

Recent case law on privacy and data protection



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Case 1

The case of the missing powers



Questions

1. Can the supervisory authority, in exercise of its corrective powers, order the data controller or processor to erase unlawfully processed personal data even in the absence of an express request by the data subject?
2. If the supervisory authority may order the data controller or processor to erase unlawfully processed personal data even in the absence of a request by the data subject, is that so irrespective of whether or not the personal data were obtained from the data subject?

GDPR = EUDPR

GDPR

Article 17

Right to erasure ('right to be forgotten')

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies: (...)

EUDPR

Article 19

Right to erasure ('right to be forgotten')

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies: (...)

C-46/23 Újpesti Polgármesteri Hivatal

- **1. DPA power to order erasure**
- **2. Right to erasure = obligation to erasure**
- **3. Role of the EDPB**

C-46/23 Újpesti Polgármesteri Hivatal

EDPB 2021

Opinion of the Board (Art. 64)



Opinion 39/2021 on whether Article 58(2)(g) GDPR could serve as a legal basis for a supervisory authority to order ex officio the erasure of personal data, in a situation where such request was not submitted by the data subject

Adopted on 14 December 2021

CJEU 2024



**Judgment of the Court (Fifth Chamber)
of 14 March 2024**
(request for a preliminary ruling from the
Fővárosi Törvényszék - Hungary) – Budapest
Főváros IV. Kerület Újpest Önkormányzat
Polgármesteri Hivatala v Nemzeti Adatvédelmi
és Információszabadság Hatóság
(Case C-46/23, ¹ Újpesti Polgármesteri Hivatal)

Case 2

***Information
or
no information?***



Questions

(1) Must Article 14(5)(c) of [the GDPR], read in conjunction with Article 14(1) and recital 62 thereof, be interpreted as meaning that the exception laid down in Article 14(5)(c) **does not refer to data generated by the controller** in its own procedure but rather **only to data which the controller has expressly obtained from another person**?

(2) If Article 14(5)(c) of the GDPR is also applicable to data generated by the controller in its own procedure, must the right to lodge a complaint with a supervisory authority, laid down in Article 77(1) of the GDPR, be interpreted as meaning that a natural person who alleges an infringement of the obligation to provide information is entitled, when exercising his or her right to lodge a complaint, to request an **examination of whether Member State law provides appropriate measures** to protect the data subject's legitimate interests, in accordance with Article 14(5)(c) of the GDPR?

(3) If the answer to the second question is in the affirmative, may Article 14(5)(c) of the GDPR be interpreted as meaning that the "appropriate measures" referred to in that provision require the national legislature to transpose (by means of legislation) the measures relating to the security of data laid down in Article 32 of the GDPR?

GDPR = EUDPR

GDPR

Article 14

Information to be provided where personal data have not been obtained from the data subject

(...)

5. Paragraphs 1 to 4 shall not apply where and insofar as:

(c) **obtaining or disclosure is expressly laid down by Union or Member State law** to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests;

EUDPR

Article 16

Information to be provided where personal data have not been obtained from the data subject

(...)

5. Paragraphs 1 to 4 shall not apply where and insofar as:

(c) **obtaining or disclosure is expressly laid down by Union law**, which provides appropriate measures to protect the data subject's legitimate interests;

C-169/23 Másdi

- AG Medina **opinion** of 6 June 2024

C-169/23 Másdi

(1) Article 14(5)(c) GDPR must be interpreted as meaning that the derogation from the obligation on the data controller to provide information to the data subject **applies to all data which the controller has not obtained from the data subject.**

It is not relevant, in that regard, whether the data are expressly obtained from another entity or if the data are generated by the controller in its own procedure.

(2) Article 77(1) GDPR must be interpreted as meaning that, in the context of a complaint procedure, the supervisory authority has the power to examine whether all the conditions laid down in Article 14(5)(c) of that regulation are complied with. More particularly, it has the **power to examine the question whether Member State law, to which the controller is subject, provides appropriate measures** to protect the data subject's legitimate interests.

(3) Article 14(5)(c) GDPR must be interpreted as meaning that the 'appropriate measures' referred to in that provision do not require the national legislature to transpose the measures relating to the security of the data laid down in Article 32 of that regulation.

Data protection rulings 2024

- **CJEU Kočner v EUROPOL [C-755/21 P]** - 5 March 2024: Europol and the Member State concerned are to be jointly and severally liable for non-material damages suffered by Mr Kočner.
- **CJEU Endemol Shine Finland [C-740/22]** - 7 March 2024: The oral disclosure of personal data can be covered by the GDPR.
- **CJEU IAB Europe [C-604/22]** - 7 March 2024: whether or not the TC String can be considered personal data. role and responsibility of IAB Europe as a sector organisation.
- **CJEU OC v European Commission [C-479/22 P]** - 7 March 2024: On appeal, annulment of a General Court case which examines when data can be qualified as personal data.
- **CJEU Újpesti Polgármesteri Hivatal [C-46/23]** - 14 March 2024: The Court confirmed that SA's may order the erasure of unlawfully processed data.

Data protection rulings 2024

- **CJEU Landeshauptstadt Wiesbaden [C-61/22]** - 21 March 2024: The Court invalidated the EU regulation which lays down the obligation to insert two fingerprints into the storage medium of identity cards. Reason: the legal basis for adoption was incorrect. But: the mandatory insertion in identity cards is compatible with the fundamental rights to respect for private life and to protection of personal data.
- **CJEU juris [C-741/21]** - 11 April 2024. Case about the right to compensation for non-material damages.
- **CJEU M.N. - EncroChat [C-670/22]** - 30 April 2024. Conditions for the transmission and use of evidence in criminal cases with a cross-border dimension.
- **CJEU Procura della Repubblica presso il Tribunale di Bolzano [C-178/22]** - 30 April 2024. ePrivacy case about the prosecution of serious offences.
- **CJEU LQDN and Others - Personal data and the fight against counterfeiting [C-470/21]** - 30 April 2024. The Court confirms that it is legally possible for national public authorities (responsible for combating online counterfeiting) to access identification data on the basis of IP addresses.

B o n u s

- **Opinion of the Advocate General in the case C-768/21 Land Hessen of 11 April 2024**
- Protection of personal data: according to Advocate General Pikamäe, the supervisory authority has an obligation to act when it finds a breach in the course of investigating a complaint

Contact & questions



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