Judgement of the European Court of Justice (ECJ)

Combating corruption vs protecting personal data

Data protection is known to be in constant latent conflict with other public interests. In a recent ruling, the ECJ addressed the extent to which the two areas of anti-corruption and data protection can be reconciled and which pertinent considerations must be balanced. In addition, the Court laid out the conditions under which Article 9 of the General Data Protection Regulation (GDPR) applies to the indirect disclosure of sensitive data.

Disclosure of sensitive data

The ECJ ruling of 1 Aug 2022 (Case C-184/20) concerned a reference for a preliminary ruling from the Vilnius Regional Administrative Court, Lithuania (Vilniaus apygardos administracinis teismas).

The question submitted to the ECJ was whether the unrestricted disclosure of personal data pertaining to the director of an environmental protection organisation can be justified at all pursuant to Articles 6 and 9 of the GDPR, and if so, what extent of data processing may be permissible. According to Lithuanian law, the head of a publicly financed organisation or authority must provide personal information to the Chief Ethics Commission (Vyriausioji tarnybinės etikos komisija), to be published on the Commission's website.

The case at hand involved, inter alia, the indirect disclosure of sensitive data. The data disclosed included the name of the affected person's (the data subject's) life partner, allowing conclusions to be drawn as to the person's sexual orientation.

Balancing transparency and data protection

The heart of the issue was the extent to which the disclosure of personal data is necessary to pursue anti-corruption and transparency objectives.

For an overview of the applicable tests, see our blog post on data processing based on a balancing of interests. The disclosed data included the names of the head of the authority and of his spouse, their occupations and those of his relatives, as well as a list of transactions of more than EUR3,000 in value. Hence, the circle of affected persons included not only the head of the authority himself but also persons close to him.

In its assessment of the case, the ECJ set out in detail the conflicting interests: combating corruption on one hand and protecting personal data on the other. With regard to the severity of the interference by the disclosure of personal data, the ECJ concluded that this had to be regarded as a serious interference with the fundamental rights of data subjects to respect for private life and to the protection of personal data.

On the other hand, the ECJ also made it clear that combating corruption is of great importance in the EU. The Court emphasised that "corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society"

In this context, the following are of particular importance for the "balancing exercise" in individual cases:

- The prevalence of corruption in the respective country
- The position of the person concerned and the person's responsibility for the sound management of public funds

The decision

The ECJ concluded that the comprehensive publication on the website of the Chief Ethics Commission in particular is not justified by Articles 6(1)(c) and (3) of the GDPR in light of Articles 7, 8 and 52(1) of the European Charter of Fundamental Rights. Any publication of personal data may only encompass data relevant to the objective of combating corruption, such as any self-employed activities and the manes of legal entities in which the data subjects and persons close to them are involved as partners or shareholders. This assessment was essentially based on the considerable scope of a publication on the Internet and on the principle of "data minimisation" enshrined in Article 6(1)(c) of the GDPR.

In its decision, the ECJ also had to decide whether the acts of data processing are subject to the stricter requirements of Article 9 of the GDPR in the case of indirect publication of sensitive data pursuant to that provision. This question arose in the present case because the person affected lives in a registered civil partnership; if the name of his civil partner were made public, anyone could infer his sexual orientation. Here, the ECJ has clearly ruled in favour of comprehensive protection of personal data, clarifying that "data that are capable of revealing the sexual orientation of a natural person by means of an intellectual operation involving comparison or deduction fall within the special categories of personal data, for the purpose of Article 8(1) of Directive 95/46 and Article 9(1) of the GDPR".

ECJ sets out limits for balancing interests

In its ruling, the ECJ pointed out that data protection actually constitutes a major factor in the fight against corruption, setting out the limits within which the diverging interests are to be balanced. It also becomes clear that the ECJ is set to construe the concept of sensitive data broadly, meaning that such data may well be protected even where they may not be immediately recognisable as such.

Source: Dr. Datenschutz Intersoft Consulting Services

More information

The judgement is accessible in English here: