

No Cure for Data That's Insecure

An Analysis of the European Health Data Protection Safeguards

Master's Thesis

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Abstract

Health data belong to the most intimate sphere of individual's life. Therefore, due to the sensitive nature, it is necessary to provide adequate protection to them. According to the view of the European Court of Human Rights (ECtHR) expressed in the case of *Z. v. Finland*, the member states are legally obliged to implement adequate safeguards regarding the protection of medical data.

The aim of this thesis is to assess the existing safeguards regarding protection of health data. This is carried out through an analysis of the ECtHR case law, as well as other legal instruments regarding data protection adopted by the Council of Europe and the European Union. Among the assessed documents are the European Convention on Human Rights, the Convention on Data Protection and the Directive 95/46/EC. Furthermore, in order to assess the implementation of the documents and the case law of the ECtHR into domestic legislations, a comparative analysis of data protection laws of Austria and the Czech Republic was undertaken.

The text will answer the following questions: What are the appropriate safeguards providing guarantees against unlawful processing of personal health data at the European level? Is there a common understanding of such safeguards? And do the member states of the European Union provide its citizens with the same level of protection?

Keywords

Data protection, medical data, health data, safeguards, European Union, Council of Europe, European Court of Human Rights, European Convention on Human Rights, Directive 95/46/EC, Convention on Data Protection, Czech Republic, Austria, ECHR, ECtHR.

List of Abbreviations

Act 101/2000	Act on the Protection of Personal Data and on Amendment to Some Acts ¹
AJCL	American Journal of Comparative Law
CDCJ	European Committee on Legal Co-operation
Directive 95/46/EC	Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data
DSG	Datenschutzgesetz 2000 ²
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
EC	European Commission
ECJ	Court of Justice of the European Union
ECtHR	European Court of Human Rights
EJHL	European Journal of Health Law
ER	Explanatory Report
ETS No. 005	Convention for the Protection of Human Rights and Fundamental Freedoms
ETS No. 108	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
ETS No. 164	Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine
EU	European Union
EU Charter	Charter of the Fundamental Rights of the European Union
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
IJLT	International Journal of Law and Technology
No.	Number
Rec.	Recommendation
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNSWLawJI	University of New South Wales Law Journal
Vol.	Volume

¹ Czech Data Protection Act.

² Austrian Data Protection Act.

Table of Contents

1. Introduction.....	5
1.1. Structure of the Work.....	6
1.2. Methodology.....	7
2. Privacy and Data Protection.....	9
2.1. Introduction.....	9
2.2. Relationship between Privacy and Data Protection.....	10
3. Jurisprudence of the Strasbourg Court.....	15
3.1. Introduction.....	15
3.2. Private Life.....	15
3.3. Data Protection.....	17
3.4. Health Data Cases.....	21
3.4.1. Protection against Public Actors.....	21
3.4.2. Protection against Private Actors.....	27
3.5. Conclusion: Adequate Safeguards Provided by Case Law.....	30
4. Data Protection Convention.....	34
4.1. Introduction.....	34
4.2. Convention on Data Protection and Article 8 ECHR.....	34
4.3. Convention's Principles in relation to Medical Data.....	36
4.3.1. ECtHR Jurisprudence.....	36
4.3.2. Other Principles Enshrined in the Convention on Data Protection.....	40
4.4. Conclusion: Role of the Convention on Data Protection.....	41
5. Data Protection in the European Union.....	44
5.1. Introduction.....	44
5.1.1. The Charter of Fundamental Rights of the European Union.....	46
5.2. Data Protection Directive.....	47
5.2.1. Directive and European Convention on Human Rights.....	48
5.3. Conclusion: Common European Understanding of Safeguards.....	55
6. National Legislation.....	58
6.1. Introduction.....	58
6.2. Czech Law.....	58
6.2.1. Domestic Law and Safeguards.....	59
6.3. Austrian Law.....	63
6.3.1. Domestic Law and Safeguards.....	64
6.4. Conclusion: Implementation of European Standards.....	68
7. Conclusion.....	70
Bibliography.....	73