

In case 7104 / 2021

ANSWER

No. 11636

Sofia, 16.11.2021

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

VIOLETA GLAVINOVA

MEMBERS:

GALINA KARAGYOZOVA

POLINA BOGDANOVA

to secretary

Madeleine Dukova

and with participation

to the prosecutor

Hristo Angelov

listened to what was reported

by the judge

GALINA KARAGYOZOVA

by adm. case no

7104/2021

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

Two cassation appeals were filed, the first filed by A. Oskar, through his attorney, Adv. P. Kyosev, against decision No. 2006 of 26.03.2021, issued under adm. case No. 11856/2020 of the Administrative Court - Sofia-city (ASG), Second Department, 40th Chamber, which annulled upon appeal of "Pik News" EOOD, decision No. PPN-01-217 of 28.08.2020. , decreed by the

Commission for the Protection of Personal Data (PCPD).

The second cassation appeal was filed by the Commission for the Protection of Personal Data, through its procedural representative legal consultant K. Parvanova, against the same decision of the ASSG.

In the two cassation appeals, similar arguments were developed for the incorrectness of the rendered court decision, due to a violation of the substantive law, a substantial violation of the rules of judicial procedure and the unfoundedness of the court's conclusions - 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 "Peak News" EOOD, and the right to protect personal data. It is claimed that the publication of the personal data of A. Oskar - the first six digits of the EGN, representing and revealing the date of birth and the full address of the property owned by him, 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 individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (Regulation (EU) 2016/679, GDPR, the Regulation) and in particular with the principle of reducing data to a minimum. The court's conclusion that once the details of Oscar's property were published in a public register, their subsequent publication was lawful, arguing that the publication of the documents from the Property Register of the Registration Agency was for journalistic purposes, which were different from those of publication in the public register. In addition, according to Art. 25h, para. 1 of the Personal Data Protection Act (PDPA), 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 privacy, i.e. again when assessment of the balance of the two rights, while the principle of reducing the data to a minimum should be respected, respectively that the court did not correctly apply the proportionality test, thereby committing a violation of the substantive law. According to the reasons developed in detail, in both cassation appeals it is requested that the court decision be annulled as incorrect and that a decision be made on the merits by the cassation instance, rejecting the appeal of "Peak News" EOOD against the cited decision of the CPLD. In both cassation appeals, costs of the proceedings are claimed.

The defendant - "Pik News" EOOD, EIK[EIK], represented by the manager N. Nedyalkov, does not express an opinion on the cassation appeals.

The representative of the Supreme Administrative Prosecutor's Office gives a reasoned conclusion that the cassation appeals

are unfounded and considers that the 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 appeals were filed by the proper parties, against a contestable judicial act that is unfavorable to them, as well as within the preclusion period under Art. 211 of the APC, which is why they are procedurally admissible.

Considered in substance, they are sound.

The subject of control for legality in the proceedings before the ASSG, instituted on a complaint filed by the current defendant on cassation, is Decision No. PPN-01-217/28.08.2020 of the CPLD, which declared the appeal int. No.

PPN-01-217/19.03.2020, submitted by A. Oscar, on the basis of Art. 58, § 2, b. "d" of Regulation (EU) 2016/679 for violation of Art. 5, § 1, b. "in" from the same and in relation to "Peak News" EOOD, an order was issued to comply with the operations of processing Oscar's personal data - date of birth and full address of a property owned by him, with the provisions of the regulation by deleting this data from published on site pik. bg article and on the basis of Art. 83, § 5, b. "a", in conjunction with Art. 58, § 2, b. "and" from the Company's Regulation, an administrative penalty "property penalty" in the amount of BGN 5,000 was imposed for processing Oscar's personal data in violation of Art. 5, § 1, b. "c" of the Regulation, in the period from 10.03.2020 to 15.06.2020.

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.

It was accepted as established that proceedings before the CPLD were initiated based on a complaint by A. Oscar, which contained allegations of unlawful processing of his personal data by "Pik News" EOOD, which on 10.03.2020 on the electronic website of the media PIK (pik. bg) has published an article with the title

"bomb-in-pik-luxury-apartment-at-a-ridiculous-price-for-the-boss-of-[name]-by-the-lieutenant-of-v.-bozhkov". In the content of the article, accessible to an unlimited number of persons, information regarding the physical identity of the applicant (three names, part of the social security number/date of birth, address), economic identity (property and financial status, participation and membership in a non-governmental organization) was unlawfully disclosed. social identity (profession, workplace, work activity, affiliation information) - personal data within the meaning of Art. 4, item 1 of Regulation (EU) 2016/679.

According to protocol reg. No. PPN-01-217#1/24.03.2020, after receiving the complaint, an employee of the commission made

a screen printout regarding the content of the address indicated in the complaint, and it was established that there was actually a publication "bomb-in-

peak-luxury-apartment-at-a-ridiculous-price-for-the-boss-of-[name]-from-the-lieutenant-of-the-rev.-god-nwes911703. html".

It has been established that the parties were notified of the initiation of the administrative proceedings, and were given the opportunity to take an opinion and present evidence. The same were regularly called for the scheduled open meeting on 16.06.2020, at which, by decision under protocol No. 28/16.06.2020, the commission accepted the complaint as well-founded and indicated the measures that should be implemented. As a result, the above contested decision was issued.

With these data, from the factual side, from the legal side, the court accepted that the administrative act was issued by a competent administrative body, according to Art. 10 and Art. 10a of the Labor Code, respectively from Art. 57 and Art. 58 of Regulation (EU) 2016/679, in conjunction with Art. 38 of the Labor Code, as the decision was made with the required under Art. 9, para. 3 of the LLDP majority, it was signed by all the members who were present when it was adopted and it was voted unanimously. The court accepted that the requirement for the form and content of the administrative act was met, and the factual and legal grounds for its adoption were also indicated, and no significant violations of the administrative production rules were committed - the proceedings were instituted and conducted lawfully in accordance with the provisions of Art. 38 et seq. of the Labor Code and Art. 26 et seq. of the Rules for the Activities of the CPLD and its Administration (PDKLDNA). The evidence collected in the file was discussed, and there were no violations of the defendant company's right to defense.

The court accepted that the substantive law was incorrectly applied when issuing the contested act. He accepted that in the case under consideration, in which the name, date of birth and exact address of a property owned by the complainant before the CPLD were published on the website of the disputing company, it concerns personal data within the meaning of § 1, item 1 of the DR of the CPLD , in conjunction with Art. 4, item 1 of the GDPR, which are processed within the meaning of Art. 4, item 2 of the GDPR, as the site on which they are published has the nature of electronic media, and the information has the nature of information published for journalistic purposes. The court of first instance indicated that the concept of "journalistic purposes" was not defined by the legislator, but was interpreted in judicial practice, as the essential activity is the collection, analysis, interpretation and dissemination through the mass media of current and socially significant information and any journalistic activity is a manifestation of freedom of speech in the rule of law. Limiting the freedom of expression and information is permissible only within the framework of what is necessary in a democratic society according to Art. 10, § 2 of the Convention

for the Protection of Human Rights and Fundamental Freedoms (CPR). The GDPR and the GDPR define the rules regarding the protection of natural persons in connection with the processing of their personal data, as according to Recital 4 of the Regulation, 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, including the right to 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 of concern in each individual case in view of the specific features. In this regard, the court indicated that according to Art. 25h, para. 1 of the GDPR, 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 privacy, and according to para. 3 of the same provision when processing personal data for the purposes of para. 1: 1. do not apply art. 6, 9, 10, 30, 34 and chapter five of Regulation (EU) 2016/679, as well as art. 25c; 2. the administrator or processor of personal data may refuse the full or partial exercise of the rights of data subjects under Art. 12 - 21 of Regulation (EU) 2016/679, i.e. the legislator provides that when the processing of personal data is for journalistic purposes, the subject whose data is, enjoys a lower level of protection in view of the pursued goal - implementation of freedom of expression and the right to information. The court noted that the balance between the right to information and the right to protection of personal data should be assessed, taking into account the particularities of the specific case, as the right to privacy is not absolute and may, but only in compliance with the requirements of Art. . 8 of the Civil Code, to be limited by law when this is necessary in a democratic society, which is the meaning of the conclusions of the Constitutional Court in Decision No. 8/15.11.2019, issued in constitutional case No. 4 of 2019. In this case , in view of the quality of the disputant, his consent was not necessary, especially since he is also a public figure. The ruling court considered as irrelevant the argument in the contested administrative act that A. Oscar is a person who is among the persons liable under the Law on Combating Corruption and Confiscation of Illegally Acquired Property, as this is one of the criteria under Art. 25h, para. 2 of the LLDP, based on which an assessment should be made as to whether, upon disclosure through transmission, distribution or any other way, personal data collected for the purposes of para. 1, become accessible, the balance between freedom of expression and the right to information and the right to protection of personal data, which provision was declared unconstitutional by Decision No.

8/15.11.2019 in constitutional case No. 4 of 2019, and according to Art. 151, para. 2, ex. 3 of the Constitution of the Republic of Bulgaria, the act declared unconstitutional is not applied from the day the decision enters into force. Finally, the court indicated that the data published on the website administered by the disputing company are generally available through the public Property Register maintained by the Registration Agency, as on the basis of Art. 93, para. 1 ZKIR, anyone can receive a verbal report on the entries for a lot of real estate, a transcript or an extract from it, or a certificate of a circumstance entered or not entered therein. For these reasons, the court considered that "Peak News" EOOD did not carry out the violation attributed to it by the CPLD and, having accepted the complaint of the data subject as well-founded and applied the relevant measures in accordance with the accepted, the administrative body incorrectly applied the substantive law. Based on these considerations, the court ruled on the currently disputed result - it canceled the decision of the CPLD.

The judgment so rendered is incorrect.

The conclusions of the court of first instance 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 undisputedly established that "Peak News" EOOD, as the publisher of the electronic website of its media "Peak" and as the administrator of personal data, has published the cited article, as it contains personal data of A. Oscar - names - first and last name , profession, workplace, belonging to the organization [name], references from the Registration Agency have been published, containing accurate data about the property owned by him - full address, description, price, entries, mortgage, deletion of mortgage, the TIN has been published with deleted only the last four digits.

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 "Peak News" EOOD, 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. Oscar is a public figure - head of the ophthalmology clinic of "Alexandrovska" hospital, chairman of the organization [name],

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 necessary to assess the balance between them are also correct, insofar as both do not are absolute, including in the context of the requirements of Art. 5, §1 b. "c" of GDPR. It is also correct to refer to decision No. 8 of 15.11.2019, issued in constitutional case No. 4/2019, regarding the arguments justifying the need for a specific assessment of the balance of the mentioned competing rights,

Precisely with regard to the assessment of the balance of the two rights, the court drew conclusions that were not in accordance with the requirements of the GDPR and the GDPR, which is why the decision was made in violation of the substantive law and should be annulled. The conclusion of the ASSG cannot be shared that, in passing its decision, the CPLD violated the substantive law, accepting that the personal data administrator committed a violation of the principle of "reducing the data to a minimum". By publishing the first six digits of A. Oskar's personal identification number, as well as by publishing the address of the property owned by him, the CPLD correctly assumed that the information required for the purpose of the article was excessively exceeded, thereby disrupting the balance between the two competing rights.

The present composition considers that the partial deletion of the personal identification number is insufficient, as the published six digits reveal the date of birth of the person, and by publishing the exact address, including the apartment and property identifier, information is revealed that is irrelevant to the purpose of the publication. For the purposes of journalistic investigation, it is sufficient to publish the neighborhood, street and building in which the property is located, its square footage, so that a comparison can be made between its value and the value of other properties located in the area, in view of the claim in the article , that the same was acquired at a low price ("ridiculous price"), with which the freedom of expression and information can be satisfied. The publication of a part of the personal identification number and the exact address of the residence where the person lives, his identifier, represents a disproportionate interference in his private life (right to privacy of the person), a derivative of which is the right to the protection of personal data and exceeds the purpose for which the same are processed by the administrator, which violates the objectives laid down in Art. 25h, para. 1 of the Labor Code. According to the cited provision, the processing of personal data for journalistic purposes, as well as for academic, artistic or literary expression, is lawful when it is carried out for the realization of freedom of expression and the right to information, while respecting privacy. In this case, there is such an influence.

It is true that according to Art. 85, § 1 and § 2 of the GDPR, member states are obliged to reconcile by law the right to the protection of personal data, in accordance with the regulation, with the right to freedom of expression and information,

including processing for journalistic purposes and for academic purposes, the artistic or literary expression, and for the same purposes they may 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 organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and coherence) and Chapter IX (special situations of data processing), if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information. For this purpose, in the norm of Art. 25h, para. 1 of the GDPR regulates the exception that the processing of personal data carried out for journalistic purposes is lawful when it is carried out for the realization of freedom of expression and the right to information, but the norm explicitly states that the processing should not affect the inviolability of personal life. According to Art. 25h, para. 2 of the Personal Data Protection Act when processing personal data for the purposes of para. 1, Art. does not apply. 6, 9, 10, 30, 34 and chapter five of the GDPR, as well as that 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. The conclusion follows that the derogation does not affect the principles under Art. 5, respectively the principle under Art. 5, §1, b. "c" of the GDPR to reduce data to a minimum. In this case, the wrongly deciding court assumed that there was no violation of this principle, according to which personal data are appropriate, related to and limited to what is necessary in relation to the purposes for which they are processed.

In this case, the controller of personal data has violated this principle, since, as indicated above, the balance between freedom of expression and the right to information and that of personal data protection has been violated, since the need to inform the public about the facts, the subject of the article in the electronic media, can be satisfied without indicating the date of birth of the commented public figure and the exact number of his apartment and the identifier of the property.

The court of first instance correctly indicated that in decision No. 8 of 15.11.2019, issued under the e. No. 4/19, the Constitutional Court noted that the issues that arise in practice in connection with the balancing of conflicting fundamental rights are the nature of the balancing method and the moment of undertaking the balancing. By its very nature, balancing is a case-by-case analysis and assessment activity and is endorsed as the approach of the courts, which are the proper forum for resolving a conflict of rights. Regarding the moment of balancing, the SC emphasizes that it is approached only after going through other, logically subsequent stages of the established jurisprudence of the ECtHR and the CJEU and applied by the national jurisdictions a three-stage proportionality analysis regarding a fundamental right (proportionality test), taking into



account the requirement to preserve the essential content of fundamental rights as the basis of the rule of law. The decision also summarizes the criteria for assessing the balance between competing rights - assessment of the contribution to a debate of public interest, assessment of the fame of the affected person, discussion of the subject of the journalistic material, the previous behavior of the affected person, the content, form and consequences of the publication, the circumstances surrounding the receipt of the publication.

In this case, the specific assessment was correctly made by the CPLD, taking into account the cited criteria, and not by the court, taking into account the facts that Oscar is a public figure, his data were published for journalistic purposes, which makes their publication in the main part legal. In view of the public's right to information, but this right would not be violated by erasing the entire personal identification number and not publishing the apartment number and property identifier. With the publication of the specified personal data, the balance between the right to information and the right to privacy has not been observed, accordingly there is a violation of Art. 25h, para. 1 of the Labor Code. The fact that some of the information is sourced from a public register was discussed by both the CPLD and the court, and the court accepted that this was sufficient to make the publication of the data lawful. This conclusion cannot be shared, since the publication of the data in the property register of the Registration Agency (a public body within the meaning of Article 86 of the GDPR) has different purposes than those of the publication for journalistic purposes. In addition, the data in the public register are not immediately publicly available, but can be obtained in accordance with the procedure of ZKIR and Ordinance No. 2/2005 on the keeping and storage of the property register. The processing of personal data for the purposes of journalistic activity is an operation of new processing of the data received from the public register of the Registration Agency, respectively with a new purpose, which operation and purpose should meet the requirements of the GDPR, including the principle of reducing the data to a minimum that is violated. The GDPR and the LLDP were correctly applied by the CPLD, accepting the contrary, the court of first instance rendered its decision in violation of the substantive law.

In view of the established fact that the publication - the violation continued to exist at the time of the decision of the CPDP, the Commission correctly issued a prescription for its suspension, and since such prescriptions regarding the specific administrator for similar violations established by decisions of the CPDP, were not observed, the same violations were committed, CPLD correctly imposed a property sanction, in accordance with the requirements of Art. 83, § 5, b. "a" from GDPR.

Based on the stated considerations, the disputed court decision as unfounded issued in violation of the substantive law -

grounds for annulment under Art. 209, item 3 of the APC, should be repealed. Since the case has been clarified from a factual point of view, the present instance should rule on the merits by rejecting the appeal of "Peak News" EOOD against the decision of the CPLD, which does not suffer from vices under Art. 146 of the APC.

In view of the outcome of the case, the claims for the award of costs in favor of the assessee are justified. A. Oskar should be awarded the expenses for the state fee paid for the cassation proceedings - BGN 70, as evidenced by the submitted import note, as there is no evidence of other expenses incurred, and the CPLD should be awarded the sum of BGN 200, in total for both courts for legal consultancy fees - BGN 100 for each instance on the basis of Art. 78, para. 8 of the Civil Code, in conjunction with Art. 37 of the Law on Legal Aid and Art. 24 of the Ordinance on the payment of legal aid, as well as the amount of BGN 70, paid for the state fee for the cassation proceedings, as can be seen from the import note presented, or the total amount of BGN 270.

That is why and on the basis of Art. 221, para. 2, proposition second and Art. 222, para. 1 of the APC, the Supreme Administrative Court, composition of the fifth department,

RESOLVE:

AVOIDS decision No. 2006 of 26.03.2021, issued under adm. case No. 11856/2020 of the Administrative Court - Sofia-city, Second Department, 40 panel instead DECIDES:

I REJECT the appeal of "Peak News" EOOD, EIK [EIK], represented by the manager N. Nedyalkov, against decision No. ППН-01-217 of 28.08.2020, issued by the Commission for the Protection of Personal Data.

ORDERS "Peak News" EOOD, EIK [EIK], represented by the manager N. Nedyalkov to pay the Commission for the protection of personal data. the sum of 270 (two hundred and seventy) BGN, costs for the two court instances, and to A. Oscar to pay the sum of 70 (seventy) BGN costs for the cassation proceedings.

True to the original,

CHAIRMAN:

/p/ Violeta Glavinova

Secretary:

MEMBERS:

/p/ Galina Karagyozyova

