# [DE] Schleswig-Holstein Administrative Court Lifts Facebook Fan Page Ban

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In a ruling of 9 October 2013, the Schleswig-Holsteinische Verwaltungsgericht (Schleswig-Holstein Administrative Court - VG) lifted the decision of the Unabhängiges Landeszentrum für Datenschutz (Independent Land Data Protection Centre - ULD), prohibiting companies in Schleswig-Holstein from operating Facebook fan pages (case no. 8 A 218/11, 8 A 14/12, 8 A 37/12).

The ULD had banned the operation of Facebook fan pages on the basis of Article 38(5) of the Bundesdatenschutzgesetz (Federal Data Protection Act - BDSG) because it breached data protection law in several ways. Visitors to such fan pages were not provided with adequate information about the collection and use of their personal data, as required under Article 13(1) of the Telemediengesetz (Telemedia Act - TMG). As a result, no effective consent was given for the data to be collected and used, as required under Articles 4 and 4a BDSG. The fan pages also failed to grant the right of refusal, as required under Article 15(3) TMG. Companies were responsible for processing this data illegally if they made use of this technical infrastructure.

The VG did not say whether using personal data taken from Facebook fan pages infringed substantive data protection law. In any case, the companies, as fan page operators, were not “controllers” in the sense of Article 3(7) BDSG (see also Article 2(d) of Data Protection Directive 95/46/EC). Under this provision, the companies would have to collect, process or use personal data on their own behalf, or commission others to do the same. However, anyone who had no actual or legal influence over the use of the data could not be the “controller”, according to the VG.

In view of the fundamental importance of this dispute, the VG allowed the decision to be appealed before the Schleswig-Holsteinische Verwaltungsgericht (Schleswig-Holstein Administrative Court of Appeal).

***Pressemitteilung des Schleswig-Holsteinischen Verwaltungsgerichts zum Urteil vom 9. Oktober 2013 (Az. 8 A 218/11, 8 A 14/12, 8 A 37/12)***

http://www.schleswig-holstein.de/OVG/DE/Service/Presse/Pressemitteilungen/09102013_VG_facebook.html

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*Press release of the Schleswig-Holstein Administrative Court on the ruling of 9 October 2013 (case no. 8 A 218/11, 8 A 14/12, 8 A 37/12)*

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