

This translated ruling is provided for information purposes only. Only the Swedish-language versions are the official rulings.

In case no. 6193-22, **AA** (Appellant) v. the **Swedish Authority for Privacy Protection** (Respondent), the Supreme Administrative Court delivered the following judgment on 17 November 2023.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court overturns the rulings of the administrative court of appeal and the administrative court and remands the case to the administrative court for new proceedings.

BACKGROUND

1. The EU General Data Protection Regulation is intended to protect the fundamental rights and freedoms of natural persons, in particular their right to protection of personal data. Anyone who considers that the processing of personal data relating to him or her infringes the Regulation has the right to lodge a complaint with a supervisory authority. According to the Regulation, everyone also has the right to an effective judicial remedy against a legally binding decision of a supervisory authority or where the supervisory authority, for example, does not handle a complaint.
2. In Sweden, the Swedish Authority for Privacy Protection is the supervisory authority in the area of data protection. Decisions by the authority pursuant to the EU General Data Protection Regulation may be appealed to an administrative court.
3. AA has lodged a complaint with the Swedish Authority for Privacy Protection against certain employees of a bank who, according to him, have refused to provide him with an extract to which he is entitled in accordance with the EU General Data Protection Regulation. The Swedish Authority for Privacy Protection decided to close the matter. It was stated in the decision that the

Authority had sent information regarding the complaint to the bank for the purpose of providing the bank with the opportunity to review its processing of personal data and rectify any deficiencies.

4. The Administrative Court in Stockholm disallowed AA's appeal to the court. The reason given for the decision was that the decision of the Swedish Authority for Privacy Protection to not take any measures in response to the complaint does not affect him in such a manner that it is appealable.
5. AA appealed the decision to disallow to the Administrative Court of Appeal in Stockholm. The administrative court of appeal rejected the appeal and stated the following. The applicable provisions do not expressly define which decisions by the supervisory authority in matters of complaint that shall be able to be appealed. The issue of appealability must therefore be assessed in each individual case in accordance with section 41 of the Administrative Procedure Act (2017:900). The decisive factor is which real consequences the decision will have for the affected person. The decision does not give rise to any real consequences in the sense that it may be perceived as binding in any respect as a result of which it can have consequences according to its content and affect other decision-making bodies or actions of individuals. Accordingly, the decision does not have such an effect as is required in accordance with section 41 of the Administrative Procedure Act in order for it to be appealable. Furthermore, it cannot be perceived to be a legally binding decision which gives rise to the right to an effective judicial remedy in accordance with the EU General Data Protection Regulation.

CLAIMS, ETC.

6. AA appeals.
7. *The Swedish Authority for Privacy Protection* is of the opinion that the appeal is to be rejected.

REASONS FOR THE RULING

The question in the case

8. The question in the case is whether the decision of the Swedish Authority for Privacy Protection to not investigate a complaint further is appealable.

Legislation, etc.

9. Article 78 (1) of Regulation (EU) 2016/679 of the European Parliament and of the Council 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, the EU General Data Protection Regulation, provides that each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.
10. Chapter 7, section 3, first paragraph of the Act Containing Supplementary Provisions to the EU General Data Protection Regulation (2018:218), the Data Protection Act, states that decisions by the supervisory authority pursuant to the EU General Data Protection Regulation may be appealed to an administrative court.

The Court's assessment

11. The EU General Data Protection Regulation began to apply on 25 May 2018 and thereby replaced the Personal Data Act (1998:204). The Data Protection Act contains provisions which supplement the Regulation on a general level.
12. The preparatory works for the Data Protection Act discussed the question whether the Regulation requires that the individual shall have a general right to appeal decisions of the supervisory authority to, for example, not take any measures in response to a complaint. The Government was of the position that it was unclear

whether the Regulation entails that the data subject was entitled to appeal decisions of the supervisory authority to not take any action in response to a complaint. Irrespective of the manner in which the Regulation is to be interpreted in this respect, however, no regulatory measures in Swedish law were required. Instead, it was left to the courts to, by means of an interpretation of the general provisions of the Administrative Procedure Act regarding appeal, determine whether Swedish case law still is relevant or whether the Regulation has altered the legal situation (Government Bill 2017/18:105, p. 164 f.).

13. The right to an effective judicial remedy in accordance with Article 78 (1) of the EU General Data Protection Regulation pertains to legally binding decisions issued by a supervisory authority. Recitals 141 and 143 of the preamble of the Regulation provide that the data subject should have the right to an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Decisions wherein the supervisory authority dismisses or rejects a complaint are mentioned as examples.
 14. According to the Supreme Administrative Court, this entails that a decision determining that the Swedish Authority for Privacy Protection will not do what has been requested in a complaint must be regarded as a legally binding decision which is appealable in accordance with Article 78 (1) of the EU General Data Protection Regulation.
 15. AA's complaint to the Swedish Authority for Privacy Protection has not resulted in the measures requested by him. Based on the aforementioned, it follows that AA is entitled to appeal the decision of the Swedish Authority for Privacy Protection. The rulings of the administrative court of appeal and administrative court shall thus be overturned and the case remanded to the administrative court for new proceedings.
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Justices Henrik Jermsten, Thomas Bull, Marie Jönsson and Magnus Medin have participated in the ruling.

Judge Referee: Max Uhmeier.

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In case no. 3691-22, the **Swedish Authority for Privacy Protection** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 17 November 2023.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court rejects the appeal.

BACKGROUND

1. The EU General Data Protection Regulation is intended to protect the fundamental rights and freedoms of natural persons, in particular their right to protection of personal data. Anyone who considers that the processing of personal data relating to him or her infringes the Regulation has the right to lodge a complaint with a supervisory authority. According to the Regulation, everyone also has the right to an effective judicial remedy against a legally binding decision of a supervisory authority or where the supervisory authority, for example, does not handle a complaint.
2. In Sweden, the Swedish Authority for Privacy Protection is the supervisory authority in the area of data protection. Decisions by the authority pursuant to the EU General Data Protection Regulation may be appealed to an administrative court.
3. AA lodged a complaint with the Swedish Authority for Privacy Protection according to which his neighbours conduct video surveillance with cameras pointed at other people's lots and at a shared access road. The Swedish Authority for Privacy Protection initiated a supervisory matter in response to the complaint. The authority thereafter determined that the investigation in the supervisory matter did not show that the neighbours were processing personal data by virtue

of camera surveillance. The EU General Data Protection Regulation thus did not apply and the matter was therefore closed without action being taken.

4. The Administrative Court in Stockholm disallowed AA's appeal to the court. The reason given for the decision was that the appealed decision did not affect him in such a manner that it is appealable.
5. AA appealed the decision to disallow to the Administrative Court of Appeal in Stockholm. The administrative court of appeal reversed the decision and remanded the case to the administrative court for examination of AA's appeal. The administrative court of appeal stated the following. The decision in the supervisory matter entails that the Swedish Authority for Privacy Protection has considered the merits of AA's complaint by rejecting it. It is such a legally binding decision by the supervisory authority in relation to him against which he, pursuant to the EU General Data Protection Regulation, is entitled to an effective judicial remedy.

CLAIMS, ETC.

6. *The Swedish Authority for Privacy Protection* claims that the Supreme Administrative Court shall overturn the judgment of the administrative court of appeal and affirm the decision of the administrative court, stating the following. The Supreme Administrative Court has previously determined that the decision of the Swedish Authority for Privacy Protection to not take any measures relating to a complaint is not appealable (RÅ 2010 reported case no. 29). The question in the current case differs from the reported case in so far as the decision appealed has been taken within the framework of a supervisory matter. The matter of complaint was concluded by means of a decision in conjunction with the initiation of the supervisory matter. The decision to dismiss a complaint-based supervisory matter and a decision to not initiate supervision should, however, be assessed in the same way. Such decisions have no legal effects or other significant consequences, neither for the party who has lodged the complaint nor for anyone else.

7. AA is of the opinion that the appeal should be rejected.

REASONS FOR THE RULING

The question in the case

8. The question in the case is whether the decision of the Swedish Authority for Privacy Protection to conclude a supervisory matter without taking measures is appealable.

Legislation, etc.

9. Article 78 (1) of Regulation (EU) 2016/679 of the European Parliament and of the Council 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, the EU General Data Protection Regulation, provides that each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.
10. Chapter 7, section 3, first paragraph of the Act Containing Supplementary Provisions to the EU General Data Protection Regulation (2018:218), the Data Protection Act, states that decisions by the supervisory authority pursuant to the EU General Data Protection Regulation may be appealed to an administrative court.

The Courts' assessment

11. The EU General Data Protection Regulation began to apply on 25 May 2018 and thereby replaced the Personal Data Act (1998:204). The Data Protection Act contains provisions which supplement the Regulation on a general level.

12. The preparatory works for the Data Protection Act discussed the question whether the Regulation requires that the individual shall have a general right to appeal decisions of the supervisory authority to, for example, not take any measures in response to a complaint. The Government was of the position that it was unclear whether the Regulation entails that the data subject was entitled to appeal decisions of the supervisory authority to not take any action in response to a complaint. Irrespective of the manner in which the Regulation is to be interpreted in this respect, however, no regulatory measures in Swedish law were required. Instead, it was left to the courts to, by means of an interpretation of the general provisions of the Administrative Procedure Act regarding appeal, determine whether Swedish case law still is relevant or whether the Regulation has altered the legal situation (Government Bill 2017/18:105, p. 164 f.).
13. The right to an effective judicial remedy in accordance with Article 78 (1) of the EU General Data Protection Regulation pertains to legally binding decisions issued by a supervisory authority. Recitals 141 and 143 of the preamble of the Regulation provide that the data subject should have the right to an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Decisions wherein the supervisory authority dismisses or rejects a complaint are mentioned as examples.
14. According to the Supreme Administrative Court, this entails that a decision determining that the Swedish Authority for Privacy Protection will not do what has been requested in a complaint must be regarded as a legally binding decision which is appealable in accordance with Article 78 (1) of the EU General Data Protection Regulation.
15. When the Swedish Authority for Privacy Protection concludes a matter of complaint in order to initiate a supervisory matter, a determination will be made regarding the complaint only once the supervisory matter is addressed. In the event the outcome of the supervisory matter subsequently deviates from what has

been requested in the complaint, the same situation arises as though the supervisory matter had been concluded directly without the complaint being heard. In order for the right to an effective judicial remedy not to be lost, such a decision must thus also be regarded as a legally binding decision in accordance with Article 78 (1).

16. AA's complaint to the Swedish Authority for Privacy Protection has not resulted in the measures requested by him. Based on the aforementioned, it follows that AA is entitled to appeal the decision of the Swedish Authority for Privacy Protection. The Swedish Authority for Privacy Protection's appeal shall therefore be rejected.

Justices Henrik Jermsten, Thomas Bull, Marie Jönsson and Magnus Medin have participated in the ruling.

Judge Referee: Max Uhmeier.