

ANONYMIZATION OF COURT DECISIONS

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Išsilavinimas 360°

HYPHOTHESIS

ANONYMIZATION OF COURT DECISIONS POLICY
SHOULD BE DIVERSIFIED

INTERESTS

- Right to privacy (art.8 ECHR; art. Art.7 Charter of EU);
- Data protection (art. 8 Charter of EU); GDPR and Right to be forgotten;
- Freedom of expression (art.10 ECHR; art. 11 Charter of EU);

Schrems case- (C-311/18): Grand Chamber

170. access to a natural person's personal data with a view to its retention or use affects the fundamental right to respect for private life guaranteed in Article 7 of the Charter, which concerns **any information relating to an identified or identifiable individual**. Such processing of data also falls within the scope of Article 8 of the Charter because it constitutes the processing of personal data within the meaning of that article and, accordingly, must necessarily satisfy the data protection requirements laid down in that article.

171. The Court has held that the communication of personal data to a third party, such as a public authority, **constitutes an interference** with the fundamental rights enshrined in Articles 7 and 8 of the Charter, whatever the subsequent use of the information communicated. The same is true of **the retention of personal data and access to that data** with a view to its use by public authorities, **irrespective** of whether the information in question relating to private life **is sensitive** or whether the persons concerned have been **inconvenienced** in any way on account of that interference.

TELE 2 Sverige Case (C-245/19 and C-246/19)- Grand Chamber

50. in a situation where **several rights** guaranteed by the Charter are involved in a given case and are liable to be at odds with each other, **the necessary reconciliation of those rights**, in order to ensure that **a fair balance** is struck between the protection attached to each of them, **may lead to limitations** being imposed on them (see, to that effect, judgments of 29 January 2008, *Promusicae*, C-275/06, EU:C:2008:54, paragraphs 63 to 65, and of 27 March 2014, *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraph 46).

LIMITS: SCHREMS Case (par.173-5)

- However, the rights enshrined in Articles 7 and 8 of the Charter **are not absolute** rights, but **must be considered in relation to their function in society**;
- any limitation on the exercise of the rights and freedoms recognised by the Charter must be **provided for by law** and **respect the essence** of those rights and freedoms. Under the second sentence of Article 52(1) of the Charter, subject to the **principle of proportionality**, limitations may be made to those rights and freedoms only if they **are necessary** and genuinely **meet objectives of general interest** recognised by the Union **or** the **need to protect the rights and freedoms** of others.
- Following from the previous point, it should be added that the requirement that any limitation on the exercise of fundamental rights must be provided for by law implies that the legal basis which permits the interference with those rights **must** itself **define the scope** of the **limitation** on the exercise of the right concerned.

Proportionality test: SCHREMS Case: (par.176)

*must apply only in so far as is **strictly necessary**, the legislation in question which entails the interference must lay down **clear and precise rules governing the scope and application of the measure in question and imposing minimum safeguards**, so that the persons whose data has been transferred have sufficient guarantees to protect effectively their personal data against the risk of abuse. It must, in particular, indicate **in what circumstances and under which conditions** a measure providing for the processing of such data may be adopted, thereby ensuring that the interference is limited to what is strictly necessary. The need for such safeguards is all the greater where personal data is subject to automated processing*

TEST:

- limitations provided by law;
- respect the essence of right and freedom;
- principle of proportionality:
 - are **necessary** and
 - genuinely meet objectives of general interest recognised by the European Union [[art.3](#) of TEU (including: The Union shall offer its citizens an area of freedom, **security** and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the **prevention and combating of crime**) [art.4](#) of TEU] or
 - **the need to protect the rights and freedoms of others.**

NECESSITY IN SOCIETY:

LITHUANIAN ORDER:

RIGHT TO INFORMATION:

- To inform society about interpretation and application of law in national courts;
- To ensure publicity, transparency and openness of the courts.

GDPR art.2 (2):

- (d) by competent authorities for the purposes of the **prevention**, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the **safeguarding** against and the prevention of **threats to public security**.

CONCLUSSIONS:

- ANONYMIZATION POLICY SHOULD BE DIVERSIFIED /based on the need **to protect** the rights and freedoms of others/
- Decisions in criminal cases should be anonymized considering the following criteria:
 - Gravity and category of crime;
 - Position of convicted person: private vs.public person;
 - Level of court;
 - EXCEPTIONS: (closed hearings)

Thank you!

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