EDPS

EUROPEAN DATA PROTECTION SUPERVISOR

Overview of recent case law

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EDPS meeting with DPOs

8 May 2015

Definitions (Personal Data) and exceptions (household activity)

- C-212/13, Ryneš v UPOOU, 11 December 2014
  - *Case C-131/12, Google v AEPD*
  - *Case C-101/01, Lindqvist*
- C-141/12 and C-373/12, YS et al v Minister voor Immigratie, 17 July 2014
  - Durant v FSA, (2003), CSA v SIC (2008), Edem v ICO (2014)
- Google v Vidal-Hall (English CA, 27 March 2015)
- C-615/13 P, Client Earth v EFSA
  - Case C-28/08 P, Bavarian Lager
- C-582/14, Breyer (pending): website logs

Ryneš v UPOOU

C-212/13, 11 December 2014

- R installed video camera with view of entrance to home, public footpath and entrance to house opposite. Camera enabled identification and prosecution of suspects breaking house windows
- CZ DPA found that R had collected personal data of persons in street and house opposite without consent or information and had failed to notify DPA

Held:

- Exception under art 3(2) for "purely personal or household activity" must be narrowly construed
- May take legitimate interests into account under Arts 7(f), 11(2) and 13(1)(d) and (g)

YS v Minister voor Immigratie
C-141/12 and C-373/12, 17 July 2014

- 3rd country nationals applied for residence in NL
- requested access under art 12(a) of Dir 95/46 to document containing legal analysis of application

Held:

- Information relating to an individual is personal data
- Legal analysis does not relate to P, is only information about legal assessment of P's situation
- Otherwise right of access to personal data would become a right of access to documents
- Providing a "full summary of those data in an intelligible form" is sufficient

Google v Vidal-Hall et al
English CA, 27 March 2015

- Google collected BGI about Ps' internet usage by using cookies, Ps claimed moral damages for anxiety and distress

Held:

- Google based in California could be sued in UK because damage sustained in UK
- "damage" under article 23 Dir 95/46 includes moral damage, inconsistent UK law set aside on basis of arts 7, 8 and 47 of EU Charter
- BGI are personal data under Dir 95/46 because they 'individuate' the individual, 'singled out and distinguished from all others'

Client Earth v EFSA
C-615/13 P, AG 17 July 2014

- NGOs requested access to documents, EFSA released names of experts and comments made, but not the connection between each expert and comment, on basis of art 4(1)(b) of Reg 1049.

GC: dismissed application.

AG Cruz Villalón :

- Agreed with GC and EDPS that the 'intersection' of information is personal data
- But apply a lower level of *necessity* under art 8 of Reg 45 where data are professional, not within scope of privacy in strict sense
- Subject to *legitimate interests* requirement

Complaints and Transparency

- T-791/14, B. v Commission and EDPS, Order of 27 April 2015
- C-127/13 P, Strack v Commission, Judgment of 2 October 2014
- T-217/11, Staelen v European Ombudsman, Judgment of 29 April 2015

B. v EC and EDPS
T-791/14, Order of 27 April 2015

- P complained to EDPS against EC refusal to give access to personal information
- After 6 months applied for annulment of implied EDPS decision to reject complaint
- Based on Article 32(2) second indent of Reg 45:

  In the absence of a response by the European Data Protection Supervisor within six months, the complaint shall be deemed to have been rejected.
- Case withdrawn, costs awarded against P notwithstanding request for costs

Strack v Commission

C-127/13 P, 2 October 2014

- P requested, inter alia, all the documents relating to all of the confirmatory applications for access to documents refused by EC since 1 January 2005
- Some documents had personal data redacted

Held:

- it is for the person applying for access to establish the necessity of transferring that data
- transparency not itself an overriding public interest under art 8(a) Reg 45 (unless “especially pressing”)
- Deadlines must be respected; proportionality of request must be assessed in that context

Law enforcement and surveillance

- Riley v California
  - 4th Amendment to U.S. Constitution
- Big Brother Watch et al v UK, no 58170/13 (pending)
  - Malone v UK (ECHR, 1984)
- C-362/14, Schrems v DPC (pending, AG June 2015)
  - Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland and Seitlinger* (2014)
- A-1/15, Canada-EU PNR Agreement (pending)
- C-192/15 Rease (pending): NL DPA and surveillance
  - EDPS Opinion of 30 September 2013

Riley v California

US SCt, June 25, 2014

- Gang member involved in shooting of rival gang member. Cell phone seized when stopped for driving offence, info on cell phone used to prove gang motive for shooting, convicted,15 years prison

Held (unanimous): police generally require a warrant in order to search cell phones, even when it occurs during an otherwise lawful arrest

- Violation of 4th Amendment

"We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime... Privacy comes at a cost."

Riley v California

US SCt, June 25, 2014

EPIC brief:

- *The average smart phone user has installed 33 apps, which together can form a revealing montage of the user's life*
- *cell phones, with increasing frequency, are designed to do by taking advantage of "cloud computing." … the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself.*

Big Brother Watch et al v UK

application no. 58170/13, lodged 4/9/13

- Following the Snowden revelations about PRISM and UPSTREAM Ps claim that they have been the subject of surveillance by the US, passed to UK GCHQ, as well as direct surveillance by GCHQ under TEMPORA
- Ps claim violation of art 8 ECHR because such surveillance is not “in accordance with the law”, especially using broad general warrants where one party to a communication is outside the UK
- Nor is it “necessary in a democratic society”, being an inherently disproportionate interference with large numbers of people

Schrems v DPC Irl

Case C-362/24

- Safe Harbor Decision adopted by COM in 2000 under art 25(6) of Dir 95/46 to permit transfers of personal data to the U.S. Includes specific provision authorising national DPAs to suspend transfers
- Snowden revealed that US companies such as Facebook transfer personal data to the NSA
- DPC Irl refused Schrems' request to suspend transfers under the SH, to stop Facebook transmitting personal data to the U.S.
- Irl High Ct referred case to CJEU

Schrems v DPC Irl

Case C-362/24

Issues discussed at the hearing

- Was the Safe Harbor Decision lawful when it was adopted? Is it lawful now?
- Can it limit the power of DPAs only to take action as permitted by the Decision, or do they retain all their normal powers and discretion?
- Should the Commission have suspended/repealed the SH Decision during negotiations with the U.S?
- Should national DPAs or the EDPS intervene in the event of inaction by the Commission?

Canada-EU PNR Agreement
Case A-1/15

- EP Resolution of 25/11/2014: following *DRI*, EP has asked CJEU for Opinion on legal basis and compatibility of EU-Canada PNR treaty with Charter
- Substance: disproportionate in violation of arts 7, 8 and 52(1) of EU Charter
- Legal basis: wrongly based on Articles 82(1)(d) and 87(2)(a) TFEU (police and judicial cooperation) rather than Article 16 TFEU (data protection)
- EDPS: no evidence to show necessity and proportionality – Opinion of 30 September 2013

Thank you for your attention!

For more information:

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