

**Case C-683/23**

**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:**

14 November 2023

**Referring court:**

Juzgado de Primera Instancia No 19 de Barcelona (Spain)

**Date of the decision to refer:**

10 October 2023

**Applicant:**

Encarna

**Defendant:**

Elías

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**Subject matter of the main proceedings**

Proceedings concerning mutually agreed child custody arrangements – Joint parental responsibility – Application for enforcement – Protection of natural persons with regard to the processing of personal data – Lawfulness of the processing of personal data in the context of proceedings – Handover of personal data not based on the data subject’s consent or on EU or Member State law

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

Request for a preliminary ruling on interpretation – Article 267 TFEU – Compatibility of a national practice with Regulation (EU) 2016/679 – Handover of personal data not based on the data subject’s consent or on EU or Member State law – Treaty on the Functioning of the European Union – Article 16(1) – Protection of personal data – Charter of Fundamental Rights of the European Union – Articles 7, 8, 24, 47 and 52 – Istanbul Convention – Article 48(1) – European Convention on Human Rights – Article 8

## **Questions referred for a preliminary ruling**

1. Does the handing over by the court of the personal data of the parties and of children and teenagers to the parenting coordinator and authorisation to access the processed personal data of those persons in third-party (including healthcare) archives, without any statutory or regulatory provision, infringe Article 6(4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016?
2. In the event that the court is entitled to hand over the personal data of the parties and of children and teenagers, does the handing over of that data by the court to the parenting coordinator infringe Article 16 TFEU and [Article] 7 CFREU (respect for private and family life), [Article] 8 CFREU (protection of personal data) and [Article] 52 CFREU (scope and interpretation of rights and principles)?
3. Is the handing over of data to the parenting coordinator without first hearing the child's views on this matter and without considering the child's best interests compatible with Article 6(4) of Regulation (EU) 2016/679 in conjunction with Article 24 CFREU?
4. Does the handing over of the child's data to the parenting coordinator so that he or she may take decisions concerning the exercise of parental responsibility and/or custody and/or contact arrangements, in cases involving violence, infringe Article 48(1) of the Istanbul Convention, which prohibits the use of mandatory alternative dispute resolution processes, in conjunction with Articles 7 and 24 of the CFREU?
5. In the event that the court is entitled to hand over the parties' personal data and, as a consequence of the handing over of that data, the parenting coordinator's fees must be covered by the parties because that has been ordered by the court, even though the parties have been granted legal aid, does this infringe Article 47 CFREU (right to effective judicial protection)?

## **Provisions of international and European Union law relied on**

Article 6(4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ('Regulation 2016/679')

Articles 7, 8, 24, 47 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter')

Article 8 of the European Convention on Human Rights

Article 48(1) of the Istanbul Convention

General Comment No 14 of the United Nations Committee on the Rights of the Child, 2013

### **Provisions of national law relied on**

Article 8 of Framework Law 3/2018 on the protection of personal data and guaranteeing digital rights (Ley Orgánica 3/2018 de Protección de Datos Personales y garantía de los derechos digitales) of 5 December 2018 ('LO 3/2018')

Article 236*quinquies* of the Framework Law on the judiciary (Ley Orgánica del Poder Judicial)

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 Ms Encarna and Mr Elías were civil partners from mid-2017 until the end of November 2019. In 2017, they had a daughter called María.
- 2 After their relationship ended, the Juzgado de Primera Instancia No 19 de Barcelona (Court of First Instance No 19, Barcelona, Spain) decided, on 16 June 2020, to grant parental responsibility for the child to both parents jointly, and custody to Ms Encarna.
- 3 On 28 June 2020, in a preliminary investigation for the offence of the attempted murder of María, the Juzgado de Instrucción No 1 de Tremp (Court of Preliminary Investigations No 1, Tremp, Spain) amended the custody arrangements for the child, granting custody to Mr Elías and banning Ms Encarna from approaching Mr Elías and their daughter and from communicating with them.
- 4 On 30 April 2021, the Juzgado de Primera Instancia No 19 de Barcelona (Court of First Instance No 19, Barcelona) gave judgment enshrining the custody arrangements mutually agreed between Ms Encarna and Mr Elías in respect of María and maintaining the restraining order imposed by the Juzgado de Instrucción No 1 de Tremp (Court of Preliminary Investigations No 1, Tremp).
- 5 On 20 March 2023, Ms Encarna lodged an application for enforcement of the judgment of 30 April 2021 against Mr Elías before the Juzgado de Primera Instancia No 19 de Barcelona (Court of First Instance No 19, Barcelona), on the ground that he was not complying with the terms of that judgment. Mr Elías lodged an objection against the application for enforcement lodged by Ms Encarna, who contested that objection. Ms Encarna also asked the court to appoint, as a matter of urgency, a parenting coordinator to work on and normalise the relationship between herself and Mr Elías.

**Essential arguments of the parties in the main proceedings**

- 6 Mr Elías opposes the application for appointment of a parenting coordinator lodged by Ms Encarna, arguing that this is inappropriate and that if the court were to make an order to that effect he would be denied due process and his fundamental right to an effective remedy would be breached.
- 7 Ms Encarna submits that there is a parental dispute which is affecting each parent's relationship with the child. Her own relationship with María is limited to contact at a meeting centre, and therefore she only has the option of learning about matters relating to her daughter through Mr Elías, who has been granted custody. However, he does not communicate with Ms Encarna, takes unilateral decisions and conceals medical and everyday information about María from her, even though they have joint parental responsibility.
- 8 The Ministerio Fiscal (Public Prosecutor's Office) considers that it is appropriate for the court to appoint a parenting coordinator to facilitate the relationship between María's parents. It also considers that it is not appropriate to refer the second question for a preliminary ruling.

**Succinct presentation of the reasoning in the request for a preliminary ruling**

- 9 A parenting coordinator is a concept which is not regulated by Catalan law or Spanish ordinary law. Some family courts opt to use a parenting coordinator when there is a dispute between parents concerning the exercise of parental responsibility, custody or access arrangements. Occasionally, courts order a parental coordinator to intervene in situations where there is violence between the parents or against the child, without hearing the parties or the child and without it being possible to object to the parenting coordinator or to oppose his or her appointment.
- 10 Once appointed, a parenting coordinator acts by order of the court but not on the basis of any statutory or regulatory provisions and without it being necessary for the parties to give their consent or for the child's views to be heard on the subject. The parenting coordinator's services are paid for by the parents, including where the parents have been granted legal aid.
- 11 When a parenting coordinator is used, the court usually directs that he or she is appointed after giving judgment. The role tends to be performed by a person trained in psychology, mediation or social work who is not a member of the court staff. The parenting coordinator's task is to find out about the family's situation and make adjustments to the arrangements for custody, access or parental responsibility set out in the judgment, for which purpose he or she is entitled to take decisions affecting the child's family life.
- 12 In order to facilitate the performance of his or her tasks, the parenting coordinator has access to the identity data that the family has provided to the court for the

purposes of conduct of the family proceedings. The parenting coordinator is also authorised to access, inter alia, the child's medical and education data and to contact organisations, institutions, doctors' surgeries, schools and other bodies in order to access all data about the family unit and the extended family that he or she considers necessary, including confidential data such as medical data.

- 13 LO 3/2018 provides that personal data may be handed over for the purpose of compliance with aims directly related to the lawful duties of the transferor and the transferee, where there is consent and where the transfer is authorised by law. In the view of the referring court, the intervention of the parenting coordinator and the handing over of the data of parties and children are legally questionable because they are not based on the data subjects' consent or authorised by law. The referring court therefore considers that this practice may be contrary to the fundamental right to the protection of personal data enshrined in Article 6(4) of Regulation 2016/679, read in conjunction with Articles 7, 8, 47 and 52 of the Charter.
- 14 According to the referring court, the handing over of data to the parenting coordinator without considering the child's best interests or first hearing the child's views may breach Article 6(4) of Regulation 2016/679, in conjunction with Article 24 of the Charter.
- 15 Furthermore, the handing over of data in a situation where there has been violence between the parents or against the child may be contrary to Article 48(1) of the Istanbul Convention, which prohibits the use of mandatory alternative dispute resolution processes, read in the light of Articles 7 and 24 of the Charter.
- 16 Finally, the referring court considers that the payment of the parenting coordinator's fees by the parents, as ordered by the court, including in cases where the parents have been granted legal aid, may breach the right to effective judicial protection enshrined in Article 47 of the Charter.