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Judgment of the Court of Justice in Case C-73/07

Tietosujvaltuutettu v Satakunnan Markkinopörssi Oy and Others

THE COURT OF JUSTICE DEFINES THE RELATIONSHIP BETWEEN DATA PROTECTION AND THE FREEDOM OF THE PRESS

The processing of personal data made available by the tax authorities for the purposes of putting into place a text-messaging service allowing mobile telephone users to receive tax data relating to other natural persons may be the subject of a derogation from the data protection rules if it is carried out solely for journalistic purposes

For several years, the company Markkinapörssi has collected public data from the Finnish tax authorities for the purposes of publishing extracts from those data in the regional editions of the *Veropörssi* newspaper each year. The information contained in those publications comprises the surname and given name of approximately 1.2 million persons whose income exceeds certain thresholds as well as the amount, to the nearest EUR 100, of their income and details of the wealth tax levied on them. That information is set out in the form of an alphabetical list and organised according to municipality and income bracket.

Markkinapörssi and Satamedia, an associated company to which the data at issue were transferred in the form of CD-ROM discs, signed an agreement with a mobile telephony company which put in place, on Satamedia's behalf, a text-messaging service allowing mobile telephone users to receive information published in the *Veropörssi* newspaper on their telephone for a charge of approximately EUR 2. On request, the personal data are removed from that service.

Following complaints from individuals alleging infringement of their right to privacy, the Data Protection Ombudsman applied for an order prohibiting Markkinapörssi and Satamedia from carrying on the personal data processing activities at issue.

The Supreme Administrative Court, which will rule as the court of last instance on that application, has asked the Court of Justice to rule on the correct interpretation of The Data Protection Directive¹. The administrative court wishes to know in particular in what circumstances the activities in question can be considered as data processing undertaken solely

¹ Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

for journalistic purposes and may, accordingly, be the subject of derogations and limitations relating to data protection.

In its judgment delivered today, the Court of Justice holds that the activities of Markkinapörssi and Satamedia constitute data processing within the meaning of the Data Protection Directive even though the files of the public authorities that are used comprise only information that has already been published in the media. Were the position to be otherwise, the directive would be largely deprived of its effect. It would be sufficient for the Member States to publish data in order for those data to cease to enjoy the protection afforded by the directive.

Next, the Court notes that the Member States should, while permitting the free flow of personal data, protect the fundamental rights and freedoms of natural persons and, in particular, their right to privacy, with respect to the processing of those data. In order to reconcile the protection of privacy and the right to freedom of expression, the Member States are required to provide for a number of derogations or limitations in relation to the protection of data and, therefore, in relation to the fundamental right to privacy. Those derogations must be made solely for journalistic purposes or for the purposes of artistic or literary expression, which fall within the scope of the fundamental right to freedom of expression, in so far as it is apparent that they are necessary in order to reconcile the right to privacy with the rules governing freedom of expression.

In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary, first, to interpret notions relating to that freedom, such as journalism, broadly. Secondly, the protection of the fundamental right to privacy requires that the derogations and limitations in relation to the protection of data must apply only insofar as is strictly necessary.

In those circumstances, the Court considers that **activities** such as those carried on by Markkinapörssi and Satamedia and **which concern data from documents which are in the public domain under national legislation may be classified as ‘journalistic activities’ if their object is the disclosure to the public of information, opinions or ideas**, irrespective of the medium which is used to transmit them. They are not limited to media undertakings and may be undertaken for profit-making purposes. It is therefore for the Supreme Administrative Court to determine whether the activities at issue in the main proceedings have as their sole object the disclosure to the public of information, opinions or ideas.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES DE EL EN FI FR IT PL PT

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-73/07>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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