

## **Portugal, Tribunal Central Administrativo do Sul (Central Administrative Court of the South) - 2937/16.6BELSB**

### Deciding bodies and decisions

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### Area of law

Data protection - right to access

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### Subject matter

Whether an interested party in an insolvency proceeding, by requesting information on that competition without concealing the identity of the candidates, calls into question the protection of the candidates' personal data.

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### Summary Facts Of The Case

Aida, a Portuguese citizen, competed with the Director of the Human Resources Management and Training services of the Directorate-General for School Administration, under the supervision of the Portuguese Ministry of Education.

Not having succeeded in this contest, she asked the Ministry of Education to consult the proceedings, in order to see the profile of the other candidates and which specific competencies for the position they had.

The Ministry of Education denied access to these documents, and Aida brought the case to court. The lower court denied Aida's claim, justifying that full consultation of the tender procedure is only permitted without revealing the identity of the candidates.

Not accepting this decision, Aida appealed to the Central Administrative Court of the South.

First, the Court briefly describes the appealed decision.

Afterwards, the Court defines the concept of "personal data" and of "processing personal data".

The Court concludes that the plaintiff's claim entails access to personal data (the candidates' names).

According to Article 6 of the Portuguese Data Protection Act, personal data might lawfully be processed on grounds of the legitimate interests of a third party. Therefore, Aida had to prove that she had a legitimate interest. As mentioned in the appealed decision, Aida simply asked for all the information concerning the tender procedure, without presenting a justification. Nevertheless, in the request for the appeal she stated that the identity of the other candidates was necessary to fully exercise her right to appeal against the tender procedure final decision.

The court ruled in favour of the plaintiff, considering that the right to appeal against the tender procedure could only be effectively exercised if the candidates' names were provided.

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### Relation to the scope of the Charter

There is a relation of the case to the Charter. The Court makes use of the Portuguese Data Protection Act (Law no. 67/98) in order to know what means personal data, the processing of personal data and what is a third party for the purpose of data protection.

In order to know what "personal data" means, the Court considers Article 8 of the Charter, in particular the doctrine that exists about it, in order to demarcate the correct meaning of that concept.

At the same time, the Court uses the Opinion issued by the European Union Data Protection Working Group, in relation to Directive 95/46/EC, in order to further clarify the meaning of personal data.

We can therefore say that there is a direct relation between this decision and ECFR and that the meaning of "personal data" reached by the Court is consistent with that of the ECFR.

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