject of the data, adopted as such in violation of road traffic rules.

The court came to the conclusion that by publishing the article, the electronic media exercised the right to freedom of speech in line with the right to freely seek and receive information about events of public interest, and no interference with the "private life" of the disputant was established due to the published photographic images of the vehicle he owns in a place for public use, as it does not disclose moments of his private life. Given the lack of infringement of a fundamental right to private life,

according to the court, a balanced assessment of the reconciliation of fundamental rights in conflict is not due, since the indicated violation has not been committed.

For these reasons, the court considered that for the correct conclusions of the CPLD in the disputed decision about the absence of committed violations of Art. 25h of the CPLD, Art. 5, §1, b"c" of the GDPR, "Plovdiv Media" Ltd. did not carry out the alleged before the CPLD violation and having accepted the complaint of the data subject as groundless, ruled the contested result - rejected the appeal against the decision of the CPLD.

The judgment thus rendered is correct.

The conclusions of the first-instance court regarding the issuance of the procedural decision of the CPLD by a competent administrative body, in the required form, in the absence of violations of the administrative production rules, can be fully shared as being consistent with the evidence in the case and the substantive law. The court correctly accepted the facts of the dispute as established by the CPLD, since they are not disputed between the parties, and were established by the evidence collected in the case. It is not in dispute between the parties and the evidence establishes that on the website of [https:// plovdivmedia.com](https://plovdivmedia.com). on 22.10.2019 an article was published about the assessor, to which were attached photos containing an image of a person with the text "Candidate for mayor parks as he pleases, the post about it on Facebook is threatened" and a second photo with images of a parked car with a clear mark visible, model, color, location and registration number of the vehicle.

The main arguments of the court regarding the nature of the published data as personal data as defined in Art. 4, para. 1 of the GDPR, respectively § 1, item 1 of the DR of the GDPR, their processing by the company "Plovdiv Media" OOD, in the sense of Art. 4, item 2 of the GDPR, as well as that the processing is for journalistic purposes, in the content of this concept, clarified by the European judicial jurisdictions, in connection with the application of the GDPR, HOPES and GDPR. It is also correctly accepted that A. Kostov is a public figure - in his capacity as a candidate for mayor of the city of Plovdiv.

Corresponding to the evidence collected in the case are the conclusions of the AC - Plovdiv, that in this case the processing of the applicant's personal data, contained in the publicly presented photographic images, bearing personal data, name of the person, profession, owner of a certain motor vehicle with a specified make, model and registration number is in harmony with the content of information addressed to an unlimited number of users about events of public interest, does not in itself constitute a violation of the right to privacy. The processing of this personal data by the administrator is solely for journalistic purposes and by publishing the article the electronic media has exercised the right to freedom of speech in unison with the

right to freely seek and receive information about events of public interest.

The principle reasoning of the court regarding the two competing rights in the case - the right to freedom of expression and information and the right to protection of personal data, the nature of the same, and that it is not necessary to assess the balance between them are also correct, insofar as both are not absolute, including in the context of the requirements of Art. 5, §1 b. "c" of the GDPR, namely, the processing is not excessive, it is in accordance with the principle of Article 5 of the GDPR, that the personal data are appropriate, related to and limited to what is necessary in relation to the purposes for which they are processed ("reduce the data to minimum").

Pursuant to Art. 85, §1 and §2 GDPR: 1. Member States shall harmonize by law the right to the protection of personal data in accordance with this regulation with the right to freedom of expression and information, including processing for journalistic and academic purposes, artistic or literary expression.; 2. For processing carried out for journalistic purposes and for the purposes of academic, artistic or literary expression, Member States shall provide for exceptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (administrator and processor of personal data), chapter V (transfer of personal data to third countries and international organizations), chapter VI (independent supervisory authorities), chapter VII (cooperation and coherence) and chapter IX (special situations of data processing), if they are necessary for reconciliation of the right to protection of personal data with freedom of expression and information.

According to the exceptions and derogations provided for in Article 25h of the LLPA, related to the processing of personal data carried out for journalistic purposes, the processing of personal data for journalistic purposes is lawful when it is carried out for the realization of freedom of expression and the right to information, while respecting of privacy (Art. 25h, para. 1 LLPA), but according to Art. 25h, para. 3 LLPA, when processing personal data for the stated purposes, Articles 6, 9, 10, 30, 34 and Chapter Five do not apply of Regulation (EU) 2016/679, as well as Art. 25c of the GDPR, as the administrator or personal data processor may refuse the full or partial exercise of the data subjects' rights under Art. 12 - 21 of Regulation (EU) 2016/679.

In view of the specifics of the case, the present composition fully shares the conclusions of the AC-Plovdiv that the above-mentioned categories of personal data were processed by the personal data controller "Plovdiv media" OOD with the aim of informing the public about a given behavior of the data subject in his quality as a public figure-candidate for the mayor of the city of Plovdiv, and the processing was carried out within the framework of the derogation adopted by the national legislation from some provisions of the Regulation, without violating the subject's right to the protection of personal data, when

realized by the administrator of personal data, the right to inform society, by exercising the right to express an opinion and freedom of information, laid down in Article 11 of the Charter.

As AC-Plovdiv has rightly pointed out in a number of decisions of the ECHR, the freedom of dissemination of information is linked by the Court to the right of everyone and society as a whole to information through the media on matters of public interest. Such public interest in the present case is undoubtedly present in view of the public nature of the data subject's personality.

The question of whether procedural personal data in terms of volume and type are limited to what is necessary in view of the purposes for which they are processed should be answered positively, as the first-instance court also did, because the name of the data subject, his social identity- profession, and the established identifiers such as "candidate for mayor of the city of Plovdiv", "owner of a certain motor vehicle with a certain make, model and registration number", "perpetrator of violations under the Personal Data Protection Act", are outside the special categories of personal data, subject to protection under Art. 9 GDPR, where, on the basis of an argument on the stronger grounds, after the special categories of personal data referred to in Art. 9, §1 GDPR (revealing specific elements of the person, which are assumed to affect the person of the subject in a certain sense of data to a greater extent) have a derogation permitted under Art. 85 of the GDPR (applied by the national legislator in the GDPR), then the process personal data processed by the controller "Plovdiv Media" OOD are included in the category of appropriate, related and bordered carried out to the necessary degree of disclosure in accordance with the goals of journalism (see and item 153, ex. last from the preamble of Regulation (EU) 2016/679) to inform the public about the momentary behavior of a socio-politically visible, recognizable, and therefore significant subject in a certain time interval given its public quality.

The appellant's objection that he was not, did not want to be and is not a public figure cannot be shared. Whether a person has the characteristic of "public" is not determined by his claims, but by his participation in public relations, whereby he acquires such a characteristic, which in this case is undoubted.

With regard to Kostov's claim, stated before the CPLD, for exercising the right to erasure (right "to be forgotten") according to Art. 17 GDPR, the court of first instance presented detailed reasons, to which the present instance refers on the basis. Art. 221, Para. 2, Art. latest apk.

The manner in which the data was provided to the personal data controller and the purposes of their processing outside of

those of journalism (in the broad interpretation of this term) are irrelevant to the trial case, since the subject of investigation in the present proceedings is a violation of the applicable protection legislation of the personal data, and not other legal relationships, in the event of the presence of which the parties may claim rights under a different procedural order. It is in different legal spheres that the relations stated by the plaintiff are related to deliberate and tendentious photography, the search for an opposite opinion, surveillance, lack or presence of an objective journalistic investigation, disclosure of defamatory or disgraceful circumstances, damage to the good name, violation of the presumption of innocence, tort. Contrary to what was stated by the assessee, no substantial procedural violations were found committed by the administrative court. In accordance with the provisions of Article 168, paragraph 1 of the APC, the court has verified the legality of the contested act. The burden of proof in the trial is distributed in accordance with the requirements of Article 170 of the APC, in the case of procedural activity shown by the judicial panel in accordance with Article 171, paragraph 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 extensive complaints about bias in the actions of the administrator "Plovdiv Media" OOD, as well as defamatory actions on his part, aimed solely at tarnishing the name and reputation of the plaintiff, as a person, a lawyer and a candidate for mayor of the city of Plovdiv in the specific case moment, are completely irrelevant to the subject of the dispute, which is related to the main disputed issue, namely the lawful processing of personal data for journalistic purposes, carried out to implement the freedom of expression and the right to information, while respecting privacy.

The taxpayer should realize that with his actions of active participation in the public and political life of the country, he acquires the quality of a public figure, to whom the interests, requirements and expectations of society will be significantly increased, the public interest in his person should with greater intensity, therefore, his private life is protected to a lesser extent than that of other members of society. In a number of its decisions, the CJEU pays special attention to the duty of the media to receive on behalf of the public and to disseminate to the general public information of public interest, placing emphasis on the contribution of this information to the public debate. Both the CJEU and the ECtHR share the understanding that society can only participate effectively and effectively in the democratic process if it has information about the activities and policies of public authorities. In accordance with Art. 52(3) HOPES, the CJEU follows the practice of the ECHR and accepts that freedom of expression includes not only the expression of opinions, but in accordance with Art. 10, §1, sentence two of the ECHR and

with Art. 11, §1, first sentence of the Charter, it covers - in the sense of freedom of communication - the freedom to receive and disseminate information and ideas, and that freedom of communication refers to any type of information (judgment in case C - 73/07).

On the basis of the above, the current court panel accepts that when the appealed court decision is rendered, the violations pointed out by the appellant under Article 209, item 3 of the APC are not present, therefore the same should be left in force.

In view of the outcome of the dispute and in view of the fact that the defendant CPLD is represented by legal counsel in the court proceedings, given the stated claim and on the basis of art. 143, para. 3 of the APC in conjunction with art. 24 NZPP, the CPLD should be awarded expenses - legal consultancy fee in the amount of BGN 100.

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

RESOLVE:

decision No. 914 of 29.04.2021, issued under adm., REMAINS IN FORCE. case No. 3214/2020 of the Administrative Court - Plovdiv:

CONDEMNED A. Kostov, EGN [EGN] to pay the Commission for the Protection of Personal Data. the sum of 100 (one hundred) BGN, expenses for the cassation proceedings.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Anna Dimitrova

Secretary:

MEMBERS:

/p/ Iliana Slavovska

/p/ Tinka Koseva