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In case no. 433-20, **Region Stockholm** (Appellant), the Supreme Administrative Court delivered the following judgment on 19 February 2021.

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RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court grants the appeal and decides that the National Board of Health and Welfare shall provide information to Region Stockholm in accordance with what is stated under the heading *Reasons for the ruling*.

BACKGROUND

1. The National Board of Health and Welfare is responsible for maintaining a register of licensed healthcare staff. The register is regulated by a special regulation which states the purposes – objectives – for which the National Board of Health and Welfare may process the information. Several purposes are stated, *inter alia*, that the data may be processed in order to exercise supervision of the healthcare service and its personnel, for verifying the identity and authority of healthcare staff in connection with appointment and during employment and to verify the identity and authority of healthcare staff to issue certificates. There are also other types of purposes provisions, *inter alia*, according to which information in the register may be provided to other registers.

2. The register contains, in addition to information regarding, for example, occupation, name, personal identity number, co-ordination number and other similar identity designations, information regarding prescriber codes. A prescriber code consists of a number of digits and must be stated on drug prescriptions. Prescriber codes are issued by the National Board of Health and Welfare. Doctors, dental hygienists and dentists receive a personal prescriber code in connection with the licensing decision, and nurses and midwives who apply for the right to

issue prescriptions receive a personal prescriber code by virtue of special decisions.

3. According to a provision in the Public Access to Information and Secrecy Act, an authority shall, at the request of another public authority, provide information in its possession provided the information is not subject to secrecy or would impede the usual functioning of the authority.

4. Region Stockholm requested, pursuant to the aforementioned provision regarding the obligation to provide information, that the National Board of Health and Welfare should disclose the prescriber codes which were linked to incomplete personal identity or co-ordination numbers. The objective of the request was to verify the identity and authority of certain persons in order to be able to prevent the unauthorised prescription of pharmaceuticals and erroneous disbursements of pharmaceutical benefits.

5. The National Board of Health and Welfare rejected the request with the justification that a disclosure presupposed that both the National Board of Health and Welfare and the Region's processing of the data was covered by one of the purposes set forth in the regulation. Since the Region's purposes was not covered by the purposes of the regulation, the data could not be disclosed.

6. Region Stockholm appealed the decision to the Administrative Court of Appeal in Stockholm. According to the administrative court of appeal, a disclosure in accordance with the provision regarding the obligation to provide information appeared incompatible with the purposes for which the data was collected. Since the purposes provisions in the regulation constitute Union law, the principle regarding the primacy of Union law may be deemed to entail that the obligation to provide information set forth in the provision in the Public Access to Information and Secrecy Act is limited by the purposes provisions in the register regulation to the extent they entail that a disclosure may not take place. The conditions in accordance with both the provision regarding the obligation to provide

information as well as in accordance with any of the purposes provisions in the regulation must thus be fulfilled in order for the data to be able to be disclosed.

7. According to the administrative court of appeal, it did not, however, fall on it to examine in a case regarding the application of the Public Access to Information and Secrecy Act whether a disclosure was permissible in accordance with the regulation. What could be examined by the administrative court of appeal was whether impediments to disclosure existed due to secrecy or the usual functioning of the authority. This had not been examined by the National Board of Health and Welfare. The administrative court of appeal therefore remanded the case to the National Board of Health and Welfare for examination of whether an impediment to disclosure existed due to secrecy or the usual functioning of the authority.

CLAIMS, ETC.

8. Region Stockholm maintains its request.

REASONS FOR THE RULING

The question in the case

9. The question in the case is which examination is to be made before personal data in the healthcare staff register of the National Board of Health and Welfare can be provided to another public authority pursuant to the provision regarding the obligation to provide information between public authorities in the Public Access to Information and Secrecy Act.

Legislation, etc.

10. In accordance with section 1 of the Healthcare Staff Register Regulation (2006:196) (the register regulation), the National Board of Health and Welfare shall, for the purposes set forth in sections 4 and 5, maintain a register of

healthcare staff by means of automated processing. According to section 3 a, the National Board of Health and Welfare is the controller for the register.

11. Pursuant to section 2, first paragraph, the register regulation contains provisions which supplement the EU General Data Protection Regulation, 2016/679. The second paragraph states that, in the processing of personal data in accordance with the register regulation, the Act Containing Supplementary Provisions to the EU General Data Protection Regulation (2018:218) (the Data Protection Act) and provisions which have been issued in connection with that Act shall apply except as otherwise provided by the register regulation.

12. Section 4 of the register regulation states that personal data in the register may be processed in order to maintain a current list of licensed healthcare staff. Furthermore, in accordance with section 5, the personal data may, in addition to what is stated in section 4, be processed only for seven specific purposes stated in the provision.

13. The EU General Data Protection Regulation applies to the processing of personal data which takes place automatically in both public and private activities. The EU Regulation has direct applicability but has, in certain respects, a directive-like character in that it both presupposes and allows for national provisions (Government Bill 2017/18:105, p. 21 f.). A data protection directive, 2016/680, also applies within the EU. The EU Data Protection Directive applies to the processing by public authorities of personal data for, *inter alia*, the prevention, investigation, detection or prosecution of criminal offences. The EU Directive has essentially been implemented through the Criminal Data Act (2018:1177). The EU General Data Protection Regulation and the EU Data Protection Directive build on the same principles. What is commonly referred to as the principle of finality is expressed in both pieces of legislation.

14. Article 4 (7) of the EU General Data Protection Regulation states that *controller* means the natural or legal person, public authority, agency or other body which,

alone or jointly with others, determines the purposes and means of the processing of personal data.

15. Article 5 of the Regulation states the basic principles relating to processing of personal data, *inter alia*, that the data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject, that they shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, that they shall be accurate and, where necessary, kept up-to-date and that they shall be processed in a manner that ensures appropriate security of the data.

16. The principle of finality is expressed in the EU Regulation in that Article 5 (1) (b) states that personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. This entails that where a contemplated processing of personal data which have already been collected is not covered by the original purposes, an assessment must be made of whether the purpose of the subsequent processing is compatible with the original purposes or not.

17. According to Article 4 (1) of the EU Data Protection Directive, the Member States shall provide for personal data to be collected for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes. Article 4 (2) provides that processing for purposes other than that for which the personal data are collected within the area of application of the Directive shall be permitted in so far as the controller is authorised to process such personal data for such a purpose in accordance with Union or Member State law. In addition, it is required that the processing is necessary and proportionate to that other purpose in accordance with Union or Member State law.

18. Chapter 2, section 4, first paragraph of the Criminal Data Act provides that, before personal data may be processed for a new purpose, it must be determined with certainty that there is a legal basis for the new processing and that it is necessary

and proportionate that the personal data are processed for the new purpose. The second paragraph prescribes that, to the extent an obligation to provide information follows from law or regulation, no examination in accordance with the first paragraph is to be carried out.

19. Pursuant to Chapter 6, section 5 of the Public Access to Information and Secrecy Act, a public authority shall, on request from another public authority, provide data in its possession unless the data are subject to secrecy or it would impede the usual functioning of the authority. The provision is deemed to constitute a specification of the general cooperation obligation applicable to public authorities in accordance with section 8 of the Administrative Procedure Act (2017:900). The obligation to provide information covers all information in the possession of the public authority, thus including information from documents which are not public (Government Bill 1979/80:2 Part A, pp. 89 and 361).

The Court's assessment

20. The starting point is that it is the controller who determines the purposes of the processing.

21. In Sweden, the processing of personal data within, in particular, the public sector has long been regulated through so-called register regulations. A register regulation may pertain, for example, to a specific public authority or a specific area. The regulation often states the purposes for which the personal data may be processed, i.e. the legislators have assumed the task of determining the purposes and have thus done so in the stead of the controller.

22. The purposes regime in a register regulation can be such that it exhaustively states the purposes for which the data may be processed. This is often apparent in that the regulation states that the personal data may "only" be processed for certain stated purposes. Further processing for other purposes is not permitted. In such cases, it is usually stated that the principle of finality "does not apply"

(Government Bill 2017/18:171, p. 90). In other cases, the purposes provisions state an outer limit within which the data may be processed. In such cases, it is the principle of finality which ultimately sets the limit for what may be deemed to be a permissible processing, i.e. the controller must verify whether a subsequent processing is incompatible with the purposes for which the data were first collected.

23. In the legislative matter relating to the Data Protection Act, a determination was made regarding the compatibility of the register regulations with the EU General Data Protection Regulation. The government stated that there was still room for such sector-specific special regulation of processing of personal data which is present in the Swedish register regulations (Government Bill 2017/18:105, p. 21 f.). As regards purposes, the government stated that the EU Regulation does not impose any requirements according to which they are to be laid down in regulations, but also that there is nothing to prevent this provided that the provisions satisfy a public-interest goal and are proportionate to the legitimate goals sought (*ibid.*, Government Bill, pp. 48, 50 f. and 54).

24. Accordingly, there is no doubt that, provided that certain fundamental requirements are met, it is permissible to lay down in national law both the purposes for which personal data may be processed and the purposes limitations which the legislators deem are to apply. A purposes regime of the type included in the now-relevant register regulation thus does not trigger an application of the principle of the primacy of Union law.

25. Provisions regarding purposes apply, furthermore, only to those which are covered by the regulation in question. The now-relevant register regulation thus applies only to the processing of personal data by the National Board of Health and Welfare. The processing of personal data which may be carried out by Region Stockholm if data from the register are provided to it is thus not governed by the register regulation but, rather, by the data protection rules applicable to the Region.

26. The purposes provisions in the register regulation are thus not Union law in character and also do not regulate the Region's planned processing.

27. However, the administrative court of appeal has been of the opinion that a disclosure in accordance with Chapter 6, section 5 of the Public Access to Information and Secrecy Act appears to be incompatible with the principle of finality. On this issue, the Supreme Administrative Court makes the following assessment.

28. A disclosure of personal data per se entails that the personal data are "processed". The data protection rules thus apply also to the disclosure as such. It is true that the disclosure of public documents in accordance with Chapter 2 of the Freedom of the Press Act is exempted from the data protection regime (*cf.* Chapter 1, section 7 of the Data Protection Act). The rules in Chapter 2 of the Freedom of the Press Act do not apply, however, when public authorities provide information to one another. This entails that, when a public authority in accordance with Chapter 6, section 5 of the Public Access to Information and Secrecy Act provides personal data to another public authority, the fundamental principles of the EU General Data Protection Regulation apply to such processing. The provision of data as such must thereby adhere to the principles set forth in Article 5, thus, *inter alia*, the principle of finality and the principle of data minimisation, i.e. that no more data than necessary are disclosed.

29. As regards the principle of finality, discussions, *inter alia*, have taken place in connection with a variety of legislative committees work as to the manner in which it and Chapter 6, section 5 of the Public Access to Information and Secrecy Act relate to one another (Committee Report 2003:99, p. 231 f.; Committee Report 2015:39, pp. 283 f. and 435 f.; and Committee Report 2017:74, p. 405). For example, it has been asserted that processing personal data in the form of a disclosure is compatible with the principle of finality where the data are not subject to secrecy. Contrary to this, it has been asserted that personal data may be

privacy-sensitive notwithstanding that it is not subject to secrecy and that an interpretation which reduces the principle of finality to nothing more than a secrecy examination must be regarded as being highly permissive.

30. The question was not addressed in connection with the legislative work concerning the implementation of the Data Protection Act (*cf.* Government Bill 2017/18:105, p. 126 f.). In the legislative matter applicable to the Criminal Data Act, however, the question as to the manner in which provisions regarding the obligation to provide information relate to the processing of personal data for new purposes was addressed. In the Government Bill, the government states that, where it is prescribed in law or regulation that data are to be provided, the legislators have determined, in part, that it is so important that an obligation to provide the information is introduced and, in part, that any secrecy is to be lifted. The legislators must then also have determined that the provision of data is necessary and proportionate. In such cases, no examination is to be carried out – which otherwise applies in accordance with the Criminal Data Act – as to whether the processing of personal data for the new purpose is necessary and proportionate. The same is expressly stated to apply also with respect to Chapter 6, section 5 of the Public Access to Information and Secrecy Act (Government Bill 2017/18:232, p. 137 f.). Thus, through the provisions regarding the obligation to provide information and secrecy, the objective of the principle of finality is deemed to be achieved, i.e. the provision of data is deemed to be necessary and proportionate in those cases in which the data are not subject to secrecy.

31. In the view of the Supreme Administrative Court, a corresponding approach should be established in respect of the relationship between Chapter 6, section 5 of the Public Access to Information and Secrecy Act and the principle of finality in accordance with the EU General Data Protection Regulation. By virtue of the secrecy provisions, public authorities are prevented from providing, *inter alia*, privacy-sensitive data to other authorities. Thus, the legislators must be deemed to have adopted a position as to when the provision of data is incompatible with the purpose or purposes for which the data were collected. Over and above the

secrecy examination, the public authority which is the controller is thus not to conduct any verification of the compatibility of the principle of finality in connection with the provision of data in accordance with Chapter 6, section 5 of the Public Access to Information and Secrecy Act.

32. The question is then whether the National Board of Health and Welfare is obliged pursuant to Chapter 6, section 5 of the Public Access to Information and Secrecy Act to provide the personal data which Region Stockholm has requested.

33. In accordance with the provision, the data are to be provided if they are not subject to secrecy or it would impede the usual functioning of the authority. It has come to light in the case that the National Board of Health and Welfare is of the opinion that neither secrecy nor the usual functioning of the authority prevents the provision of the data. Accordingly, the National Board of Health and Welfare is obliged to provide the data to Region Stockholm.

34. As has been stated, the provision of information is also to be compatible with, *inter alia*, the basic principles for the processing of personal data, e.g. that the provision of information as such is to be covered by appropriate security measures and that data in addition to what is required in order to fulfil the needs of the Region may not be provided. It is incumbent on the National Board of Health and Welfare to ensure that the personal data are provided to Region Stockholm in accordance with applicable data protection regulations.

Justices Henrik Jermsten, Anita Saldén Enérus, Kristina Svahn Starrsjö, Ulrik von Essen and Helena Rosén Andersson have participated in the ruling.

Judge Referee: Malin Karlsson.