

The Restriction of the Rights of a Data Subject According to the Supreme Court of Estonia

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The General Data Protection Regulation (GDPR) is the most important document in Europe related to data processing. One of the most significant purposes of the rules set forth in the GDPR is to maintain the protection of data subjects' rights. In Estonia the GDPR has been adapted into law as the Personal Data Protection Act (PDPA). This article will focus on a decision by the Supreme Court of Estonia involving a data subject's right to obtain information from a processor.

The initial enquiry

At the end of 2019 a person, whom we will call "X", wished to learn whether the Financial Intelligence Unit (FIU) had reported him/her to Estonian or foreign credit institutions or foreign authorities in connection with money laundering in Estonia or abroad. The FIU declined to release the information, citing § 60 section 1 of the Money Laundering and Terrorist Financing Prevention Act (MLTFPA), which at the time stated that only officials of the FIU had access to and the right to process information in the FIU database, and that the Head of the FIU may establish restrictions on access to information and classify information as only for internal use.

The Tallinn Administrative Court decision

X argued in court that not releasing the aforementioned information to him was a violation of article 15 section 1 of the GDPR and PDPA § 24 section 1, according to which the data subject has the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data.

The Tallinn Administrative Court dismissed the initial enquiry in its decision of 24. November 2020. The Administrative Court ruled that the publication of FIU's data is limited by § 60 section 1 of the MLTFPA. The MLTFPA § 60 section 3 specifies the persons to whom the data registered with the FIU may be communicated and imposes a restriction on the transmission of data registered with the FIU to persons not so specified. The Tallinn Administrative court concluded that the FIU had

acted lawfully in its response to X's request for information. The complainant's references to the PDPA were irrelevant, the Court ruled, since according to § 2 section 2(d) of the PDPA, the act does not apply where personal data is processed by competent authorities for the purpose of the detection, prevention, investigation, or prosecution of criminal offences, including the protection against and the prevention of threats to public security.

The Tallinn Circuit Court decision

X then appealed the decision of the Administrative Court to the Tallinn Circuit Court - which dismissed it in its decision of 28 May 2021. According to the District Court the first sentence of § 60 section 1 of the MLTFPA is not a jurisdictional provision, but prohibits any person other than the employees of the FIU from having access to data maintained by the FIU.

The District Court also ruled that, although the MLTFPA provides exceptions to the rule, none of them justified the communication of information to X, since the exceptions are related to the need to transmit data for the purpose of better prevention of money laundering and terrorist financing, for the conduct of criminal proceedings, or for judicial control of the activities of the FIU. The District Court believed that the second sentence of § 60 section 1 of the MLTFPA is both an enabling provision and a rule of power, relating both to the person who decides whether to restrict access to the data contained in the FIU's database and to the discretion to be exercised in deciding whether to restrict such access.

Although the District Court did not find that X's rights were disproportionately restricted, it did admit that a general and indefinite ban on access to personal data in the FIU's databases may be disproportionate in some cases. The District Court wrote in its decision that the need for a proportionality test is also referred to in Article 15 of Directive 2016/680. The appellant appealed against the district court's decision, asking the court to set aside the district court's decision and to uphold the appeal.



Decision of the Supreme Court of Estonia

The Supreme Court of Estonia ruled that, Under Article 41 of Directive 2015/849 on the prevention of money laundering and terrorist financing, the GDPR and Regulation 2018/1725 (regulating the processing of personal data by the Union institutions) apply to the processing of personal data under the Directive. According to the Court, under Article 43 of Directive 2015/849, the processing of personal data for the purposes of preventing money laundering and terrorist financing is to be considered a matter of public interest within the meaning of the GDPR. Where a dispute does not concern information collected in the course of criminal proceedings, the European Court of Justice has considered these articles to be an important criterion for determining the scope of the GDPR.

The court added that when introducing the second sentence of § 60 section 1 of the MLTFPA, the legislator had in mind a restriction of access including a restriction of the rights of the data subject. The application of the provision to restrict the rights of the data subject must be necessary and proportionate, considering the rights which the data subject derives from Article 15 of the GDPR in relation to other persons. The second sentence of § 60 section 1 of the MLTFPA does not directly limit the rights of the data subject by operation of law, but confers discretion on the head of the FIU. The restriction of the rights of the data subject must be in accordance with Article 23 of the GDPR, which sets out the requirements for a legislative measure on the subject. In the end the panel of judges ordered the FIU to reconsider its decision to not issue the data to the complainant.

Therefore, after the analysis offered by the Supreme Court of Estonia, we can say that the GDPR has had a definite impact regarding the Estonian judicial system, since the Supreme Court of Estonia has stated that the GDPR and PDPA have to be followed when making decisions affecting a data subject's right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data. It does not make a difference if the processor is a private company or an entity connected to the government. The right of the data subject to be given information when his or her personal data is processed does not apply where the data is processed by competent authorities for the purpose of the detection, prevention, investigation, or prosecution of criminal offences, including the protection against and the prevention of threats to public security.