

[CZ] Constitutional Court Struck Down Parts of the Data Retention Law

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A campaign of the civic rights organisation Iuridicum Remedium (IuRe) against the public surveillance of everyday communication resulted in considerable success: spying on communication was judged unconstitutional. On 31 March 2011 the Constitutional Court agreed with IuRe privacy protection activists and a group of 51 MPs, who in March 2010 had submitted a proposal calling for a repeal of the relevant sections of the Electronic Communications Act implementing obligations on mobile operators and internet providers to retain communications data for the purpose of police investigations.

The Electronic Communications Act Nr. 127/2005 Coll. (in force since 1 May 2005), as amended in 2008, serves as the transposition measure of the Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of public electronic communications services or public communications networks, which requires the member states to gather telecommunications connection data in order to combat serious crime, in particular terrorism and organised crime. The judicial challenge to the Act related to the information showing when and with whom people were communicating.

The Court overturned section 97 paras. 3 and 4 of the Electronic Communications Act, which stipulated that telecommunications companies have to maintain records of their customers Internet and telephone use (including phone calls, faxes, text messages, Internet activities and emails) for up to twelve months. According to the Court, the ambiguous data retention rules resulted in measures, applied for requesting and using retained data, "being overused by authorities engaged in criminal proceedings for purposes related to investigations in common, i.e., less serious crimes". The Constitutional Court also regards certain provisions of the Criminal Act concerning the use of such data by investigation authorities as highly questionable and called on MPs to consider the modification of these provisions.

According to the Court, it will be necessary to consider each individual case in which data have already been requested in order to be used in criminal proceedings - with respect to the principle of proportionality regarding the infringement of the right to privacy. The decision implies that electronic communication providers are no longer obliged by any law to retain such data for

the use of the entitled authorities; the respective databases should be deleted.

The ruling is of great importance not only for the Czech Republic but for the EU as a whole, since there is currently an evaluation process underway assessing the impact of, and compliance with, higher ranking norms of the Data Retention Directive.

Nález ústavního soudu ČR Nr. Pl. ÚS 24/10

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Decision of the Constitutional Court of the Czech Republic of 31 March 2011

