



C-28/08 P Commission v Bavarian Lager, judgment of 29 June 2010

The Court specifies the limits of the right of access to documents under the rules for the protection of personal data.

Bavarian Lager is a company established in 1992 for the importation into the United Kingdom of bottled German beer, principally for public houses and bars. However, it encountered a large number of difficulties since most publicans were tied by exclusive purchasing contracts obliging them to obtain their supplies from certain national breweries and British legislation *de facto* favoured the national producers. Following a complaint submitted by Bavarian Lager, the Commission decided to institute proceedings against the United Kingdom for failure to fulfil its obligations, which led to it finally amending the provisions in dispute to bring them in line with Union law. The case was therefore shelved.

Bavarian Lager then asked the Commission, among other documents, for a copy of the minutes of a meeting held on 11 October 1996, which had been attended by representatives of the Commission, the British authorities and the Confédération des Brasseurs du Marché Commun (CBMC). The Commission forwarded the requested document to the company, indicating, however, that in accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001, five names had been blanked out. The Commission considered that these provisions refer directly to Article 8(b) of Regulation (EC) No 45/2001 and the conditions provided for there for the communication of personal data were not met, given two express refusals by persons to consent to the disclosure of their identity and the failure to contact the remaining three attendees to give their consent. Since it was not satisfied with this position, Bavarian Lager referred the matter to the General Court, which annulled the Commission decision by judgment of 8 November 2007.

The General Court held that the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents had to be interpreted restrictively and concerned only personal data that were capable of actually and specifically undermining the protection of privacy and the integrity of the individual, within the meaning of Article 8 of the ECHR. Considering that the requested data did not come under the concept of privacy within the meaning of this provision and that Regulation (EC) No 1049/2001 did not require any justification to request access to the documents, the General Court concluded that Article 8(b) of Regulation (EC) No 45/2001 could not be applied to the present case.

On appeal by the Commission, the Court of Justice set aside this judgment. It found that Article 4(1)(b) of Regulation (EC) No 1049/2001 establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public. The assessment of whether the protection of privacy and the integrity of the individual are undermined should not therefore be confined to the situations in which there would be a breach within the meaning of Article 8 of the ECHR, but must take account of the Union legislation on the protection of personal data and especially of Regulation (EC) No 45/2001, which was therefore applicable in its entirety in this case, as the Commission maintained.

The Court concluded that the Commission was therefore right to check whether the attendees at the meeting of 11 October 1996 agreed to the disclosure of their names and that in the absence of the consent of five of them, it released an expurgated version of the minutes. It refers to the fact that since Bavarian Lager had not provided any express and legitimate justification or any convincing argument in order to



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demonstrate the necessity for those personal data to be transferred, the Commission has not been able to weigh up the various interests of the parties concerned or verify whether there was any reason to assume that the data subjects' legitimate interests might be prejudiced. Under these conditions, it was right to reject the request made by Bavarian Lager.