

In case 287 / 2020

ANSWER

No. 5218

Sofia, 30.04.2020

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

JOVKA DRAZEVA

MEMBERS:

GALINA KARAGYOZOVA

JULIA KOVACHEVA

to secretary

Milena Cenova

and with participation

to the prosecutor

Chavdar Simeonov

listened to what was reported

by the chairman

JOVKA DRAZEVA

by adm. case no

287/2020

The proceedings are under Art. 208 et seq. of the APC.

It was formed on the cassation appeal of the Supreme Bar Council, represented by the chairman, against decision No.

6794/12.11.2019 under the adm.d. No. 9290/2019 according to the inventory of the Administrative Court Sofia-city. Requests

annulment of the decision, as rendered in violation of substantive law. Presents considerations developed in detail in the

cassation appeal. Claims an award of costs.

The defendant, the Commission for the Protection of Personal Data (PCDP), contests the cassation appeal as groundless.

Claims an award of attorney's fees.

The defendant K. Georgieva, through legal representative Adv. V. Mitev, express an opinion that the cassation appeal is groundless. Claims an award of costs.

The representative of the Supreme Administrative Prosecutor's Office gives a conclusion that the cassation appeal is groundless.

The Supreme Administrative Court, taking into account that the cassation appeal was filed within the term under Art. 211 of the APC, finds the same admissible. Considered on its merits, it is unfounded.

By decision No. 6794/12.11.2019 under Adm.d. No. 9290/2019 according to the inventory of the Administrative Court of Sofia City, the appeal of the High Bar Council against Decision No. PPN-01-992/2018 of 07.09.2019, issued by the CPLD in the part by which the CPLD announced as a well-founded complaint of K. Georgieva, with reg. No. PPN-01-992 of 6. 12. 2018 on requested access to written work - test due to violation of art. 15, § 1 in conjunction with Art. 5, § 1, b. a" of GDPR, as on the basis of Art. 58, § 2, b. "c" of the GDPR /General Regulation on Data Protection/ has ordered the administrator to provide access to the written work - test, which contains personal data of K. Georgieva, within two weeks of the entry into force of the decision.

In order to rule on this result, the court accepts that in the specific case, the test completed by K. Georgieva for the examination for lawyer and junior lawyer, organized by the Supreme Judicial Council and conducted on 27.10.2018 under Ordinance No. 2 of 29.10.2004 for the terms and conditions for conducting the examination for lawyers and junior lawyers, contains personal data, as it reflects knowledge and skills in a specific field and represents information that relates to a specific candidate. He accepted that the work also carries information about the candidate's handwriting with the placement of the "x" sign, although to a very limited extent, which, however, information in combination with the specifically given answers to the test /which answers are specific to the mental identity of the person/ represent information related to a specific person that can be directly or indirectly identified. It was reasoned that the identification of the particular candidate was carried out through a combination of several components: the given answers to the test, marked in the handwriting of the person concerned and by noting the name of the candidate in the small envelope which, together with the test, was placed in a separate envelope in

accordance with the provision of art. 12, para. 6 of Ordinance No. 2 of October 29, 2004 on the terms and conditions for holding the examination for lawyers and junior lawyers. The court accepted that the case falls within the scope of Art. 4, § 1 of the GDPR and a violation of Art. 15, § 1 in conjunction with Art. 5, b."a" of GDPR. He referred to the Decision of the Court of the EU No. C-434/2016, since in this case there is an overlap in the main proceedings due to the presence of a written examination paper, although there is no verbose writing of answers by a candidate, but who can be directly identified by its name.

The decision is correct and should be upheld.

It was decided in a factual situation established with admissible evidence, in compliance with the requirement to present reasons for the arguments and facts relevant to the dispute.

Reasonably, the court accepts that the first part of the examination for junior lawyers in the form of a test falls under the definition of Art. 4, § 1 of the GDPR for "personal data". According to Art. 26, paragraph 1 of the Labor Code, repealed State Gazette no. 17/2019, but effective at the time of referral to the CPLD, every individual has the right of access to personal data relating to him. The law was adopted in 2002 transposing Directive 95/46/EC of the EP and the Council on the protection of natural persons in the processing of personal data and on the free movement of such data. At the time of the ruling by the CPDP, the same principle is regulated in Article 15 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 on the free movement of such data and on cancellation of Directive 95/46/EC (General Data Protection Regulation). The provision of Art. 94, § 2 GDPR states that references to the repealed Directive shall be construed as references to this Regulation. According to the cited definition in Art. 4, § 1 of the GDPR "personal data" means any information relating 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, an identification number, location data, an online identifier or by one or more characteristics specific to the physical, physiological, the genetic, psychic, mental, economic, cultural or social identity of that natural person. In this case, there is information that is linked specifically to K. Georgieva. The selected correct answers reflect the person's knowledge in a certain area, and their "x" formation contains minimal information about the person's handwriting. There is identification through the candidate's data with names and social security number, which data are contained in a separate small envelope, which, together with the completed test, is placed in a large common envelope

according to the rules laid down in Ordinance No. 2 of October 29, 2004 on the terms and conditions to conduct an examination for barristers and junior barristers. The moment of opening the small envelope is irrelevant from the point of view of the possibility of identification of the person.

According to Art. 15, § 1 of the GDPR, every subject has the right to request access to the data and information relating to him. The data subject has the right to request from the personal data administrator confirmation whether the administrator is processing his personal data and, if so, access to data and information in the volume specified in the cited provision. The refusal to allow K. Georgieva to access data in accordance with the cited provision is a violation of the basic principles for processing personal data provided for in Art. 5, § 1, b."a" of the GDPR. With Art. 12, § 1 of the GDPR, personal data controllers are obliged to provide access to the data of the data subject in a form that allows the person to familiarize himself with the data and check whether it is accurate and processed in accordance with GDPR, which guarantees the possibility to subsequently exercise other rights protected by GDPR.

The cassation appellant's argument that Decision of the Court of the EU No. C-434/2016 is irrelevant to the present dispute is groundless. The first-instance court accepted as unfounded the identical statement made before it in the first-instance appeal. The subject of the dispute under C-434/2016 is identical to the subject of the dispute under Adm.d.No. 9290/2019 of the ASSG. The fact that in this case there is no handwriting of answers, and that the person's name is contained in a separate envelope, and not on the written work itself, cannot change the above conclusions.

The present court shares according to the order of Art. 221, para. 2, ex. 2 of the APC, the reasons of the court of first instance. Given the outcome of the dispute, the request made by the representative of the CPLD for the award of a legal consultancy fee, on the basis of Art. 78, para. 8 cf. cf. Art. 37 of the Law on Legal Aid, cf. Art. 24 of the Ordinance on the payment of legal aid, in the amount of BGN 100. The claim of the defendant K. Georgieva is also well-founded and proven in the amount of BGN 1,000, given the power of attorney with reflected payment in cash.

In view of the above and on the basis of Art. 221, para. 2 of the APC, the Supreme Administrative Court, fifth department
RESOLVE:

REMAINS IN FORCE decision No. 6794/12.11.2019 under adm.d. No. 9290/2019 according to the inventory of the
Administrative Court Sofia-city.

ORDERS THE SUPREME BAR COUNCIL to pay the COMMISSION FOR THE PROTECTION OF PERSONAL DATA the sum

of 100 (one hundred) BGN, representing costs in the case for legal fees and to K. GEORGIEVA, TIN: [TIN] the sum of 1,000 (thousand) BGN, representing incurred for cassation proceedings costs for legal defense.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Yovka Drazheva

Secretary:

MEMBERS:

/p/ Galina Karagyzova

/p/ Yulia Kovacheva