EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Banning the mass publication of personal tax data in Finland did not violate the right to freedom of expression

After two companies had published the personal tax information of 1.2 million people, the domestic authorities ruled that such wholesale publication of personal data had been unlawful under data protection laws, and barred such mass publications in future. The companies complained to the European Court of Human Rights that the ban had violated their right to freedom of expression.

In today's **Grand Chamber** judgment[1] in the case of **Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland** (application no. 931/13) the Court held, by a majority of 15 to 2, that there had been **no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The Court held that the ban had interfered with the companies' freedom of expression. However, it had not violated Article 10 because it had been in accordance with the law, it had pursued the legitimate aim of protecting individuals' privacy, and it had struck a fair balance between the right to privacy and the right to freedom of expression. In particular, the Court agreed with the conclusion of the domestic courts, that the mass collection and wholesale dissemination of taxation data had not contributed to a debate of public interest, and had not been for a solely journalistic purpose.

However, also by a majority of 15 to 2, the Court did find **a violation of Article 6 § 1 (right to a fair hearing within a reasonable time)**, due to the excessive length of the proceedings (which had lasted over eight years).

Principal facts

The applicant companies, Satakunnan Markkinapörssi Oy and Satamedia Oy, are Finnish limited liability companies based in Kokemäki (Finland). Both companies published the newspaper *Veropörssi*, which reported on taxation information.

In 2003 the second applicant company, together with a telephone operator, started an SMS-service permitting people to obtain taxation information from a database. The database had been created using information already published in 2002 in *Veropörssi* on 1.2 million persons' income and assets (amounting to a third of all taxable persons in Finland).

In April 2003 the Data Protection Ombudsman brought administrative proceedings concerning the manner and extent of the applicants' processing of taxation data. The Data Protection Board dismissed the Ombudsman's case on the grounds that the applicant companies were engaged in journalism and so were entitled to a derogation from the provisions of the Personal Data Act. However, the case subsequently came before the Supreme Administrative Court, which in September 2009 found that the publication of the whole database could not be considered as journalistic activity but as the processing of personal data, which the applicant companies had no right to do. The court quashed the earlier decisions and referred the case back to the Data Protection Board. In November 2009 the board forbade the applicant companies from processing taxation information to the extent that they had done in 2002 and from passing such data to the SMS-service. This decision was ultimately upheld by the Supreme Administrative Court in June 2012.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

The applicant companies complained that the ban on them processing and publishing taxation data had violated their rights under Article 10 (freedom of expression) and Article 14 (prohibition of discrimination), alleging that it had amounted to censorship as well as discrimination vis-à-vis other newspapers which were able to continue publishing such information. The companies also relied on Article 6 § 1 (right to a fair hearing within a reasonable time) to complain about the allegedly excessive length of the proceedings.

In its Chamber judgment of 21 July 2015, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 10 of the European Convention. It also held unanimously that there had been a violation of Article 6 § 1 as regards the length of the proceedings, and rejected the complaints under Article 14 as being manifestly ill-founded.

On 14 December 2015 the case was referred to the Grand Chamber at the request of the applicant companies. A public hearing was held on 14 September 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

András **Sajó** (Hungary), *President*,
Işıl **Karakaş** (Turkey),
Angelika **Nußberger** (Germany),
Ganna **Yudkivska** (Ukraine),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Kristina **Pardalos** (San Marino),
Vincent A. **De Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
Aleš **Pejchal** (the Czech Republic),
Jon Fridrik **Kjølbro** (Denmark),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Marko **Bošnjak** (Slovenia),

and also Lawrence **Early**, *Jurisconsult.*

Judgment of the Court

Article 10 (freedom of expression)

The Court held that there had been an interference with the applicant companies' right to impart information under Article 10, arising from the prohibition on them processing and publishing taxation data. However, the Court held that there had been no violation of Article 10, because the interference had been "in accordance with the law", it had pursued a legitimate aim, and it had been "necessary in a democratic society".

In regard to the question of whether the interference had been "in accordance with the law", the Court held that it had had a legal basis in sections 2(5), 32 and 44(1) of the Personal Data Act. It had been sufficiently foreseeable for the applicant companies that their activities would be considered unlawful under that legislation, and that such a mass collection and wholesale dissemination of data would not be covered by the law's derogation for journalistic purposes.

In regard to the question of whether the interference had pursued a legitimate aim, the Court held that the interference had clearly been made in order to protect "the reputation or rights of others", a legitimate aim under Article 10 § 2. The protection of privacy had been at the heart of the data protection legislation, and the Data Protection Ombudsman's actions against the companies had been based on concrete complaints from individuals claiming that their privacy had been infringed.

The core question before the Court was whether the interference had been "necessary in a democratic society". When addressing this issue, the Court was required to assess whether the domestic authorities had appropriately balanced the right to respect for private life and the right to freedom of expression. The Court concluded that a fair balance had been struck, and that the domestic authorities had given due consideration to the relevant principles and criteria set down in the Court's case law. In particular, the Court agreed with the conclusion of the Supreme Administrative Court, that the publication of the taxation data in the manner and to the extent described did not contribute to a debate of public interest, and that the applicants could not in substance claim that the publication had been carried out for a solely journalistic purpose within the meaning of the relevant law.

Furthermore, the Court noted that the applicants' collection, processing and dissemination of data had been conducted on a bulk basis, in a way that impacted on the entire adult population. Compiling the data had involved circumventing the normal channels used by journalists to obtain such information, as well as the checks and balances established by the authorities to regulate access to it. The applicants' dissemination of the data had made it accessible in a manner and to an extent which had not been intended by the legislator.

Though Finnish law had made personal taxation information publicly accessible, data protection legislation had also established significant limits to this accessibility. The parliamentary review of such legislation in Finland had been both exacting and pertinent, a process reflected at the EU level. In such circumstances, the Finnish authorities had enjoyed a wide margin of appreciation in deciding how to strike a fair balance between the competing rights of privacy and expression relating to the use of the data. The Court also took into consideration the fact that most countries in Europe do not grant public access to personal tax information and the Finnish legislation is somewhat exceptional in this regard. Furthermore, the decisions of the authorities had not put a total ban on the applicant companies' publication of taxation data, but had merely required them to make such publications in a manner consistent with Finnish and EU data protection laws.

In light of these considerations, the Court found that the Finnish authorities had acted within their margin of appreciation, and that the reasons relied upon for their interference with the applicants' freedom of expression had been both relevant and sufficient to show that it had been "necessary in a democratic society". There had therefore been no violation of Article 10.

Article 6 § 1 (right to a fair hearing within a reasonable time)

Noting that the domestic proceedings had lasted between February 2004 and June 2012, the Court held that – even taking into account the legal complexity of the case – the length of proceedings had been excessive and had failed to meet the reasonable time requirement, in violation of Article 6 § 1.

Just satisfaction (Article 41)

The Court found no evidence of any pecuniary or non-pecuniary damage resulting from the violation, but held that Finland was to pay the applicant companies 9,500 euros in respect of costs and expenses.

Separate opinions

Judges Nussberger and López-Guerra expressed a joint partly dissenting opinion. Judges Sajó and Karakaş expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and in French.

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