

Data Protection and Privacy rights: an overview of the case-law of the Strasbourg Court

Rachael Kondak, lawyer Research Division
European Court of Human Rights

2 June 2015 , Bordeaux

Overview of presentation

- Introduction and general framework
- 1. Collection of data
- 2. Storage and use of data
- 3. Disclosure and access to one's data
- 4. Data and privacy online
- 5. Pending cases – what's new in Strasbourg?



General framework: the structured approach to Article 8

1. **Does the applicant's claim fall within the scope of Article 8?**
2. **Has there been an interference with that right?**
3. **Was the interference conducted in “accordance with the law”?**
4. **Does the interference further a legitimate aim?**
 - in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
5. **Is the interference necessary in a democratic society?**

1. Collection of data

Investigations by police or security services- for example, interception of telephone communications

- *Klass v. Germany* (1978)
- *Malone v. the United Kingdom* (1984)
- *Taylor-Sabori v the United Kingdom* (2002)
- *Association “21 December 1989” and Others v. Romania* (24 May 2011)
- *Shimovolos v. Russia* (21 June 2011)



2. Storing and Use of Personal Data

- *Segerstedt-Wiberg and Other v. Sweden* (6 June 2006)
- *Rotaru v. Romania* (4 May 2000)

Databases

- *B.B. v. France, Gardel v. France, and M.B. v. France* (17 December 2009)
- *S. and Marper v. the United Kingdom* (4 December 2008)



3. Disclosure of one's data and access to one's personal data

Sensitive data/Medical data

- *Z. v. Finland* (25 February 1997)
- *M.S. v Sweden* (27 August 1997)
- *Peck v. the United Kingdom* (28 January 2003)

Access to one's personal data

- *Gaskin v. the United Kingdom* (7 July 1989)



4. Data and online privacy

- *K.U. v. Finland* (2 December 2008)
- *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* (5 May 2011)
- *Ahmet Yildirim v Turkey* (18 December 2012)



5. Some pending Cases

- *Zakharov v Russia (no. 47143/06)*
- *Antović and Mirković v. Montenegro (no. 70828/13)*
- *López Ribalda v. Spain*
- *Big Brother Watch v UK*
- *Delfi v Estonia*



Conclusions

- The right to data protection has developed out of the right to private life (Article 8 of the ECHR)
- Structured approach to Article 8- in accordance with the law, legitimate aim, necessary in a democratic society
- Strasbourg Court has examined many situation in which the issue of data protection and privacy arose:
 - Interception of communication;
 - Various forms of surveillance;
 - Protection against storage by public authorities
- Other key areas: medical/sensitive data, online data

Thank you for your attention!

