

# Supreme Court's DECISION

delivered in Stockholm on 29 December 2023

Case no.

Ö 1750-20

## **PARTIES**

### **Appellant**

Norra Stockholm Bygg AB, 556336-3026

Truckvägen 14 A

194 52 Upplands Väsby

Counsel: Attorney EW

### **Respondent**

Per Nycander AB, 556120-3901

Box 7011

187 11 Täby

Counsel: Attorneys PD and VH

## **OTHERS**

Entral AB, 559010-5853

Seldonsvägen 8

302 62 Halmstad

**THE MATTER**

Disclosure

**RULING APPEALED**

Decision of the Svea Court of Appeal of 27/02/2020 in case Ö 1738-20

---

**THE SUPREME COURT'S RULING**

The Supreme Court modifies the Court of Appeal's decision only in the respect that Entral AB must produce the staff ledger after redacting the personal identification numbers, coordination numbers or equivalent foreign ID numbers of the registered individuals.

The staff ledger must be submitted to the District Court within two weeks from the date of this ruling.

**CLAIMS IN THE SUPREME COURT**

Norra Stockholm Bygg AB (Fastec) has requested that the Supreme Court, in the first case, reject Nycander AB's request for disclosure, and, in the second case, order that the staff ledger need only be produced in an anonymised form.

Per Nycander AB (Nycanders) has opposed modification of the decision of the Court of Appeal.

The Supreme Court has obtained an opinion from the Swedish Data Protection Authority, now the Swedish Authority for Privacy Protection.

## REASONS FOR THE DECISION

### Background

1. According to the Tax Procedures Act (2011:1244), a construction site must be equipped with an electronic staff ledger. The necessary identification details of workers on the site must be recorded in such a ledger. Such details include names and personal identification numbers, coordination numbers or equivalent foreign ID numbers, as well as the time each individual started and ended their shift. This staff ledger must be made available to the Swedish Tax Agency and the developer, and its contents must be retained for two years. The basic purpose of this requirement to maintain a staff register is to limit the amount of undeclared work occurring in the sector.
2. Fastec was contracted by Nycanders to construct office buildings in Täby. Following completion and final inspection of the works, in 2017, a dispute arose between the parties. The dispute, which is ongoing in the District Court, concerns Fastec's right to payment for the works. In that case, Nycanders claims that Fastec seeks remuneration for time not spent working or performing according to the contract.
3. During proceedings in the case, Nycanders sought a subpoena against Entral AB, which managed the staff ledger on behalf of Fastec, for production of the staff ledger concerning the period 1 August 2016 to 30 November 2017, in the alternative with the personal identification numbers redacted. According to Nycanders, the staff ledger may be important for the company's ability to disprove that Fastec's personnel were on-site to the extent claimed. Entral left it to the District Court to decide whether the staff register would be produced, but Fastec contested the disclosure motion. The District Court concluded that Entral was obliged to present the personnel ledger unredacted, a decision upheld by the Court of Appeal.

4. As grounds for its objection to disclosure, Fastec has emphasised that the staff ledger contains personal data and that the privacy interests of the staff registered therein outweigh Nycanders' interest in gaining access to this data. For its part, Nycanders has argued that the company's interest in obtaining the unredacted staff register overrides other conflicting interests.

### **Duty of disclosure**

5. According to Chapter 38, Section 2, first paragraph of the Code of Judicial Procedure, anyone possessing a written document of presumable evidentiary significance has an obligation to disclose the document. The second paragraph of the same Section includes certain specific exceptions to this duty of disclosure.

6. The duty of disclosure is intended to ensure that anyone requiring a document as evidence is granted access to it. The obligation can be said to stem from the fact that, in the administration of justice, there is a fundamental requirement for the possibility to carry out a complete investigation. Ultimately, as with the obligation to give evidence, the aim here is to ensure an individual's ability to realise his or her rights. The duty of disclosure contributes to effective judicial protection.

7. Even relatively general subpoenas for the production of documents can therefore be accepted. Nor is the court normally required to make an assessment of the relevance of each individual piece of information; it is sufficient that the circumstances indicate that the document as such has at least some minor evidentiary value in the examination of the substantive issue (cf. "Kreditakten" NJA 1998 p. 590 I).

8. The assessment of whether to issue a subpoena for the production of a document shall involve weighing the relevance of the evidence against the counter-party's interest in not having to disclose the document. The interest of

other persons in the content of the document, as a rule, should usually not be taken into account, beyond the exceptions specifically provided for. (Cf. "Loggfilerna" NJA 1998 p. 829, and "Mötesanteckningarna" NJA 2020 p. 664 para. 12)

9. However, the document requested may contain personal data, as is the case with the staff ledger at issue in this case. This raises the question of how the procedural duty of disclosure in the Code of Judicial Procedure relates to the EU General Data Protection Regulation (GDPR).<sup>1</sup>

### **The duty of disclosure and data protection**

10. Article 6(1)(c) of the GDPR states that processing of personal data is lawful if it is necessary for compliance with a legal obligation to which the data controller is subject. According to Article 6(3), this ground for processing shall be determined in accordance with Union law or the national law of a Member State to which the data controller is subject. The second paragraph states that the national law of Member States shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

11. Furthermore, Article 6(4) provides that where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account what is set out in points (a) to (e) of Article 6(4). One purpose that

---

<sup>1</sup> 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.

may be protected under Article 23(1) is the protection of judicial independence and judicial proceedings.

12. Against that background, the Supreme Court asked the Court of Justice of European Union for a preliminary ruling on the following questions. 1) Does Article 6(3) and (4) also impose a requirement on national procedural legislation relation to the obligation to produce documents? 2) If question 1 is answered in the affirmative, does the Regulation require that regard must also be had to the interest of the data subjects when a decision on production must be made which involves the processing of personal data? In such circumstances, does EU law establish any requirements concerning how, in detail, this decision should be made?

### **Preliminary ruling of the Court of Justice of the European Union**

13. The Court of Justice of the European Union has decided on the following response.<sup>2</sup>

- 1) Article 6(3) and (4) must be interpreted as meaning that that provision applies, in the context of civil court proceedings, to the production as evidence of a staff register containing personal data of third parties collected principally for the purposes of tax inspection.
- 2) Articles 5 and 6 must be interpreted as meaning that, when assessing whether the production of a document containing personal data must be ordered, the national court is required to have regard to the interest of the data subjects concerned and to balance them according to the circumstances of each case, the type of proceeding at issue and duly taking into account the requirements arising from the principle

---

<sup>2</sup> Judgment of the Court of Justice of the European Union of 2 March 2023 in Norra Stockholm Bygg AB, C-268/21, EU:C:2023:145

of proportionality as well as, in particular, those resulting from the principle of data minimisation referred to in Article 5(1)(c).

14. The data minimisation principle requires that data be adequate, relevant and not excessive in relation to the purposes for which they are processed.

**The assessment in this case**

15. The right to effective judicial protection and a fair trial requires that the parties have access to documents they may need to prove their case. As the Court of Justice of the European Union emphasises as well, this also applies to the personal data of others (see para. 53 of the preliminary ruling). Nycanders thus, as a starting point, has a valuable interest in obtaining, through disclosure, the staff ledger maintained by the contractor Fastec. This interest must weigh heavily in the assessment.

16. When assessing the proportionality of the measure, the interests of the staff recorded in the ledger, i.e., the data subjects, must also be taken into account, in accordance with the preliminary ruling. This matter permits an interest assessment only in the most general terms.

17. In this regard, it can be noted that the personal data in the staff ledger mainly consist of identity data, in the form of names and personal identification numbers. Furthermore, these data have been provided and recorded, as required by law, so as to be available to Nycanders as well during the contract, although the works have been complete for several years and the staff have moved on. The data cannot be considered highly sensitive in this context. The dispute concerns whether Fastec has a right to certain remuneration under the construction contract, and the data subjects themselves are not significantly affected. The interest of the data subjects in the protection of their personal data from disclosure may generally be considered less important.

18. However, special considerations apply specifically to personal data in the form of personal identification numbers and the like. In view of the fact that Nycanders has not explained, in detail, why it requires this information for evidentiary purposes, the subpoena for disclosure should, in accordance with the principle of data minimisation, be limited in such a way that Entral must produce the staff ledger with the data subjects' personal identification numbers, coordination numbers or equivalent foreign ID numbers redacted.

19. The decision of the Court of Appeal shall be modified accordingly.

---

---

Justices of the Supreme Court Svante O. Johansson, Dag Mattsson (reporting Justice), Malin Bonthron, Johan Danelius and Anders Perklev participated in the ruling.

Judge referee: Lina Zettergren