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FINLAND: Personal data protection and door-to-door preaching: Jehovah's Witnesses v. Finland

Judgment of the Court Grand Chamber in Case C-25/17 (https://bit.ly/2utVBuF)

A religious community, such as the Jehovah's Witnesses, is a controller, jointly with its members who engage in preaching, for the processing of personal data carried out by the latter in the context of door-to-door preaching

The processing of personal data carried out in the context of such activity must respect the rules of EU law on the protection of personal data

Press release 103/18 (10.07.2018) - https://bit.ly/2JfTD6e - On 17 September 2013, the Tietosuojavaltuutettu (Finnish Data Protection Supervisor) prohibited the Jehovan todistajat - uskonnollinen yhdyskunta (Jehovah's Witnesses religious community, Finland) from collecting or processing personal data in the course of door-to-door preaching by its members unless the requirements of Finnish legislation relating to the processing of personal data are observed.

The members of the Jehovah's Witnesses Community take notes in the course of their door-to door preaching about visits to persons who are unknown to themselves or that Community. The data collected may consist of the name and addresses of persons contacted, together with information on their religious beliefs and their family circumstances. Those data are collected as a memory aid and in order to be retrieved for any subsequent visit without the knowledge or consent of the persons concerned. The Jehovah's Witnesses Community and its congregations organise and coordinate the door-to-door preaching by their members, in particular by creating maps from which areas are allocated between the members who engage in preaching and by keeping records about preachers and the number of the Community's publications distributed by them. Furthermore, the congregations of the Jehovah's Witnesses Community maintain a list of persons who have requested not to receive visits from preachers and the personal data on that list are used by members of that community.

The reference for preliminary ruling from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) asks essentially whether that community is required to observe the rules of EU Law on the protection of personal data (*) on account of the fact that its members, when they carry out door-to-door preaching, may take notes re-transcribing the content of their discussions and, in particular, the religious views of the persons whom they have visited.

In today's judgment, the Court of Justice considers, first of all, that door-to-door preaching by members of the Jehovah's Witnesses Community is not covered by the exceptions laid down by EU Law on the protection of personal data. In particular, that activity is not a purely personal or household activity to which that law does not apply.

The fact that door-to-door preaching is protected by the fundamental right of freedom of conscience and religion enshrined in Article 10(1) of the Charter of Fundamental Rights of the European Union, does not confer an exclusively personal or household character on that activity because it extends beyond the private sphere of a member of a religious community who is a preacher.

Next, the Court states, however, that the rules of EU Law on the protection of personal data apply to the manual processing of personal data only where the data processed form part of a filing system or are intended to form part of a filing system. In the present case, since the processing of personal data is carried out otherwise than by automatic means, the question arises as to whether the data processed form part of, or are intended to form part of, such a filing system. In that regard, the Court finds that the concept of a 'filing system' covers a set of personal data collected in the course of door-to-door preaching, consisting of the names and addresses and other information concerning the persons contacted, if those data are structured according to specific criteria which, in practice, enable them to be easily retrieved for subsequent use. In order for such a set of data to fall within that concept, it is not necessary that they include data sheets, specific lists or other search methods.

The processing of personal data carried out in connection with door-to-door preaching must therefore comply with the rules of EU law on the protection of personal data.

As regards the question as to who may be regarded as a controller of the processing of personal data, the Court states that the concept of 'controller of the processing of personal data' may concern several actors taking part in that processing, with each of them then being subject to the rules of EU law on the protection of personal data. Those actors may be involved at different stages of that processing of personal data and to different degrees, so that the level of responsibility of each of them must be assessed with regard to all the relevant circumstances of the particular case. The Court also states that no provision of EU Law supports a finding that the determination of the purpose and means of processing must be carried out by the use of written guidelines or instructions from the controller. However, a natural or legal person who exerts influence over the processing of personal data, for his own purposes, and who participates, as a result, in the determination of the purposes and means of that processing, may be regarded as a controller of the processing of personal data.

Furthermore, the joint responsibility of several actors for the same processing, under that provision, does not require each of them to have access to the personal data concerned.

In the present case, it appears that the Jehovah's Witnesses Community, by organising, coordinating and encouraging the preaching activities of its members participates, jointly with its members who engage in preaching, in determining the purposes and means of processing of personal data of the persons contacted, which is, however, for the Finnish court to verify with regard to all of the circumstances of the case. That finding cannot be called into question by the principle of organisational autonomy of religious communities guaranteed by Article 17 TFEU.

The Court concludes that EU law on the protection of personal data supports a finding that a religious community is a controller, jointly with its members who engage in preaching, of the processing of personal data carried out by the latter in the context of door-to-door preaching organised, coordinated and encouraged by that community, without it being necessary that the community has access to those data, or to establish that that community has given its members written guidelines or instructions in relation to the data processing.

(*) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the

free movement of such data (OJ 1995 L 281, p. 31) read in the light of Article 10 of the Charter of Fundamental Rights of the European Union.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

BELGIUM: Flanders ban on ritual slaughter is legal, says court

By Alan Hope

The Brussels Times (30.05.2018) - https://bit.ly/2kAl6Wj - **A ban introduced in Flanders to limit ritual slaughter – killing animals without stunning them first – has been declared lawful by the European Court of Justice**.

The measure is aimed at limiting the number of animals slaughtered according to Muslim rite, by making it illegal to carry out slaughters in temporary abattoirs, which were previously opened up at the end of Ramadan to cope with the demand. Regulated slaughterhouses are still able to carry out the procedure, but have been shown in the past to be unable to keep up with demand.

Under normal circumstances, when an animal is slaughtered it is first stunned, by a captive bolt in the case of cows and calves, and by electrodes in the case of pigs. Under the rules of halal, the animal must be conscious at the moment of slaughter, when it also has to be exsanguinated. Jewish kosher rituals have roughly similar rules and are carried out by certified butchers (shochet), but there is not the pressure caused by an annual festival, so registered abattoirs are well able to keep up with demand.

Muslim representatives had taken the Flemish ban to the European Court, arguing that it represented a block on freedom of religion – a position previously upheld by the European Court of Human Rights in Strasbourg, on a proposal to ban ritual slaughter altogether. The EU court rejected that argument.

Earlier this week, the Walloon parliament approved a ban on ritual slaughter, which becomes law on 1 June but will only come into operation on 1 September next year.

Meanwhile the Muslim Feast of the Sacrifice, Eid Al-Adha, takes place this year at the end of the fast of Ramadan, on 21 August.

See the full court decision at https://bit.ly/2JdWvEJ

GERMANY: Judgment in Case C-414/16 Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV

The requirement of religious affiliation for a post within the Church must be amenable to effective judicial review

That requirement must be necessary and objectively dictated, having regard to the ethos of the church, by the nature of the occupational activity concerned or the circumstances in which it is carried out, and must comply with the principle of proportionality

EU Court of Justice (17.04.2018) - https://bit.ly/2H6eRYh - Ms Vera Egenberger, of no denomination, applied in 2012 for a post offered by Evangelisches Werk für Diakonie und Entwicklung (Protestant Work for Diaconate and Development, Germany). This was a fixed-term post for a project for producing a parallel report on the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. The work included the representation of the diaconate of Germany vis-à-vis the political world and the general public and the coordination of the opinion-forming process internally. According to the offer of employment, applicants had to belong to a Protestant church or a church belonging to the Working Group of Christian Churches in Germany. Ms Egenberger was not called to an interview. Since she considered that she had been discriminated against on grounds of religion, she sued Evangelisches Werk in the German courts, seeking for it to be ordered to pay her €9 788.65 compensation.

The Bundesarbeitsgericht (Federal Labour Court, Germany), which is hearing the case, asked the Court of Justice to interpret in this context the Anti-Discrimination Directive,(*) which aims to protect the fundamental right of workers not to be discriminated against on grounds, inter alia, of religion or belief. However, that directive also takes into account the right of autonomy of churches (and other public or private organisations whose ethos is based on religion or belief), as recognised by EU law, in particular the Charter of Fundamental Rights of the European Union.

Thus the directive provides that a church (or other organisation whose ethos is based on religion or belief) may impose a requirement related to religion or belief if, having regard to the nature of the activity concerned or the context in which it is carried out, 'religion or belief constitute[s] a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos'. The Bundesarbeitsgericht observes in this respect that, in accordance with the case-law of the Bundesverfassungsgericht (Federal Constitutional Court, Germany) on the churches' privilege of self-determination, judicial review of compliance with those criteria should be limited, in Germany, to a review of plausibility on the basis of the church's self-perception. It therefore puts questions to the Court in particular on whether such limited judicial review is compatible with the directive.

In today's judgment, the Court starts by finding that, under the directive, the right of autonomy of churches (and other organisations whose ethos is based on religion or belief), on the one hand, and, on the other hand, the right of workers, inter alia when they are being recruited, not to be discriminated against on grounds of religion or belief must be the subject of a balancing exercise, in order to ensure a fair balance between them.

According to the Court, in the event of a dispute, it must be possible for such a balancing exercise to be the subject of review by an independent authority, and ultimately by a national court.

Thus, where a church (or other organisation whose ethos is based on religion or belief) asserts, in support of an act or decision such as the rejection of an application for employment with it, that by reason of the nature of the activities concerned or the context in which they are to be carried out, religion constitutes a genuine, legitimate and justified occupational requirement, having regard to the ethos of the church (or organisation), it must be possible for such an assertion to be the subject of effective judicial review. The court hearing the case must ensure that, in the particular case, the criteria laid down by the directive for striking a balance between the possibly competing rights are satisfied.

The Court observes in this respect that, in principle, it is not for the national courts to rule on the ethos as such on which the purported occupational requirement is founded. They must nevertheless decide, on a case-by-case basis, whether the three criteria concerning a 'genuine, legitimate and justified' requirement are satisfied from the point of view of that ethos.

Consequently, the national courts must ascertain whether the requirement put forward is necessary and objectively dictated, having regard to the ethos of the church (or organisation) concerned, by the nature of the occupational activity in question or the circumstances in which it is carried out. In addition, the requirement must comply with the principle of proportionality, that is to say, it must be appropriate and not go beyond what is necessary for attaining the objective pursued.

Finally, as regards the point that an EU directive does not, in principle, have direct effect between individuals but has to be transposed into national law, the Court recalls that it is for the national courts to interpret the national law transposing the directive, as far as possible, in conformity with that directive.

Should it prove impossible to interpret the applicable national law (in the present case, the German General Law on equal treatment) in conformity with the Anti-Discrimination Directive, as interpreted by the Court in today's judgment, the Court states that a national court hearing a dispute between two individuals will have to disapply the national law.

Since the Charter is applicable, the national court must ensure the judicial protection deriving for individuals from the prohibition of all discrimination on grounds of religion or belief (laid down in Article 21 of the Charter, that prohibition is mandatory as a general principle of EU law) and the right to effective judicial protection (laid down in Article 47 of the Charter). Both that prohibition of discrimination and the right to effective judicial protection are sufficient in themselves to confer on individuals a right which they may rely on as such in disputes between them and other individuals in a field covered by EU law.

(*) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)
