

The Catholic Church receives criticism and an order to process the request for insight

Date: 24-11-2021

Decision

Private companies

Criticism

Injunction

Complaint

The right to access

Exercise of rights

In a complaint, the Danish Data Protection Authority criticized the Catholic Church in Denmark's response to a request for access. The Danish Data Protection Authority has also notified the Catholic Church of an order to carry out a renewed assessment of the complainant's request for access.

Journal Number: 2021-31-4650.

The Danish Data Protection Authority hereby returns to the case where XX (hereinafter 'complainant') on 17 February 2021 complained to the supervisory authority about the Catholic Church in Denmark's (hereinafter 'The Catholic Church') refusal of her request for access in accordance with the data protection rules.

## 1. Decision

After a review of the case, the Danish Data Protection Authority finds that there are grounds for criticizing the fact that the Catholic Church's response to the complainant's request for access has not been made in accordance with the rules in Article 15 of the Data Protection Regulation[1].

Below follows a closer review of the case and a rationale for the Data Protection Authority's decision.

## 2. Injunction

The Danish Data Protection Authority also orders the Catholic Church to carry out a renewed assessment of the complainant's request for access and in this connection:

to make a decision as to whether the conditions for giving the complainant insight according to Article 15 of the Data Protection Regulation are met, and

to notify complaints, whether the request for access is granted or whether the request for access is refused.

If the Catholic Church considers that the request for access (in whole or in part) must be granted, the Catholic Church must, as part of the order, provide the complainant with a copy of the personal data together with the notification.

If the Catholic Church considers that the request for access cannot be granted, the Catholic Church must, as part of the order, provide the complainant with information about the reason for this. This also applies if the Catholic Church only gives the complainant partial insight.

The order is announced in accordance with the data protection regulation, article 58, subsection 2, letter c, and the deadline for compliance with the order is 6 weeks. The Danish Data Protection Authority requests the Catholic Church to inform the Danish Data Protection Authority of its response to complaints within the same period.

### 3. Case presentation

It appears from the case that the complainant's ex-husband had a desire to get married again in the Catholic Church. For this to be possible, the previous marriage of the complainant and the complainant's ex-husband must be annulled. In this connection, the complainant's ex-husband has given an explanation as to why he believes that their previous marriage should be annulled. The explanation has been sent to the complainants and read through.

In order for the marriage to be fully annulled by the Catholic Church, witnesses must be called to testify about the complainant and the complainant's ex-husband's previous life and marriage, as well as the reason for their divorce. In this connection, the complainant's ex-husband has chosen his mother and brother as witnesses.

The complainant then chose to contact the Catholic Church to gain insight into which questions the witnesses were asked about the complainant's private life and what the witnesses answered.

360 Law Firm has represented the Catholic Church in the case, and by letter of 12 May 2021 has come forward with a statement in the case.

#### 3.1. The Catholic Church's remarks

The Catholic Church has generally stated that the complainant can be exempted from his right to access pursuant to Section 22 of the Data Protection Act[2], as consideration for the complainant must give way to decisive consideration for the complainant's ex-husband. In this connection, the Catholic Church has stated that the complainant does not appear to have had a legal interest in the case, including the relevant witness statements, as these are of no importance to the complainant

and given by family members of the complainant's ex-husband. The Catholic Church has also emphasized that the consideration of the complainant's ex-husband's freedom of religion, the priests' duty of confidentiality and especially the witnesses' rights that their statements remain protected, in this context outweigh the complainant's interest in gaining insight into the information.

The Catholic Church has explained that a person who wishes to have the validity of his marriage tested by the Church Court (hereafter 'the Court') must submit an application to the Court, which must briefly describe the process before and after the marriage and the reason for the divorce. The applicant is also requested to consent to the processing of personal data, and the applicant has thus given consent to the Court's processing of information which is also obtained in connection with the processing of the case. The consent also contains permission for the application to be sent to the former spouse.

After consideration by the Court, the application is forwarded to the other party in the case so that the latter indicates whether or not they will participate in the consideration of the case. The other party must in any case be made aware of the accusations in the application. If the other party does not wish to participate, the other party is declared absent by decree. In the specific case, the complainant has refused to participate in the processing of the case.

If the decision ends with the marriage between the complainant and the complainant's ex-husband being declared invalid, it will be possible for the complainant's ex-husband to marry in a Catholic church. On that basis, the Catholic Church has assessed that the complainant's ex-husband has a great and religious interest in the case being processed, as the processing of the case is a prerequisite for him to be married in the Catholic Church to his fiancée.

The Catholic Church has also expressed understanding that the complainant perceives the processing of information about her as unpleasant, as she herself does not wish to participate in the process, but that consideration for her ex-husband must weigh more heavily in this case, as the processing is necessary in order to he can practice his religion and observe the Catholic Church's religious conditions for remarriage. The Catholic Church has also claimed that the purpose of processing information about complaints was solely for the purpose of processing her ex-husband's application, and that in that connection the church processes the information about her in accordance with Article 6, paragraph 1 of the Data Protection Regulation. 1, letter f, and Article 9, subsection 2, letter d.

As far as the summoning of the complainant's ex-husband's mother and brother as witnesses is concerned, the Catholic Church has stated that witnesses in a case are never given free access to personal data or information of a sensitive nature

about the parties other than the fact that one of the parties wants the marriage annulled. The witnesses are thus not given access to the application for annulment of the marriage or the submissions of the other party. In this connection, the witnesses are typically asked about their relationship to the parties and how long they have known them. The witnesses are also asked about their subjective perception of both parties as well as their now ended marriage.

In relation to the statement that the complainant did not want to participate in the process, the Catholic Church has claimed that the complainant has waived his rights in the case. However, the complainant still has the right, according to the data protection legal rules, to be informed whether information has been registered about her, which has, however, been rejected, cf. section 22, subsection of the Data Protection Act. 1.

The Catholic Church has also stated that in accordance with the Data Protection Act § 22, subsection 1, the data controller may refuse to hand over information, just as the data controller is also not obliged to hand over a range of information to the registered person, if the registered person's interest in the information, after a concrete assessment, is found to give way to decisive considerations for private interests.

In this connection, the Catholic Church has referred to i.a. Danish Act 2-5-20, the Civil Service Act, the Administration of Justice Act, the Criminal Code and the Administration Act and has argued that the Court is subject to the same duty of confidentiality as priests in Denmark. The Court's treatment of testimony is subject to the same confidentiality, which means that these testimony may not be disclosed by the Court. In addition, the witnesses have only given statements for use in the complainant's ex-husband's case and in that connection concrete support for her ex-husband's wish for the annulment of the marriage. The witnesses have given their statements under the certainty that they could give statements in a free forum and without risk to your right of access.

### 3.2. Complainant's comments

The complainant has generally stated that her complaint specifically relates to a lack of insight into what the two witnesses in the case have been asked about and what they have answered.

The complainant has stated that she has been told by the Catholic Church that she will at some point be allowed to read the testimonies by appearing at their office and under supervision be given the opportunity to read them through. The complainant has also been in contact with a person associated with the church, who stated that the case was closed and that she could not gain insight into the witness statements, unless the witnesses gave their consent for her to gain insight. In this connection, the

complainant requested that the answer be sent in writing, which, however, could not be done.

The complainant has stated that she recognizes her ex-husband's desire to marry Catholic and that she has no objection to the statements he has made in connection with his application to annul their marriage. Complaints throughout the process have emphasized this towards the Catholic Church.

Complainants have also stated that the Catholic Church has not been sufficiently transparent in their description of the process, as she, among other things, was not initially informed about the role of the two witnesses in the further proceedings, and that she only found out during a subsequent conversation with her ex-husband that the witnesses would be asked the question regarding their previous marriage. When she then requested to be made aware of the questions the witnesses were asked about their previous marriage and the answers to them, she was informed that if she wished to participate in the process, she would have the right to see all the witnesses' answers and questions at the end in the process. However, in a later e-mail, complainants were also informed that in cases such as the present one, nothing was ever handed over to any of the parties, regardless of whether they participated or not.

The complainant has also rejected the Catholic Church's claim that she has repeatedly refused to participate in the processing of the case.

As far as the Catholic Church's assessment that consideration for the complainant's ex-husband is more important than consideration for the complainant's interests in the present case, the complainant has stated that it is offensive that someone has made a statement about her private life and has come up with subjective opinions about the reason her marriage has ended. The complainant is of the opinion that she has the right to see what has been asked and what the witnesses have answered. The complainant also disagrees that her complaint can be dismissed on the basis of the Catholic Church's desire to protect her ex-husband's freedom of religion, the priests' duty of confidentiality and the witnesses in relation to their statements.

#### 4. Reason for the Data Protection Authority's decision

The case concerns the complainant's request for access to information about what the two witnesses in the case have been asked about regarding her and her ex-husband's previous marriage, and what the witnesses have answered.

It also appears that the Catholic Church has rejected the complainant's request for access on the basis of section 22, subsection of the Data Protection Act. 1, as consideration for complaints must give way to decisive considerations for the

complainant's ex-husband's freedom of religion, the priests' duty of confidentiality and especially the witnesses' rights that their statements remain protected.

It follows from Article 15 of the Data Protection Regulation that the data subject has the right to obtain confirmation from the data controller as to whether personal data relating to the person concerned is being processed, and, if applicable, access to the personal data and a range of additional information. According to Article 15, subsection 3, the data controller provides a copy of the personal data that is processed.

Section 22, subsection of the Data Protection Act. 1, it appears that an exception to the regulation's article 15 can be made if the data subject's interest in the information is found to give way to decisive considerations of private interests, including consideration of the data subject himself.

It thus follows from Section 22, subsection of the Data Protection Act. 1, that a specific balancing of the opposing interests must be carried out.

After a review of the case, the Danish Data Protection Authority finds that the Catholic Church has not proven that consideration of the complainant's ex-husband's freedom of religion, the priests' duty of confidentiality and the rights of witnesses could have led to the Catholic Church being able to generally refuse to hand over a copy of information about what the witnesses have been asked about the complainant's and her ex-husband's previous marriage, and what the witnesses have answered.

In this connection, the Danish Data Protection Authority has emphasized that an exception to the right of access can only be made where there is a imminent danger that private interests will suffer significant damage. The Danish Data Protection Authority assesses, on the basis of what was disclosed in the case, that the Catholic Church has not proven that neither the complainant's ex-husband's freedom of religion, the priests' duty of confidentiality nor the rights of the witnesses are in imminent danger of suffering damage of significant importance when the information in question about complaints is disclosed.

The Danish Data Protection Authority has also emphasized that the Catholic Church does not appear to have made a concrete assessment in relation to the individual information, but simply generally refused to hand over a copy of the information.

The Data Protection Authority then finds that the Catholic Church's processing of personal data has not taken place in accordance with Article 15 of the Data Protection Regulation, which gives the Data Protection Authority reason to express criticism.

The Danish Data Protection Authority also finds occasion to notify the Catholic Church of an order to take a new position on the complainant's request for access and in this connection:

to make a decision as to whether the conditions for giving the complainant insight according to Article 15 of the Data Protection Regulation are met, and

to notify complaints, whether the request for access is granted or whether the request for access is refused.

If the Catholic Church considers that the request for access (in whole or in part) must be granted, the Catholic Church must, as part of the order, provide the complainant with a copy of the personal data together with the notification.

If the Catholic Church considers that the request for access cannot be granted, the Catholic Church must, as part of the order, provide the complainant with information about the reason for this. This also applies if the Catholic Church only gives the complainant partial insight.

The order is announced in accordance with the data protection regulation, article 58, subsection 2, letter c, and the deadline for compliance with the order is 6 weeks. The Danish Data Protection Authority requests the Catholic Church to inform the Danish Data Protection Authority of its response to complaints within the same period.

According to the Data Protection Act § 41, subsection 2, no. 5, anyone who fails to comply with an order issued by the Danish Data Protection Authority pursuant to Article 58, subsection of the Data Protection Regulation shall be punished with a fine or imprisonment for up to 6 months. 2, letter c.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).

[2] Act No. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons in connection with the processing of personal data and on the free exchange of such information (the Data Protection Act).