

[CZ] Constitutional Court rejection on data retention

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A group of 58 deputies sought the annulment of certain provisions of the Electronic Communications Act, the Criminal Procedure Act and the Police Act before the Constitutional Court. The proposal challenged certain provisions of the legislation on the preventive storage of traffic and location data in electronic communications with telecommunications service providers (hereinafter referred to as "data retention") and the possibility of their subsequent provision to law enforcement services, secret services and the police. The contested legislation requires obligated entities (providers of electronic communications services, hereinafter referred to as 'operators') to keep 'data packets' retrospectively of all clients, users of telecommunications services, for a period of six months. This includes information about the telephone numbers of the calling and called party; the date and time of commencement and termination of the communication; and the location and movement of the user of the given service. In the case of using Internet services and e-mail communication, operators are also obliged to collect, in particular, user accounts; computer and search server ID (IP address, port number); information about the e-mail addresses of the communication participants; and the e-mail protocol.

The group of Members of Parliament proposes to repeal the contested legislation as it infringes the Constitution's guaranteed right to privacy under the protection against unauthorised interference in private and family life, the right to prevent the unauthorised collection, disclosure or other misuse of personal data under it, and the right to preserve the secrets of messages from a phone or other similar device.

Restrictions on personal integrity and privacy by public authorities are permitted only in exceptional cases - where necessary in a democratic society, unless the purpose pursued by the public interest can be achieved otherwise and if it is acceptable from the point of view of lawful existence and observance of effective and concrete safeguards against arbitrariness.

The Constitutional Court rejected the petition by the group of deputies. The requirement of the proportionality of interference with the right to privacy in the light of the Constitution and the related case law of the Constitutional Court fulfils the legislation in the context of today's social and technological developments and can be interpreted in a constitutionally conforming manner. Any request and the justification of its submission must be carefully considered by the competent

authority and carefully examined by the court in the light of the particular circumstances of the case under consideration and not limited to assessing the fulfilment of the formal requirements of the application as required by current legislation and Constitutional Court case law.

Nález Ústavního soudu č. 161/2019 Sb.

https://www.epravo.cz/_dataPublic/sbirkы/2019/sb0069-2019.pdf

Decision of the Constitutional Court Nr. 161/2019. Coll.

