

DECISION

No. 9486
Sofia, 04 October 2006

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Five-Member Panel, Collegium II, in a court sitting on the twenty-eighth of September in the year two-thousand and six, in a panel composed of:

PRESIDING JUDGE: SVETLA PETKOVA
PANEL MEMBERS: IVAN TRENDAFILOV, ALEXANDER ELENKOV,
NATALIA MARCHEVA, RUMYANA PAPAZOVA

in the presence of court stenographer Milka Angelova and with the participation of prosecutor Anna Bankova, heard the report by Judge ALEXANDER ELENKOV on Administrative Case No. 3505 of 2006.

These proceedings were held pursuant to Art. 13 of the Supreme Administrative Court Act (SACA).

The case was initiated by a cassation appeal from Nikolay Todorov Penchev of Sofia, editor-in-chief of the newspaper *168 Hours* against Decision No. 11422 of 19 December 2005 on Administrative Case No. 3621/2005 by the Supreme Administrative Court, Fifth Division.

The cassation appeal was filed within the time limit stipulated in Art. 33, Para. 1 of the SACA and is admissible, and examined on its merits is in part grounded.

From the facts of the case is clear is that with the letter outgoing Reg. No. 19 of 14 February 2005, received by the Ministry of Education and Sciences on 16 February 2005 and registered with incoming Reg. No. 132-57 of 16 February 2005, the cassation appellant requested that the minister of education and sciences provide him in written form the names, education and qualification levels of all high-ranking members of the ministry's leading team, as well as that for department heads, all state experts, as well as people employed with civil contracts.

Within the time limit stipulated by Art. 28, Para. 1 of the Access to Public Information Act (APIA), the minister of education and sciences did not make a decision to present or to refuse access to the requested information. For this reason, the cassation appellant assumes that there was a silent refusal to provide him the requested information and he contested that refusal under Art. 40 *et seq.* of the APIA. Based on a complaint filed by him, Administrative Case No. 3621/2005 was initiated in the Supreme Administrative Court, Fifth Division.

In the case, one court sitting was held in which the minister of education and sciences was represented by an authorized state expert. The minister's legal representative expressed the opinion that the appeal was unfounded, based on the argument that the data requested by the cassation appellant are personal data in the sense of the Personal Data Protection Act.

In the decision now under appeal, the Three-Member Panel of the Supreme Administrative Court held that the information requested in the letter (which possesses the character of a request in the sense of Art. 24 and Art. 25 of the APIA) does not concern data about the public life of the country, nor data about the activities of subjects obliged under law or the individuals described in the requests, but rather concerns personal information related to the personal data of the individuals characterized by the positions they hold. This information is not public, thus it does not fall within the scope of the provisions of Art. 31 of the APIA and thus the question is moot as to whether the minister requested the consent of the individuals identified in the request letter or whether the possibility existed to present the cassation appellant with the requested information to such a degree and in such a way so as to not disclose information related to third parties.

Decision is incorrect in the section that rejects the appeal against the refusal to provide information about the names, education and qualification levels of the deputy ministers, head secretaries and members of the minister of education and sciences' political cabinet. All of them belong to the public register according to the Disclosure of Property Owned by High Government Public Officials Act (Art. 2, Para. 1, Items 3, 28 and 30), due to which their names are publicly accessible through this register. The remaining data - education and qualification level - are not included in the public register, but are necessary for citizens to form their own opinion as to whether the leading political and executive team in the sphere of education and sciences in Bulgaria has the necessary scientific and professional qualifications for high-quality and effective fulfillment of their official duties in that sphere of public life. By the way, with respect to these positions, the solution to the question under discussion should be the same or similar to that of the minister of education and sciences himself, whose picture, a short but information-rich biography, and even his property declaration are publicly accessible on the electronic webpage of the Council of Ministers.

The remaining part of the decision by the three-member panel is correct. State employees, employees under labor contracts and individuals with civil contracts are experts and implementers who assist the minister of education and sciences as a body of the executive power in the implementation of his authority. They do not fall into the category of "public figures," even when they are acknowledged by the law for high-ranking government officials (for example, heads of directorates - see Art. 5, Para. 2 of the Public Officials Act), and have the right to anonymity in the public sphere.

Based on these arguments, the Supreme Administrative Court, Five-Member Panel finds that the appealed decision of the three-member panel must be overturned in the part that rejects the complaint of the cassation appellant against the refusal to provide information about the names and education and qualification levels of the deputy

ministers, head secretary and members of the minister of education and sciences' political cabinet; in its place another ruling is established, in which the minister's silent refusal is reversed and the case should be returned to him with instructions to provide information about the names and education and qualification levels of the deputy ministers, the head secretary and members of his political cabinet. In the part concerning information about the remaining state employees and individuals working on labor contracts or on civil contracts, the decision is correct and should be upheld.

Guided by the aforementioned considerations and based on Art. 41, Para. 1 of the APIA, the Supreme Administrative Court, Five-Member Panel,

HEREBY RULES:

TO REVERSE Decision

No. 11422 of 19 December 2005 on Administrative Case No. 3621/2005 by the Supreme Administrative Court, Fifth Division, IN THE PART that rejects the appeal by Nikolay Todorov Penchev of Sofia, editor-in-chief of the newspaper *168 Hours*, against the silent refusal by the minister of education and sciences to provide him with the names and education and qualification levels of the deputy ministers, head secretary and members of his political cabinet; in its place is enacted a decision:

TO REVERSE the silent refusal by the minister of education and sciences to provide Nikolay Todorov Penchev of Sofia, editor-in-chief of the newspaper *168 Hours*, with the names and education and qualification levels of the deputy ministers, the head secretary of the Ministry of Education and Sciences, as well as the names and education and qualification levels of the members of the minister's political cabinet.

ON THE GROUNDS of Art. 41, Para. 1 of the Access to Public Information Act the minister of education and sciences is obliged to present Nikolay Todorov Penchev of Sofia, editor-in-chief of the newspaper *168 Hours*, with the names and education and qualification levels of the deputy ministers, the head secretary of the Ministry of Education and Sciences, as well as the names and education and qualification levels of the members of his political cabinet.

TO UPHOLD Decision

No. 11422 of 19 December 2005 on Administrative Case No. 3621/2005 by the Supreme Administrative Court, Fifth Division, in its remaining parts.

THE DECISION is not subject to appeal.

True to the original,

PRESIDING JUDGE: (signature) Svetla Petkova

PANEL MEMBERS: (signature) Ivan Trendafilov, (signature) Alexander Elenkov, (signature) Natalia Marcheva, (signature) Romyana Papazova