

Case C-740/22**Request for a preliminary ruling****Date lodged:**

2 December 2022

Referring court:

Itä-Suomen hovioikeus (Finland)

Date of the decision to refer:

30 November 2022

Appellant:

Endemol Shine Finland Oy

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Request for a preliminary ruling of 30 November 2022

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APPELLANT: Endemol Shine Finland Oy ('the company')**SUBJECT MATTER:** Requests for information**Decision of the Itä-Suomen hovioikeus (Court of Appeal, Eastern Finland)****Subject matter of the dispute**

- 1 This case concerns the interpretation of Articles 2(1) and 4(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 (General Data Protection Regulation). It concerns specifically whether an oral transfer of personal data constitutes processing of personal data within the meaning of Article 4(2) of the General Data Protection Regulation. In addition, it concerns whether public access to official documents can be reconciled with the right to protection of personal data pursuant to the General Data Protection Regulation, in the manner referred to by Article 86 of the regulation, by allowing information on criminal convictions or offences of a natural person to be obtained from a court's

register of persons without restriction where a request is made to transfer the information orally to the applicant.

The relevant facts

- 2 The company made an oral request to the Etelä-Savon käräjäoikeus (District Court, South Savo) for information on possible ongoing or completed criminal proceedings against a natural person. According to that court, the information was requested for the purpose of clarifying the criminal record of a person involved in a competition.

Processing of the request for information by the District Court

- 3 According to that court, the reason stated by the company for processing the data was not a reason for processing criminal convictions or offences referred to in Paragraph 7 of Chapter 2 of the Tietosuojalaki (Law on data protection). Therefore, the District Court took the view that the data requested by the company could not be disclosed to it, notwithstanding the fact that it related to public decisions or information under the Laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa (Law on the public nature of proceedings before ordinary courts). A search of the court's information systems would also have constituted processing of personal data, which is why the requested information could also not have been disclosed orally. Likewise, a contractual agreement per se was not a sufficient reason for processing criminal convictions or offences. For the above reasons, the court refused the company's request for information.
- 4 The company lodged an appeal against the order of the District Court with the Court of Appeal, Eastern Finland. In its appeal, it argued inter alia that fulfilment of the request for information by providing orally the requested information on possible ongoing and completed criminal proceedings did not constitute processing of personal data under Article 4(2) of the regulation. The Court of Appeal granted the company leave to proceed.

Legislation applicable

EU law

- 5 Under Article 2(1) of the General Data Protection Regulation, the regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. Under Article 4(2) of that regulation, for the purposes of the regulation 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection,

recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

- 6 Under Article 86, personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to that regulation.

National law

Law on the protection of personal data

- 7 Following the entry into force of the General Data Protection Regulation, a new Tietosuojalaki (Law on data protection) was adopted in Finland. Under Paragraph 1 of the Law on data protection, that law clarifies and supplements the General Data Protection Regulation and the national application thereof. Under Paragraph 2 of the Law on data protection, that law is to be applied in accordance with the scope of Article 2 of the General Data Protection Regulation.
- 8 Under Paragraph 28 of the Law on data protection, the provisions on the public nature of authorities' activity are to apply to the right to obtain data from an authority's register of persons and any other disclosure of personal data from a public authority's register of persons.
- 9 Under Paragraph 1(1) of the Laki henkilötietojen käsittelystä rikosasioissa ja kansallisen turvallisuuden ylläpitämisen yhteydessä 5.12.2018/1054 (Law on the processing of personal data in criminal matters and in connection with the maintenance of national security 5.12.2018/1054), that law is to be applied to the processing of personal data by competent authorities where, inter alia, criminal proceedings before a court are concerned. However, under Paragraph 1(4), the law applies only to such processing of personal data within the meaning of subparagraph 1 as is wholly or partly automated or where the data to be processed form or are intended to form a register or part of a register. Under Paragraph 2(2) of that law, the provisions on the public nature of an authority's activity are to apply to the right to obtain data from an authority's registry of persons and any other disclosure of personal data from an authority's register of persons.

Law on the public nature of activities

- 10 Under Paragraph 1 of the Laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa 30.3.2007/370 (Law on the public nature of proceedings before ordinary courts 30.3.2007/370), court proceedings and court files are to be public, unless otherwise provided for in that law or any other law. Under Paragraph 4 of that law, information on the court hearing the case, the exact nature of the case,

the course of the proceedings and the time and place of the hearing, as well as the information necessary to identify the parties, is to be public. Under Paragraph 7(2) of that law, everyone is entitled to obtain information from public court files. Under Paragraph 13(1) of that law, the way in which information from court files is provided is governed by Paragraph 16 of the Laki viranomaisten toiminnan julkisuudesta 21.5.1999/621 (Law on the public nature of authorities' activity 21.5.1999/621).

- 11 Under Article 13(1) of the Law on the public nature of authorities' activity, a request for information on the content of a file must be sufficiently specific to enable the authority to clarify which file the request relates to. The authority assists the person requesting information in identifying the file from which he or she is requesting the information by means of a log or other catalogues. The person requesting information need not identify him or herself or state reasons for his or her request, save where this is necessary to enable the authority to exercise its discretion or determine whether the applicant has a right to information on the content of the document. Under Paragraph 13(2), unless otherwise provided for, when requesting information from a confidential file, an authority's register of persons or another file from which information may be provided only under certain conditions, the applicant must state the purpose for which the information is to be used, set out any other circumstances required to clarify the condition for disclosure of the information and, where necessary, provide information on how the information is to be protected.
- 12 Under Paragraph 16(1) of the Law on the public nature of authorities' activity, information on the content of a file is to be provided orally or by making the file available for inspection, duplication or hearing at the authority's premises or by providing a copy or printout thereof. Information on the public content of a file is to be provided in the manner requested, unless this would entail unreasonable interference in official activities on account of the large number of files or the difficulty of copying or for other comparable reasons.
- 13 Under Paragraph 16(3) of the Law on the public nature of authorities' activities, personal information from an authority's register of persons may, unless otherwise provided for in law, be provided in the form of a copy or printout or in electronic form where the recipient is entitled to store and use such personal information under the provisions on the protection of personal data.

Need for and background to the reference for a preliminary ruling

- 14 The Court of Appeal is seised of a case concerning the processing of personal data in which the adoption of an appropriate decision requires an interpretation of Articles 2(1), 4(2) and 86 of the General Data Protection Regulation.
- 15 The Court of Justice has held that there is processing of personal data where a court grants access to procedural documents containing personal data and such access is granted by making copies available to journalists (judgment of 24 March

2022, *X and Z v Autoriteit Persoonsgegevens* (C-245/20, ECLI:EU:C:2022:216, paragraphs 37 to 39).

- 16 In the view of the Court of Appeal, it is unclear whether Articles 2(1) and 4(2) of the General Data Protection Regulation are to be interpreted as meaning that the oral provision of information on possible ongoing or concluded criminal proceedings against a natural person constitutes processing of personal data within the meaning of the regulation. The Court of Justice has not given any rulings on this matter.
- 17 In Finland, the processing of personal data by authorities is governed by the Law on data protection; however, the restrictions usually associated with processing personal data do not have to be complied with in all cases on account of the public nature of public authority data (Paragraph 28 of the Law on data protection and Paragraph 2(2) of the Law on processing personal data in criminal matters and in connection with the maintenance of national security). In order to reconcile the protection of personal data with the principle that authorities' activity must be public, Paragraph 16 of the Law on the public nature of authorities' activities restricts the provision of personal data in the form of a copy or printout or in electronic form from an authority's register of persons. Since that paragraph does not concern an oral transfer of personal data from an authority's register of persons, it is unclear how the protection of personal data is to be reconciled with the principle that authorities' activities are to be public and how important aspects related to the protection of personal data are to be taken into account where personal data held in an authority's register of persons are transferred orally.

Questions referred for a preliminary ruling

After giving the parties an opportunity to submit observations on the content of the request for a preliminary ruling, the Court of Appeal has decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

1. Does an oral transfer of personal data constitute processing of personal data within the meaning of Article 2(1) and Article 4(2) of the General Data Protection Regulation?
2. Can public access to official documents be reconciled with the right to protection of personal data pursuant to the General Data Protection Regulation, in the manner referred to by Article 86 of the regulation, by allowing information on criminal convictions or offences of a natural person to be obtained from a court's register of persons without restriction where a request is made to transfer the information orally to the applicant?
3. Is it relevant for the answer to Question 2 whether the applicant is a company or a private individual?

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WORKING DOCUMENT