

In case 3354 / 2021

ANSWER

No. 5292

Sofia, 26.04.2021

IN THE NAME OF THE PEOPLE

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

CHAIRMAN:

ANNA DIMITROVA

MEMBERS:

ILIANNA SLAVOVSKA

TINKA KOSEVA

to secretary

Nikolina Avramova

and with participation

to the prosecutor

Georgi Hristov

listened to what was reported

by the judge

TINKA KOSEVA

by adm. case no

3354/2021

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

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

70/06.01.2021. by adm.d. No. 8171/2020 according to the inventory of the Administrative Court of Sofia-city. It is claimed in the

complaint that the decision is incorrect due to a violation of the substantive law. It considers that with the presentation of a duly

completed test to the data subject, his request has been honored and full access to his personal data available on the test itself has been granted, in view of which his legal interest in the sought protection has also been waived. Based on detailed arguments in the cassation appeal, the annulment of the decision is claimed, by deciding otherwise on the substance of the dispute, which annulled the decision of the CPLD. Claims an award of costs for both courts.

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. Ch., in a written response presented in the case and in person at a court hearing, contests the cassation appeal and asks that the decision be left in force as correct.

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.

The subject of the dispute before the Administrative Court of Sofia-city is Decision No. PPN-01-1880/2019 of 27.07.2020, issued by the Commission for the Protection of Personal Data, which declared a well-founded complaint of K. Ch., with reg. No. PPN-01-1880 of 18.12. 2019 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/ ordered the administrator to provide the applicant with the request for access to his personal data and information (the correct and incorrect answers to the test and their number) within 14 days of entering the force of decision.

In order to reject the appeal filed by the Supreme Bar Council against the aforementioned decision of the CPLD, the court accepts that in the specific case the test completed by K. Ch., as well as the information containing the test results, fall within the scope of Art. 4, § 1 of GDPR. He considered that the answers given by Ch. in the written work - test, contain information about his level of knowledge in the relevant field, which are strictly individual for each person. the result achieved by the candidate also constitutes personal data within the meaning of Article 4 of the GDPR, as it contains strictly individual information that relates to the specific candidate and that reflects his level of knowledge compared to the other candidates and to the requirements for achieving success in the exam itself . He expressed considerations that the provided original of the written test, containing the answers given by Ch., does not contain information regarding the circumstance of which of his

answers are correct and which are wrong, therefore the personal data representing the results achieved by the candidate were not provided, although explicitly to have been requested. 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.

The decision is correct and should be upheld.

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

Reasonably, the court accepts that the completed tests by Ch., as well as the information containing the test results, fall within the scope of Art. 4, § 1 of the GDPR for "personal data".

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 connected specifically to K. Ch.. The selected correct answers reflect the person's knowledge in a certain area, and their formatting with an "x" 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 of K. Ch. to access data / given correct and incorrect answers / of the test 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.

With the Decision of the Court of the EU No. C-434/2016, an interpretation of Article 2, b."a" of Directive 95/46/EC of the European Parliaments of the Council of October 24, 1995 on the protection of natural persons during the processing was given of personal data and on the free movement of such data must be interpreted in the sense that "under conditions such as those in the main proceedings, the written answers given by a candidate during a professional skills test and the examiner's possible comments on these answers constitute personal data within the meaning of this provision". In item 37 of the decision, it is assumed that the content of these answers reflects the level of knowledge and skills of the candidate in a certain field, as well as possibly his thought process, judgment and critical thinking. In the case of a handwritten exam, the answers also contain information about his handwriting. According to the court, the ultimate purpose of collecting these answers is to assess the applicant's professional abilities and skills to exercise the relevant profession. it is held that the written answers given by the candidate in a professional skills examination constitute information that affects that candidate because of its content, ultimate purpose and consequences, since the purpose of each examination is to establish and document the results achieved by a specific person , that is, by the candidate. The opinion of the CJEU in the cited decision is that granting an applicant the right of access to the answers and comments pursuant to Article 12, b."a" of Directive 95/46 serves the purpose of the latter, namely to guarantee the protection of the right of the candidate's privacy during the processing of the data concerning him, regardless of whether the candidate in question has such a right of access and by virtue of the national legal framework applicable to the examination procedure. The subject of the dispute in case C-434/ 2016 is identical to the subject of the dispute in administrative order No. 8171/ 2020. of the ASSG, which is why the conclusions reached by the court of first instance are fully

shared by the present court. 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.

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

RESOLVE:

Decision No. 70/06.01.2021 REMAINS IN FORCE. by adm.d. No. 8171/2020 according to the inventory of the Administrative Court of Sofia-city.

ORDERS THE SUPREME BAR COUNCIL to pay to the COMMISSION FOR THE PROTECTION OF PERSONAL DATA the sum of 100 (one hundred) BGN, representing expenses in the case for legal fees.

The decision is final.

True to the original,

CHAIRMAN:

/p/ Anna Dimitrova

Secretary:

MEMBERS:

/p/ Iliana Slavovska

/p/ Tinka Koseva