

In case 7593 / 2021 DECISION No. 1954 Sofia, 01.03.2022 IN THE NAME OF THE PEOPLE The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the seventeenth of November in the composition: CHAIRPERSON: VIOLETA GLAVINOVA MEMBERS: GALINA KARAGYOZOVA MARIA NIKOLOVA with secretary Nikolina Avramova and with the participation of the prosecutor Simona Popova listened to the report by the chairman VIOLETA GLAVINOVA on adm. case No. 7593/2021 The proceedings are in accordance with Art. 208 et seq. of the Administrative Procedure Code (APC). It was formed on the cassation appeal of K. Nedelchev from the city of Sofia against decision No. 3458 of 27.05.2021, issued under adm. case No. 11356 of 2020, according to the inventory of the Administrative Court of Sofia-city (ACSG), which rejected his appeal against decision No. PPN-01-692/19 of October 22, 2020 of the Commission for the Protection of Personal Data (CPLD). By the same decision, K. Nedelchev was sentenced to pay to the Commission for the Protection of Personal Data the costs of the case in the amount of 100.00 (one hundred) BGN, a legal consultancy fee, and to "Inkonomedia" AD the costs of the case in the amount of 1,200.00 (one thousand two hundred) BGN. In the cassation appeal, complaints are made about the incorrectness of the appealed judicial act due to a violation of the substantive law and unreasonableness - cancellation grounds under Art. 209, item 3, proposal first and third of the APC. Cancellation of the contested judicial act is requested. A copy of an article as well as a copy of [map] are attached to the cassation appeal for reference. The respondent - the Commission for the Protection of Personal Data, through legal counsel Gladnikova, in written notes dated October 29, 2021, disputes the cassation appeal with arguments for its unfoundedness. Requests its rejection on the basis of Art. 78, para. 8 of the Civil Code, in connection with Art. 144 of the APC for the award of legal fees. Objected to the excessiveness of the attorney's fees claimed by the cassation appellant. The defendant - "Iconomedia" JSC, through the attorney at law. Kashamov contests the cassation appeal by presenting detailed arguments about its unfoundedness. Asks for the rejection of the cassation appeal and the award of costs for the present court instance, in view of the deposited list under Art. 80 of the Civil Code, in connection with Art. 144 of the APC, to which are attached a contract for legal protection and assistance from November 15, 2021, an invoice from the same date and a transfer of the agreed amount from November 16, 2021. The prosecutor from the Supreme Administrative Prosecutor's Office gives a reasoned conclusion that the cassation appeal is unfounded. The Supreme Administrative Court, a three-member panel of the fifth department, having assessed the cassation grounds cited in the appeal and the evidence in the case, considers the following established: The cassation appeal was filed within the preclusion period under Art. 211, para. 1 of the APC and by the appropriate party within the meaning of Art.

210, para. 1 of the APC, against which the first-instance decision is unfavorable. Considered in substance, it is unfounded for the following reasons: The proceedings before the Administrative Court of Sofia-city were initiated on the complaint of K. Nedelchev against decision No. PPN-01-692/19 of October 22, 2020 of the Commission for the Protection of Personal Data, which the authority accepted the complaint reg. No. PPN-01-692 of July 23, 2019 of K. Nedelchev against Economedia JSC as groundless and dismissed it with no respect. Also, the applicant was sentenced to pay to the joint-stock company the incurred expenses for attorney's fees in the amount of BGN 700.00 (seven hundred). The court accepted that the contested administrative act was issued by a competent body - the Commission for the Protection of Personal Data, in the written form provided for by the law according to Art. 59 of the APC, contains the statutory requisites - name of the body, name of the act, addressee of the act, before which body and within what period it can be appealed, date of issue, signatures of the persons who issued the act. He presented reasons that, when issuing the contested decision, no significant violations of the procedural rules were committed, which led to the limitation of the right of defense of the participants. The interested parties were promptly served with copies of the documents and evidence filed in the proceedings, and were given the opportunity to get to know each other and express their opinions. The administrative court concluded that in the absence of violations of Art. 25h, para. 1 of the Personal Data Protection Act (PAPA), art. 5, paragraph 1, b. "c" and in accordance with Article 78 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and on the repeal of Directive 95 /46/EC (General Data Protection Regulation) (text of EEA relevance) (consolidated version), (Regulation (EU) 2016/679) there is no basis for applying the power of the CPDP to oblige the controller of personal data to delete the publications in the media of "Iconomedia" JSC, specifically in an article entitled "Curious witness in the case against Chenalova" dated 06.12.2015. in "Capital," in an article titled "It's Not Complicated At All. It's simple," published on March 11, 2016. in "Capital" and in an article entitled "Witness against Chenalova: Envelopes of money solved cases", published on 07.01.2016. in "Dnevnik" village, based on data on court cases, containing information about the personal and last name of K. Nedelchev and his profession - [profession]. The court accepted that the disclosure of data about the applicant's personality and profession legally followed the balance between the right to information on the one hand and the protection of personal data on the other. [Profession] data relating to the profession, as well as cases in which there has been a strong public interest, have been published, therefore the disclosure of information related to the judicial system and events related to it takes precedence over the "right to be forgotten"

. In this sense, the court referred to Art. 17 of Regulation (EU) 2016/679 and Art. 21, paragraph 1 thereof. The court has reached the final conclusion of the correctness of the appealed decision of the CPLD, issued with the correct application of the substantive law, without significant violations of the rules of administrative procedure, which is why it rejected K. Nedelchev's appeal against the contested administrative act of the CPLD. The decision is correct. The conclusions of the Administrative Court of Sofia - city on the legality of the procedural decision of the CPLD are fully shared by the present judicial composition. The court act is correct and in detail motivated regarding the form and content of the act, namely that the administrative act of the commission was issued by a competent authority, in the form provided by law, without any significant procedural rules that led to the limitation of the right of defense of the participants in the administrative proceedings. He discussed the evidence relevant to the dispute, gathered within the framework of the administrative proceedings and correctly established the facts of the case. In essence, the instance correctly found that it concerns the processing of personal data for journalistic purposes and this processing does not violate the balance between the protection of the applicant's right to have his personal data deleted and the protection of the right to free expression. Regulation 2016/679 and the Personal Data Protection Act (PDPA) define the rules regarding the protection of natural persons in connection with the processing of their personal data. The aim is to protect fundamental rights and freedoms of natural persons, in particular their right to protection of personal data. According to Recital 4 of Regulation (EU) 2016/679, the right to the protection of personal data is not an absolute right, but is considered in relation to its function in society and is applied on an equal footing with other fundamental rights, according to the principle of proportionality. The Regulation complies with all fundamental rights and respects the freedoms and principles recognized by the Charter of Fundamental Rights of the European Union, and in particular respect for freedom of thought, freedom of expression and freedom of information. Recital 153 of the Regulation provides that the law of the Member States should reconcile the provisions governing freedom of expression and freedom of information, including for journalistic, academic, artistic and literary purposes, with those for the protection of personal data in the judgment of the balance (proportionality) of impact in each individual case in view of the specific features. The objection of the assessee about an admitted violation of the substantive law when issuing the appealed decision is groundless, due to a violation of the substantive provisions of Art. 25h, para. 1 of the Labor Code and Art. 85 of Regulation (EU) 2016/679. With the provision of Art. 25h, para. 1 LLDP the legislator has accepted that the processing of personal data for journalistic purposes is lawful when it is carried out for the realization of the freedom of expression and the right to information while respecting privacy. The first and last name of K. were published in

the referenced articles. Nedelchev and his profession - [profession] processed for journalistic purposes in the context of increased public interest in the problems of the judicial system. After a thorough analysis of the applicable legal norms related to the processing of personal data and freedom of expression and information, the court of first instance correctly accepted that the norm of Art. 17, paragraph 3 of the GDPR, according to which paragraph 1 and paragraph 2 do not apply, insofar as the processing is necessary for the exercise of the right to freedom of expression and the right to information is a reason to assume that the balance in the specific case has not been violated and the use of the personal data of the creditor is not in violation of the norms of the applicable GDPR and Regulation (EU) 2016/679. The court correctly considered that in the trial case there was compliance with the conditions of Art. 5, paragraph 1, b. "c" of the GDPR, as the published personal data of Nedelchev are limited only to the indication of his personal name, surname and profession, which, in view of the specifics of his profession, are known to an unlimited number of subjects. Therefore, the balance between freedom of expression and the right to information, and respect for the privacy of private life, are observed in the implementation of Art. 5, paragraph 1, b. "c" of Regulation (EU) 2016/679 on data minimization. According to Art. 4, item 1 of the Regulation "personal data" means any information related to an identified natural person or an identifiable natural person ("data subject"). An identifiable natural person is a person who can be identified, directly or indirectly, in particular by an identifier such as a name, identifier or by one or more characteristics specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. The cassation complaint about the groundlessness of the first-instance decision, expressed in violation of the requirement that the court make an assessment of whether the balance of the right to protection of personal data and the right to privacy of the person is respected, is also unfounded, taking into account the fact that the appellant is not a public person, and such is another person affected by the articles - judge Chenalova.

The current cassation panel fully shares the considerations and the conclusions drawn based on them, that the basic rights to respect for private life and the protection of personal data cannot overcome the basic right to freedom of information of the citizens in the specific case. The issues related to sensitive topics for society, such as corruption and independence of the judiciary, reflected in the articles published by "Iconomedia" JSC, indicated above, no matter how uncomfortable, unflattering and disturbing information they contain, are in fact an expression of the requirements of pluralism, tolerance and tolerance, without which a "democratic society" could not be called such.

The complaint in the cassation appeal that K. Nedelchev is not a public figure, therefore the presence of his personal data in

the articles of "Inkonomeia" AD do not contribute to the public interest debate, does not refute the conclusion about the legality of the processing of personal data, as correctly accepted the administrative court.

Whether a person has the characteristic of "public" is not determined by his claims, but by his participation in public relations, which is undoubtedly the case. Moreover, the nature of the [profession] gives the importance of publicity to the persons who practice it. It is defined in Art. 1 of the Law on Advocacy, according to which the practice of [profession] is an activity 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. Based on the stated considerations, the current panel of the Supreme Administrative Court, fifth department finds that the Administrative Court of Sofia - city has correctly applied the substantive law, issued a lawful and justified judicial act, and that the annulments mentioned in the cassation appeal under Art. 209, item 3, proposal first and third of the APC. The contested decision should be upheld.

With this outcome of the case, the claims of the defendants - the Commission for the Protection of Personal Data for the award of a legal consultancy fee for the current court instance and of "Inkonomeia" JSC for the award of a lawyer's fee, in view of the deposited list under Art. 80 of the Civil Code, in connection with Art. 144 of the APC, together with the attached legal protection and assistance agreement dated November 15, 2021, an invoice dated November 16, 2021 and a translation dated November 16, 2021. The cassation appellant did not express an opinion on the excessiveness of the costs claimed by the defendants, due to which K. Nedelchev should be sentenced to pay to the Commission for the Protection of Personal Data the costs of the case in the amount of 100.00 (one hundred) BGN, representing a legal consultancy fee, in accordance with Art. 78, para. 8 of the Civil Code, in connection with Art. 37 of the Law on Legal Aid and Art. 24 of the Ordinance on the Payment of Legal Aid and to pay to "Inkonomeia" AD the sum of BGN 1,200.00 (one thousand and two hundred), representing attorney's fees for the present court instance.

Guided by the above and based on Art. 221, para. 2, proposition first by the APC, the Supreme Administrative Court, three-judge panel of the fifth department

RESOLVE:

Decision No. 3458 of May 27, 2021, issued under Adm. REMAINS IN FORCE. case No. 11356 of 2020, according to the inventory of the Administrative Court of Sofia-city.

ORDERS K. Nedelchev to pay to the Commission for the Protection of Personal Data expenses in the amount of 100.00 (one hundred) BGN, representing legal fees for the present court instance.

ORDERS K. Nedelchev to pay to "Inkonomedia" AD, the sum of 1,200.00 (one thousand two hundred) BGN, representing attorney's fees for the present court instance.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Violeta Glavinova

Secretary:

MEMBERS:

/p/ Galina Karagyzova

/p/ Maria Nikolova