



Data Protection Case Law

**Data Protection Officers
Brussels
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Strategy

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[1] Outsourcing/investigations

Case C-119/12, Probst, CJEU, 22 Nov 2012

- Debt collection of phone bill by 3rd company
- Dir 2002/58 Art 6(2) : traffic data necessary for billing /debt collection
- Art 6(5) : processed by persons “acting under the authority of” (& Dir 95/46, art 16)
- acts on instructions and under the control of
- Contract must ensure lawful processing by assignee and allow assignor to check at all times

Case C-342/12, Worten v ACT

CJEU, 30 May 2013

- Employer refused to permit ACT to spot check working time record of staff, contrary to national employment regulation
- Dir 95/46 applies: personal data, processing
- *Rundfunk* criteria satisfied: legitimate purpose /adequate, relevant and not excessive
- National court to decide whether *immediate* consultation of records necessary for purpose

Case C-473/12, IPI

CJEU, 7 November 2013

- Estate agents regulator uses private directives
- Obligation to inform under Arts 10 and 11
- Unless derogations applied under Art 13(1)(d) (investigation of breaches of ethics) and (g) (rights of others)
- Art 13 optional, not compulsory (*Promusicae*)
- Does not apply in absence of national legislative choice

Bernh Larsen v. Norway

ECtHR app. no. 24117/08, 14 March 2013

- Art 8 ECHR, right to respect for private and family life
- tax auditors required copy of all data on computer server used jointly by three companies (“mixed archive”)
- justified for efficiency reasons
- and adequate safeguards against abuse

[2] Biometrics

M.K. v France, ECtHR, 18 March 2013

- Fingerprints taken during two unsuccessful theft investigations
- Art 8 ECHR: subsequent retention of fingerprints unjustified
- Protection of personal data of fundamental importance to right to respect for private life
- Data must be relevant and not excessive to purposes for which stored
- *Ibid* retention period

C-291/12, Schwartz v Bochum

CJEU, 17 October 2013

- Reg 2252/2004: passport contains fingerprints
- Unique identifying information (*Marper*)
- Arts 7 and 8 Charter: “joint reading” (*Schecke*)
- Legitimate purpose (not consent)
- Art 52(1): proportionality
- Limited use (authentication) and storage
- High security

[3] Data Retention

Directive 2006/24: telecoms and ISPs must :

- retain traffic data (not content)
- for period between 6 months and 2 years
- available to national competent authorities to combat “serious crime” as defined by national law

Joined Cases C-317-318/04, *PNR*

Case 301/06, *Ireland v EP and Council*

National implementing laws ruled unconstitutional in **CZ, DE and RO (+CY)**

C-293/12, *Digital Rights* ***Ireland* and C-594/12, *Seitlinger***

References from Ireland and Austria. CJEU / EDPS :

- Effectiveness : anonymous use
- Scope for abuse: unauthorised profiling
- Nature of interference with (*distinct*) rights of privacy and data protection (arts 7 and 8 of Charter)
- *Necessity and proportionality: lack of evidence, failure to consider less intrusive means*
- Balance between privacy and security: absence of specific requirements concerning outsourcing
- *Lex certa: insufficient clarity (period, crimes)*

[4] right to be forgotten

CNIL (FR) – reports a growing problem:

- 2012 - 6,000 complaints overall
- more than 1,000 re. right to be forgotten, more or less directly
- increase in complaints by 42% in one year

Reg art 17 right to be forgotten

- erasure & abstention from further dissemination
- no longer necessary, data subject withdraws consent
- take all reasonable steps to inform 3rd parties
- **LIBE**: right to erasure

Case C-131/12, Google v AEPD

a) substance

- Is there an (absolute) right to be forgotten under existing law?
 - Art 12: erasure of data whose processing does not comply with Directive
 - Art 14(a): object on compelling legitimate grounds relating to particular situation
- Can a newspaper also be ordered to remove a name from its index?

Case T-343/13, CN v EP, lodged 28/06/13

Case C-131/12, Google v AEPD

b) jurisdiction

- Is Google Spain establishment of Google in Spain?
- Does Google use equipment located inside the EU/Spain? (location of search servers, ESP websites data, cookies)

Territorial scope

- EU controllers: *in the context of the activities of an establishment*
- non-EU controllers:
- Dir 95 art 4(1)(b): makes use of equipment within the territory (cookies)
- Reg art 3 *offering goods or services to data subjects in EU or monitoring their behaviour*

[5] Supervision: independent authorities

- Art 8(3) Charter
- Art. 28 Dir 95/46: MS must provide for independent Data Protection Authorities to monitor and enforce application of national law implementing Directive 95/46
- DPAs must “*act with complete independence*”

Cases C-518/07, Germany, and C-614/10, Austria

ECJ : DPAs must be free from any external influence, direct or indirect, not only from supervised bodies but also from government

Case C-288/12, *Commission v Hungary*

- Arbitrary termination of mandate before term
- Without adequate justification
- Without procedural safeguards (transition)

Thank you for your attention!

For more information:

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