

Courts must consider third party personal data interests when assessing document production requests (Norra Stockholm Bygg v Nycander)

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Arbitration analysis: In a recent preliminary ruling, the Court of Justice considered the interplay between civil procedure and data privacy regulation when it comes to the production of documents as evidence in a civil court proceeding. The court held that such production of documents constitutes processing of personal data under the General Data Protection Regulation (GDPR) and that, accordingly, where a document including personal data is requested for production as evidence, courts and potentially arbitral tribunals must always consider the interests of the data subjects. Written by Jacob Ericson and Victoria Ribbnäs at Westerberg & Partners, Stockholm.

Norra Stockholm Bygg AB v Per Nycander AB, joined parties: Entral AB Case [C-268/21](#)

What are the practical implications of this case?

The case clarifies that while orders for production of evidence can constitute a legitimate purpose under the GDPR it is clear that courts that are presented with such requests for document production must consider the interests of third parties whose personal data is affected by the request. Importantly, this should be considered by the court even if no such provisions exist in the relevant national law. Potentially, the same considerations should be taken by arbitral tribunals assessing such requests.

In each case where personal data is affected by the production of documents, a court will be required to assess whether ruling in favour of such production strikes a proportionate balance between the third parties' right to their personal data and right to private life, and the requesting party's right to effective judicial protection and right to fair trial. This could pose a potential obstacle for parties seeking to obtain evidence which includes personal data, if the data subject's interest is ultimately deemed to be more important. The Court of Justice did not provide any further guidance regarding in what circumstances one or the other interest should take precedence and this will bring about a degree of uncertainty, at least for the short term, while courts facing this question conduct their own respective balancing act in this regard. In the case at hand, the Swedish Supreme Court will now have to consider whether to order an electronic staff register to be produced as evidence and, if so, whether it should be provided unredacted or pseudonymised.

What was the background?

The preliminary ruling from the Court of Justice was a referral from the Swedish Supreme Court. In the case, the client of a construction project had requested a Swedish District Court to order a third-party supplier to produce certain documents as evidence for a dispute between the client and his contractor. The documentation concerned was an electronic staff register recording the contractor's staff's presence at the building site. The contractor was obligated by law to collect this for tax inspection purposes and the electronic staff register was held by the third-party supplier for the contractor for such purpose.

The client argued that the staff register would be important evidence for purposes of opposing the contractor's claim for payment for certain works carried out on an hourly basis. Primarily, the client requested the documentation to be produced unredacted, or, alternatively, with the necessary national identity numbers of the persons concerned redacted. The contractor disputed the request claiming that producing such a document would be a violation of GDPR.

Both the District Court and the Court of Appeals found in favour of the client, ordering the supplier to produce the staff register unredacted. Neither of the courts considered that the GDPR was applicable for purposes of assessing whether to rule in favour or against production.

Upon appeal by the contractor, the Supreme Court granted leave and referred two questions to the Court of Justice for a preliminary ruling:

- does [Article 6\(3\)](#) and [\(4\)](#) of Regulation (EU) 2016/679, the GDPR, apply, in the context of civil court proceedings, to the production of evidence of a staff register containing personal data of third parties collected principally for the purposes of tax inspection?
- if yes, must [Articles 5](#) and [6](#) of Regulation (EU) 2016/679, the GDPR, be interpreted as meaning that, when assessing whether to rule in favour of the production of a document containing personal data, is the national court required to have regard to the interests of the data subjects concerned? If so, does EU law, and particularly the GDPR, lay down any specific requirements as to how that assessment should be made?

What did the court decide?

The Court of Justice held that, firstly, the production of documents ordered by a court constitutes processing of personal data within the meaning of GDPR, and, secondly, that the relevant provisions of Swedish law regulating the production of documents in a civil proceeding could constitute a valid legal basis on which such personal data can be processed regardless of the purpose for which that data was originally collected, i.e. in this instance, for tax inspection purposes. Accordingly, the processing of personal data needs not only to be based on national law, but also should (as set out in [Article 6\(4\)](#) of Regulation (EU) 2016/679, the GDPR) constitute a necessary and proportionate measure in a democratic society to safeguard one of the objectives referred to in [Article 23\(1\)](#) of Regulation (EU) 2016/679, the GDPR, which includes, among other things, the protection of judicial proceedings and the enforcement of civil law claims.

Regarding the second question, the Court of Justice held that national courts are required to consider the opposing interests involved when assessing whether to order the production of a document containing personal data of third parties. In this regard, courts are required to balance the data subjects' rights regarding processing of personal data and their right to private life, with the rights of the requesting party to effective judicial protection and right to fair trial. National courts must carry out this balancing act considering the specific circumstances of each case, the type of proceedings at issue and the principle of proportionality as well as, more specifically in the GDPR context, the principle of data minimisation under [Article 5\(1\)\(c\)](#) of Regulation (EU) 2016/679, the GDPR.

Case details:

- Court: Court of Justice of the European Union
- Judges: K Jürimäe, ML Arasteyx Sahún, N Piçarra, N Jääskinen (Rapporteur) and M Gavalec
- Date of judgment: 2 March 2023

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