

In case 10264 / 2021 DECISION No. 2334 Sofia, 14.03.2022 IN THE NAME OF THE PEOPLE The Supreme Administrative Court of the Republic of Bulgaria - Fifth Department, in a court session on the sixteenth of February in the composition:

CHAIRMAN: DIANA DOBREVA MEMBERS: EMANOIL MITEV EMIL DIMITROV with secretary Madlen Dukova and with the participation of the prosecutor Veselin Naydenov listened to what was reported by the chairman DIANA DOBREVA on adm. case No. 10264/2021 The proceedings are in accordance with Art. 208 et seq. of the Administrative Procedure Code (APC). It was formed on a cassation appeal filed by R. Marinov from the city of Sofia, through his attorney at law. K. Boncheva, against decision No. 4303 of 30.06.2021, issued under adm. case No. 2794/2021 by the Administrative Court of Sofia - City, which rejected his appeal against Decision No. PPN-01-1602/2019 of 01.12.2020 of the Commission for the Protection of Personal Data (PCPD) in its part under Item 3. In the cassation appeal, arguments were developed for the incorrectness of the rendered court decision, due to unreasonableness, violation of substantive law and substantial violation of the procedural rules - cancellation grounds under Art. 209, item 3 of the APC. Based on detailed reasons, it is requested to annul the court act and to award the costs incurred in the case, for which written evidence and a list are presented in accordance with the order of Art. 80 of the Code of Civil Procedure, cf. Art. 144 of the APC. The defendant - the Commission for the Protection of Personal Data (PCPD), through a procedural representative, contests the cassation appeal and asks that the decision be rightly maintained. Makes an objection within the meaning of Art. 78, para. 5 of the Code of Criminal Procedure for the excessiveness of the attorney's fees claimed by the assessee. The defendant - "Darik News" EOOD, regularly summoned, is not represented 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 assessing the facts of the case and the arguments of the parties, accepts the following as established: The cassation appeal was filed within the preclusion period under Article 211, paragraph 1 of the APC, from a proper party, against a contestable judicial act, which is unfavorable to it, which is why it is procedurally admissible. Examined in substance, it is unfounded. The subject of control for legality in the proceedings before the court of first instance is Decision No. PPN-01-1602/2019 of 01.12.2020 of the Commission for the Protection of Personal Data (PCPD) in its part under item 3, with which the complaint of R. Marinov, filed with entry No. PPN-01-1602/04.11.2019 and directed against "Darik News" EOOD, has been left without respect. After analyzing the evidence collected in the administrative file and in the case relevant to the dispute and after their

discussion, the court of first instance established the factual circumstances of the case, on which the parties do not dispute. Based on this, the court accepted that the administrative act was issued by a competent administrative body, in compliance with the procedural rules. Its factual findings are supported by the collected evidence, and on the basis of a correctly established factual situation, the authority has drawn 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 is processing of personal data for "journalistic purposes" by a personal data administrator, such as "Darik News" EOOD, the challenger is a public figure, such as the journalist purpose in this case is justified by indisputable public interest and by the fact that the provided personal data are not disclosed for their own sake, but are an expression of the public's right to information on current and current issues, given that their processing is not in violation of Art. 17, § 1, b. "a" of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.04.2016 on the protection of natural persons in connection with 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 - GDPR). The court concluded that by publishing the article on Marinov's detention in June 2009 in connection with bribery, when he was a former deputy minister of the Interior, the electronic media had exercised the right to freedom of speech in unison with the right to seek and receive free information about events of public interest. As of the date of publication of the procedural articles, the processing of the applicant's personal data is solely for the purposes of journalistic activity and does not violate the right to "private life" of the person to whom they refer. Given the lack of infringement of a fundamental right to private life, according to the court, a balanced assessment for reconciling fundamental rights in conflict is not due, since the indicated violation has not been committed. For these reasons, the court considered the CPLD's conclusions to be correct, that the complaint was justified in the part concerning the processing of personal data - an image of the complainant in handcuffs, and issued an order to "Darik News" EOOD, on the basis of Art. 58, § 2, b "g" of Regulation 2016/679, to delete the images of Marinov attached to the procedural articles available on the website within 7 days of the entry into force of the decision, then to notify the Commission by presenting the relevant evidence, and in the remaining part the complaint was accepted as unfounded. The decision is valid, permissible and correct. 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, are substantiated and 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 from the evidence it is established that articles about the assessee were published and maintained on the DARIKNEWS.BG website, to which photographic material was attached, containing personal data within the meaning of Art. 4, item 1 GDPR, which enable Marinov to be identified by name, to be associated with events surrounding his arrest in 2009 and the criminal proceedings that lasted until 2013 and ended with an acquittal. 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 "Darik News" EOOD, in the sense of art. 4, item 2 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.

Corresponding to the evidence gathered in the case are the conclusions of the ASSG that in this case the processing of the applicant's personal data in the amount of two names - first name and surname, profession - businessman is in harmony with the content of information about events of public interest sent to an unlimited number of users, which in itself does not 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 articles the electronic media has exercised the right to freedom of speech in unison with the right to freely seek and receive information on 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" GDPR, namely the processing is not excessive, it is in accordance with the principle under Art. 5 of the GDPR, the personal data are appropriate, related to and limited to what is necessary in relation to the purposes for which they are processed ("reduction of data to a minimum"). According to Art. 85, § 1 and § 2 of the 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 purposes and for the purposes of academic, 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 (Data Subject Rights), 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 the coordination of the right to protection of personal data with freedom of expression and information. According to the provisions of Art. 25h of the GDPR exceptions and derogations 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 the inviolability of personal life (art. 25h, para. 1 of the Labor Code), but according to art. 25h, para. 3 of the GDPR, when processing personal data for the stated purposes, art. 6, 9, 10, 30, 34 and chapter five of Regulation (EU) 2016/679, as well as art. 25c of the GDPR, as the administrator or personal data processor may refuse 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 panel fully shares the conclusions of the ASSG that the above categories of personal data were processed by the personal data administrator "Darik News" EOOD for the purpose of information of society for a given behavior of the subject, which is a public figure and the processing was carried out within the framework of the derogation adopted by the national legislation from certain provisions of the Regulation, without violating the subject's right to protection of personal data, when implemented by the personal data administrator given the right to inform society, by exercising the right to express an opinion and freedom of information, laid down in art. 11 of the Charter. Process personal data, such as volume and type, is limited to the necessary degree of disclosure in connection with the purposes of journalism and does not reveal specific elements of the person. They fit into the category of appropriate, related and limited (see also item 153, last wording of the preamble of Regulation (EU) 2016/679) to inform the public about momentary behavior of a socio-politically visible, recognizable, and therefore significant in a certain time interval given its public quality subject.

Regarding the claim of the assessee, submitted to the CPLD, for exercising the right to erasure (right "to be forgotten") according to Art. 17 of the GDPR, the court of first instance presented detailed reasons, to which the present instance refers on the basis of Art. 221, para. 2, ex. latest from APK.

Contrary to what was stated by the assessee, no substantial procedural violations committed by the administrative court were found. In accordance with the provision of Art. 168, para. 1 of the APC, the court verified the legality of the contested act. The burden of proof in the process is distributed according to the requirements of Art. 170 of the APC, in case of procedural activity shown by the judicial panel according to Art. 171, para. 4 of the APC. The decision of the court 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.

On the basis of the above, the current court panel accepts that when the appealed court decision was rendered, the violations pointed out by the plaintiff under Art. 209, item 3 of the APC, therefore the same should be left in force.

With this outcome of the dispute and in view of the fact that the defendant CPLD is represented by a legal consultant in the court proceedings, given the stated claim and on the basis of Art. 143, para. 3 of the APC in accordance with Art. 24 of the NZPP, the CPLD should be awarded costs - a legal consultancy fee in the amount of BGN 100.

For the stated reasons and on the basis of Art. 221, para. 2 of the APC, the Supreme Administrative Court, fifth department  
RESOLVE:

Decision No. 4303 of 30.06.2021, issued under Adm., REMAINS IN FORCE. case No. 2794/2021 from the Administrative Court Sofia - city.

JUDGMENT R. Marinov, EGN [EGN] with address Sofia [address] to pay to 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/ Diana Dobрева

Secretary:

MEMBERS:

/p/ Emanoil Mitev

/p/ Emil Dimitrov