SUMMARY

ECtHR 26 January 2017, application no. 42788/06, Right to fair hearing and right to respect for private and family life

<p>ECtHR concludes that there has been a violation of Article 8 (right to respect for private and family life) in the case of retention and disclosure of an employee's mental-health data and its use in deciding on employees' applications for promotion.</p>

Summary

Violation of Article 8 (right to respect for private and family life) in the case of retention and disclosure of an employee's mental-health data and its use in deciding on employees' applications for promotion.

Facts

The applicant, Mr Mikhail Mikhaylovich Surikov, is a Ukrainian national, born in 1962 and living in Simferopol. The case concerned the refusal by Mr Surikov's employer (a state-owned company) to promote him on the basis that he had been declared unfit for military service in 1981 for mental health reasons. Mr Surikov began working at the Tavrida State Publishing House in August 1990. In 1997 he asked the director of Tavrida to place him on a reserve list for promotion to an engineering position, in line with his qualifications. Having received no reply, in 2000 he applied again and was refused.

National proceedings

Mr Surikov appealed to the Central District Court of Simferopol, seeking to compel his employer to consider him for an engineering position. During the proceedings, Tavrida

submitted that the refusal was connected to the state of Mr Surikov's mental health, in particular, that he had been declared unfit for military service in 1981. In 1997, the human resources department of the company had obtained a certificate confirming this from the military enlistment office.

Between 2000 and 2006, Mr Surikov was engaged in civil proceedings against Tavrida concerning the alleged unlawful collection, use, and dissemination of his personal health data. He also argued that the standardised grounds for his dismissal from military service in 1981 had not been specific enough to serve as a basis for the later refusal to promote him, and that in any case, the information was outdated. He complained that, if the company had doubts about his health, it should have asked him for a current medical certificate. His claims were unsuccessful at every level. In 2006, Mr Surikov brought civil proceedings against the director of Tavrida, the human resources officer, and his supervisor, challenging the lawfulness of their actions regarding the processing of his health data. His claim was unsuccessful, as were subsequent appeals to the Court of Appeal and the Supreme Court. Relying on Article 8 (right to respect for private and family life), Mr Surikov complained that his employer had arbitrarily collected, retained, and used sensitive and obsolete data concerning his mental health when considering his application for promotion, and had unlawfully disclosed this data (to his colleagues and in court).

ECtHR's findings

The Court noted that the information at stake concerned an indication that in 1981 Mr Surikov had been certified as suffering from a mental health related condition. By its very nature, such information was highly sensitive personal data and therefore fell within the ambit of Article 8. The Court therefore had to determine whether the processing of his health data constituted an unlawful breach of Article 8 of the Convention.

First, the Court examined whether there was an interference with Article 8 of the Convention. It noted that Tavrida was lawfully required to maintain a register of military duty of its employees and that it was in fulfilling this duty that it had collected the information that he had been declared unfit to serve in the military.

Second, the Court examined whether the interference was in accordance with the law and pursued a legitimate aim. As regards lawfulness, the collection and retention of the data was effected on the basis of section 34 of the Military Service Act and the provisions of Instruction no. 165. Use of this data for deciding on Mr Surikov's promotion was based on Articles 2 and 153 of the Labour Code. The Court noted that none of those provisions was expressly referred to in the domestic courts' judgments. However, the Court was prepared to accept that

collection, storage, and other use of his mental health data had some basis in domestic law. As regards to whether interference pursued a legitimate aim, the Court considered that there could be various legitimate aims, such as the protection of national security, public safety, health, and the rights of others (particularly co-workers).

Third, the Court examined whether the interference was necessary in a democratic society. It noted that at the time of the events giving rise to the claim application, Ukraine was neither a member of the Data Protection Convention nor any other relevant international instrument. But at that time, Ukrainian national law contained a number of similar safeguards, including law protecting the confidentiality of medical information. As regards the power to collect and retain Mr Surikov's personal data, the Court considered that Ukrainian national law permitted long term storage of his health-related data and its disclosure and use for purposes unrelated to the original purpose of collection. The Court considered that such broad entitlement constituted a disproportionate interference with his right to respect for private life and it could therefore not be regarded necessary in a democratic society.

As regards the disclosure of Mr Surikov's data to third parties and its use it for deciding on promotion, the Court recognised that employers may have a legitimate interest in having information about employees' mental and physical health, particularly in the context of assigning new work to them. However, the collection and processing of the information must still be lawful and must strike a fair balance between the employer's interests and the privacy of the candidate for the job. The Court found that it was not clear that the domestic courts had analysed whether using the data to decide whether to promote the employee struck a fair balance between the employer's interests and his privacy concerns. This meant that the crux of his claim had been treated as outside the scope of what the courts needed to consider. They had therefore failed to provide sufficient reasons to explain the need for the interference he had complained about.

The Court concluded that there had been a breach of Article 8 in connection with the retention and disclosure of the employee's mental-health data and its use for deciding whether to promote him.

Creator: European Court of Human Rights (ECtHR)
Verdict at: 2017-01-26
Case number: 42788/06