

Case C-184/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

28 April 2020

Referring court:

Vilniaus apygardos administracinis teismas (Lithuania)

Date of the decision to refer:

31 March 2020

Applicant:

OT

Defendant:

Vyriausioji tarnybinės etikos komisija (Chief Official Ethics Commission)

Subject matter of the action in the main proceedings

The obligation imposed in national law on persons working in the national civil service to declare private interests. The publication of the data relating to declarations on the Internet. Possible infringement of the right to private life.

Subject matter and legal basis of the request for a preliminary ruling

Interpretation of Article 6(1)(e), in conjunction with Article 6(3), of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the General Data Protection Regulation) (hereinafter also ‘the Regulation’) and of Article 9(1) of the Regulation, in conjunction with Article 9(2)(g) thereof, in the light of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (hereinafter also ‘the Charter’).

Questions referred

1. Must the condition laid down in Article 6(1)(e) of the Regulation that processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, with regard to the requirements laid down in Article 6(3) of the Regulation, including the requirement that the Member-State law must meet an objective of public interest and be proportionate to the legitimate aim pursued, and also with regard to Articles 7 and 8 of the Charter, be interpreted as meaning that national law may not require the disclosure of declarations of private interest and their publication on the website of the controller, the Vyriausioji tarnybinės etikos komisija (Chief Official Ethics Commission), thereby providing access to those data to all individuals who have access to the Internet?

2. Must the prohibition of the processing of special categories of personal data established in Article 9(1) of the Regulation, regard being had to the conditions established in Article 9(2) of the Regulation, including the condition established in point (g) thereof that processing must be necessary for reasons of substantial public interest, on the basis of EU or Member-State law which must be proportionate to the aim pursued, must respect the essence of the right to data protection and must provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject, be interpreted, also with regard to Articles 7 and 8 of the Charter, as meaning that national law may not require the disclosure of data relating to declarations of private interests which may disclose personal data, including data which make it possible to determine a person's political views, trade-union membership, sexual orientation and other personal information, and their publication on the website of the controller, the Vyriausioji tarnybinės etikos komisija, providing access to those data to all individuals who have access to the Internet?

Provisions of EU law cited

Articles 7 and 8 of the Charter of Fundamental Rights of the European Union; recitals 1, 2, 4, 26, 39, 51, 85 and 154, Article 4(1), Article 6(1)(c) and (e), Article 6(3) and Article 9(1) and (2) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Provisions of national law cited

Article 1, Article 2(1), Article 3(2), Article 4(1), Article 5, Article 6(1), Article 10(1) and (2) and Article 22 of the Law of the Republic of Lithuania on the Coordination of Public and Private Interests in the Civil Service (hereinafter 'the Law') (version in force from 1 January 2018 to 18 December 2019).

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 6 March 2018, the applicant brought an action before the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court), requesting it to declare unlawful and to annul the decision of the Vyriausioji tarnybinės etikos komisija (Chief Official Ethics Commission) (hereinafter ‘the Commission’) of 7 February 2018 (hereinafter ‘the Decision’) finding that the applicant had infringed the provisions of Article 3(2) and Article 4(1) of the Law (the obligation to declare private interests) by failing to submit a declaration of private interests in accordance with the procedure established thereby.
- 2 The applicant holds the position of Director of the public establishment QP, a public body active in the field of environmental protection (hereinafter QP). QP has participated in public-procurement procedures and has received co-financing from the budget of the Republic of Lithuania for the implementation of certain projects of the European Union’s LIFE + Programme.

Principal arguments of the parties in the main proceedings

- 3 The applicant submits that he is not subject to the provisions of the Law governing the obligation to declare private interests. As Director of QP, he has no powers of public administration. The founders and members of QP are private individuals. No functions of state or municipal institutions have been delegated to QP. As a non-governmental organisation, it operates independently of any authorities.
- 4 According to the applicant, the Commission has unreasonably equated him with a person employed in the civil service and holding administrative powers.
- 5 The applicant claims that the content of the declaration of private interests and its practically unconditional publication in the public domain (on the Commission’s website) essentially obliges a declarant to disclose not only his own personal data but also personal data relating to other persons, thereby infringing the right to private life.
- 6 The defendant contends that the action should be dismissed as unfounded. It submits that persons who meet the following conditions are also considered in the Law (Article 2(1)) to be persons in the civil service: (1) persons who are employed at public establishments; (2) the public establishments are financed out of the Lithuanian national or municipal budget and funds; (3) those persons have administrative powers vested in them. The defendant submits that the applicant meets all of those conditions. It explains that administrative powers may be not only public, external (functions of a government representative), but also internal, which are granted to persons holding managerial positions in companies, institutions and organisations, regardless of whether powers of public administration have been vested in them. Administrative powers are associated with the supervision of the establishment’s activities, control of the work of subordinates and its organisation, financial management, and suchlike. The

applicant has been granted administrative powers in QP. He is the sole management body of QP; the activities of QP are constantly financed out of the European Union Structural Funds and out of the funds of the state budget of the Republic of Lithuania; therefore, the applicant must declare private interests.

Brief summary of the reasons for the referral

- 7 According to Article 7 of the Charter, everyone has the right to respect for his or her private and family life, home and communications. According to Article 8 of the Charter, everyone has the right to the protection of personal data concerning that person. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which have been collected concerning him or her, and the right to have those data rectified.
- 8 Article 6(1) of the Regulation lays down the conditions under which processing of data is lawful. Such conditions include the following: processing is necessary for compliance with a legal obligation to which the controller is subject (point (c)); processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (point (e)).
- 9 Article 6(3) of the Regulation provides that the basis for the processing referred to in points (c) and (e) of paragraph 1 are to be laid down by: (a) EU law or (b) Member-State law to which the controller is subject. The purpose of the processing is to be determined on that legal basis or, as regards the processing referred to in point (e) of paragraph 1, must be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of the Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to which, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The EU or the Member-State law must meet an objective of public interest and must be proportionate to the legitimate aim pursued.
- 10 Article 9(1) of the Regulation provides that processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation is to be prohibited.
- 11 Article 9(2) of the Regulation lays down the conditions under which paragraph 1 is not to apply. Such conditions include, inter alia, the condition that processing is necessary for reasons of substantial public interest, on the basis of EU or Member-

State law which must be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject (point (g)).

- 12 The Law (Article 10(1)) determines the persons whose declaration data are to be public and published on the website of the Chief Official Ethics Commission in accordance with the established procedure. The list of those persons includes heads and deputy heads of public establishments that are financed out of the Lithuanian national or municipal budget and funds.
- 13 The contents of a declaration of private interests (Article 6(1) of the Law) in principle include data relating to the private life of the persons indicated therein: personal data (name, surname, place of employment, duties) of the declarant and his/her spouse, cohabitant, partner, from which information on certain aspects of the person's private life (marital status, sexual orientation, and suchlike) can be identified, information on gifts received, transactions concluded by those persons, from which certain details of the life of the declarant and his/her spouse, cohabitant, partner can be identified, that is to say, objects used, interests, hobbies, lifestyle, financial situation, and so forth, information on persons close to or known to him/her or data which may cause a conflict of interest and may be liable to indicate the personal relationship between the declarant and his/her spouse, cohabitant or partner as well as the personal relationship between the persons who must be indicated and the declarant and his/her spouse, cohabitant, partner.
- 14 Personal data contained in a declaration of private interests constitute an integral part of a person's private life and their disclosure may breach the person's right to private life and may affect his/her security, that is to say, disclosure of such data may endanger the person's life and health, his/her other rights and freedoms, and cause other negative consequences for him/her.
- 15 The declarant is obliged to disclose not only his/her personal data but also those of other persons, knowing that such data will be published on the Commission's website and, therefore, will be available in principle to an unlimited number of persons and potentially used for a variety of purposes. The exceptions provided for in the Law (Article 10(2)) do not ensure the protection of personal data because they leave open the possibility of identifying the declarant and other persons and linking with those persons publicly disclosed information that is not covered by the exceptions.
- 16 The Law seeks essentially to safeguard the principle of transparency in the performance of public functions and in the taking of decisions related to the implementation of public interests (Article 1).
- 17 The Court of Justice of the European Union (hereinafter also 'the CJEU') has noted that the principle of transparency laid down in Articles 1 and 10 of the Treaty on European Union and in Article 15 of the Treaty on the Functioning of the European Union enables citizens to participate more closely in the decision-

making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see judgments of the Court of Justice of 6 March 2003, *Interporc v Commission*, C-41/00 P, EU:C:2003:125, paragraph 39, and of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378, paragraph 54). The CJEU has also ruled that the protection of the fundamental right to respect for private life at EU level requires that derogations from and limitations on the protection of personal data should apply only in so far as is strictly necessary (see judgments of 21 December 2016, *Tele2 Sverige and Watson and Others*, C-203/15 and C-698/15, EU:C:2016:970, paragraph 96, and of 27 September 2017, *Puškár*, C-73/16, EU:C:2017:725, paragraph 112).

- 18 According to the case-law of the CJEU, the institutions are obliged to balance, before disclosing information relating to a natural person, the European Union's interest in guaranteeing the transparency of its actions and the infringement of the rights recognised by Articles 7 and 8 of the Charter. No automatic priority can be conferred on the objective of transparency over the right to protection of personal data, even if important economic interests are at stake (see judgment of 9 November 2010, *Volker und Markus Schecke*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 85).
- 19 Although the obligation to provide data (including data on a person's private life) imposed by the Law is linked to circumstances that may affect decisions taken in the course of the performance of official duties, the court is convinced that the existence of such circumstances does not in itself mean that such data are of public interest and must be published. On the contrary, such data may reveal highly sensitive personal information (such as information about unmarried cohabitation, life with a person of the same sex, and so on), which in principle has no social need to be made public and may cause significant inconvenience to the person in his/her private life.
- 20 In the opinion of the court, the disclosure of the specified circumstances on the Internet is not a necessary measure to ensure the objective pursued by the Law, that is to say, the implementation of the principle of transparency in the civil service. The provision of such data merely to the entities specified in the Law (Article 5) as well as the functions of control assigned to those entities (Article 22), including the functions of control vested in a special institution – the Vyriausioji tarnybinės etikos komisija – are sufficient measures to ensure that the objective of the Law is achieved.
- 21 The court has doubts as to whether the rule laid down in the Law that the data relating to private declarations must be public and published is compatible with the specified provisions of the Charter and of the Regulation and with the case-law of the CJEU.