CJEU, Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy, Case C-73/07

Deciding bodies and decisions

CJEU, Judgment of the Court (Grand Chamber) of 16 December 2008, Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy, Case C-73/07.
ECHR, Satakunnan Markkinapörssi Oy And Satamedia Oy V. Finland (Grand Chamber)

Area of law

Freedom of expression - data protection

Subject matter

Which is the balance between freedom of expression and data protection in case of journalist activity?
Should the exemption for journalistic activity be interpreted strictly?

Summary Facts Of The Case

Two Finnish companies, Satakunnan Markkinapörssi Oy and Satamedia Oy, were collaborating in publishing tax information regarding Finnish citizens contained in a public register. The first comapny in particular published a magazine “Veropörssi” dedicated to this topic. In 2003, the two companies established a text-messaging service in cooperation with a Finnish telecommunications provider, through which the users may access the database of tax information published in Veropörssi.
In 2003, the Finnish Data Protection Ombudsman issued a notice under Finnish data protection law requiring< Satakunnan and Satamedia to cease the data processing activity. However, the companies refused to comply. Thus, the Ombudsman requested the Data Protection Board to issue a ban on the two companies’ collection and publishing of the tax data, both in the Veropörssi magazine and by the text-messaging service.
The Data protection Board dismissed the request as it shared the arguments presented by the two companies affirming the applicability of the exemption for journalistic purposes according to the Finnish Data Protection Act. The appeal to the decision was then lodges before the Helsinki Administrative Court by the Ombudsman, eventually confirming the decision of the Data protection board. A following appeal was lodges to the Finnish Supreme Administrative Court.
The Supreme court then decided to stay its proceedings in order to present a preliminary reference to the CJEU. I believe that it is important to follow the reasoning of the Finnish court and refer here to the entirety of questions presented to the Luxembourg court:
“(1) Can an activity in which data relating to the earned and unearned income and assets of natural persons are:
(a) collected from documents in the public domain held by the tax authorities and processed for publication,
(b) published alphabetically in printed form by income bracket and municipality in the form of comprehensive lists,
(c) transferred onward on CD-ROM to be used for commercial purposes, and
(d) processed for the purposes of a text-messaging service whereby mobile telephone users can, by sending a text message containing details of an individual’s name and municipality of residence to a given number, receive in reply information concerning the earned and unearned income and assets of that person,
be regarded as the processing of personal data within the meaning of Article 3(1) of [the directive]?
(2) Is [the directive] to be interpreted as meaning that the various activities listed in Question 1(a) to (d) can be regarded as the processing of personal data carried out solely for journalistic purposes within the meaning of Article 9 of the directive, having regard to the fact that data on over one million taxpayers have been collected

from information which is in the public domain under national legislation on the right of public access to information? Does the fact that publication of those data is the principal aim of the operation have any bearing on the assessment in this case?

The CJEU decided the case on 16 December 2008, but the Court did not give a concrete solution to the question. It provided a limited set of elements useful to check whether the activity carried out by the two companies were falling into the category of 'journalistic purposes'. The Finnish Court was then in charge of verifying whether the test was satisfied, on the basis of the fact of the case.
The balancing exercise carried out by the CJEU revolved around the right of privacy and freedom of expression, taking into account that derogations to the data protection rules based on freedom of expression are allowed only when strictly necessary. Although the analysis of the CJEU was based on the narrow construction applicable to derogations, it ended up in a broad interpretation of the concept of journalism. Accordingly, the exemption and derogations provided by Art. 9 Directive 95/46 can apply not only to media organisations but to every person engaged in journalism. This was also supported by the fact that the dissemination of information is no more strictly linked to the type of medium used to transmit such data. Moreover, also commercial justification can be at the basis of professional journalistic activity. The test of the CJEU, then, resulted in the fact that the activities in question are to be considered as being "solely for journalistic purposes" within Article 9, Directive 95/46/EC "if the sole object of those activities is the disclosure to the public of information, opinions or ideas" leaving completely to the national courts to verify whether this is the case.
This test however differ to the one provided by the ECtHR in the Hannover and Axel Springer cases, where the court set out seven criteria relevant to balancing competing rights under Arts. 8 and 10 ECHR:
1. The contribution of the information to a debate of general interest;
2. The notoriety of the person concerned;
3. The prior conduct of the person concerned;
4. The content, form and consequences of the publication;
5. The circumstances in which the photograph was taken.
6. The reliability of the published story and
7. The level of severity of the court sanction.

The Finnish Supreme Administrative Court decision was delivered on 23 September 2009. Here, the court developed a proportionality test mixing the maximum standards of protecting freedom of expression as resulting from the CJEU preliminary ruling with the maximum standard of protection of the other fundamental right at issue - right to privacy, as developed by the ECtHR in the Hannover and Axel Springer cases.
The Court pointed out that the balance requires that, for the part of freedom of speech, information provided to the audience must be important for the society and not only serve curiosity. Thus, greater attention should be given to the protection of private life in light of the capacity of new communication technologies to maintain and reproduce personal information.
Turning to the text-message service, the Finnish Court went on with the balancing exercise, and held that since the processing of data was not directed to the discussion of a social interest necessary in a democratic society, then it could not qualify as processing for journalistic purposes under the Data Protection Act. The Supreme Administrative Court applied directly the proportionality test under Article 8 ECHR to determine the applicability of the derogation in this specific instance.
According to this proportionality test, the Court sent the case back to the Data Protection Board, obliging the Board to send a refusal to Satamedia on their continued publishing of the data. The refusal covered both the publications and the SMS service. The Court stated in its judgement that Article 2.4 of the Finnish Personal Data Act is not in line with the way in which the CJEU has interpreted the scope of application of the Directive.
After a following set of proceedings regarding the enforcement of the order of the Data Protection Board before the national courts, the two companies lodged a claim before the ECtHR for the violation of art 10 ECHR.
The ECtHR decided in the Grand Chamber the case on 27 June 2017 finding no violation of the right to freedom of expression and information. In the views of the ECtHR the prohibition issued by the Finnish Data Protection Board that prohibited two media companies from publishing personal taxation data in the manner and to the extent they had published these data before, is to be considered as a legal, legitimate and necessary interference with the applicants' right to freedom of expression and information. The ECtHR approves the approach of the Finnish authorities denying the applicants' claim to rely on the exception of journalistic activities within the law of protection of personal data.
The most relevant issue was whether the interference was necessary in a democratic society, being sufficiently and pertinently motivated and proportionate in its dimension or impact. In this case, the ECtHR confirms the approach taken by the national courts, which based on the criteria laid down in the ECtHR jurisprudence Moreover, the court affirms that the journalistic purposes derogation "is intended to allow journalists to access, collect and process data in order to ensure that they are able to perform their journalistic activities, themselves

recognised as essential in a democratic society".
However, the ECtHR follows on affirming that "the existence of a public interest in providing access to, and allowing the collection of, large amounts of taxation data did not necessarily or automatically mean that there was also a public interest in disseminating en masse such raw data in unaltered form without any analytical input". In this sense, the ECtHR implies that if the a publication do not contribute to a debate of public interest, it cannot enjoy a privileged position that traditionally calls for a strict scrutiny by the ECtHR and that allows little scope for restrictions under Article 10(2) ECHR.

Relation to the scope of the Charter

Although the Charter was not mentioned in the decisions, being it not binding at the time of the proceedings, the Satamedia case is illustrative of the different approaches of the CJEU and the ECtHR as regards the balancing between freedom of expression and the right to data protection. At the same time, it shows the attempt of a national court to ensure compliance with both the Strasbourg and Luxembourg courts' standards when they express different levels of protection of the same fundamental right. The Finnish Supreme Administrative Court referred a preliminary reference to the CJEU, asking the interpretation of the clause "solely for journalistic purpose" in Article 9 of Directive 95/46/EC.
The solution reached by the national court is thus an example of how to ensure both coherent application of EU law and higher standards of application of fundamental rights in a case of conflicting fundamental rights.

Notes on judicial interactions dimension

Vertical dialogue – preliminary reference

The Supreme Court felt the need to present the preliminary reference so as to gather from the CJEU guidelines for the interpretation and the incorporation of the ECHR standard within the application of the EU law applicable in case of processing of data for journalistic purpose.

Vertical dialogue – consistent interpretation

In deciding whether the raise a preliminary question, the Supreme Court complied with the obligation under Art. 267(3) TFEU, and at the same time shielded Finland from possible claims under the principle of State liability and under the ECHR. However, the preliminary ruling did not provided an exhaustive solution. The Finnish Court, therefore, decided to fill the gaps and enriched the interpretation adopted by the CJEU with the very advanced proportionality test developed by the ECtHR.