Data protection as a fundamental right

By

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The European Union’s (EU) view on data protection is closely linked to privacy issues, which does not appear to always be the right approach in dealing with data protection. The privacy concept as outlined in Art. 8 of the European Convention on Human Rights\(^2\) refers mainly to the right to private and family life, respect of private home and private correspondence. The data protection could include privacy issues but is not limited to them.

Data protection means the right of a person to know which data is gathered in regards to her person, how the data is used, aggregated, protected, and where the data is transmitted. Anyone has the right to have access to that data and to modify it. In all cases, the person has to give his/her consent for that data to be used by another person, government, or entity. Data protection values are not essentially privacy related ones. These values cannot be dealt with just through the privacy perspective. They are autonomous values, which grant fundamental rights: the right to data protection as recognised by Article 8 in the Charter of Fundamental Rights of the European Union\(^3\): “Protection of personal data: Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified”.

The recognition of data protection by the EU legal framework constitutes an important step made towards the recognition of the Data Protection Directive\(^4\), which for years has been perceived as having two main attributes: granting and protecting the free movement of personal information and the protection of fundamental rights and freedoms of an individual (from the privacy perspective). The recognition of the right to data protection given by the Charter\(^5\), this could be considered as a way to give more weight to the fundamental rights dimension of the Directive\(^6\). Some countries in the EU as such France and Germany, perceive

privacy as not being related to data protection. Contrarily, other countries such as Belgium and The Netherlands, closely link together data protection to privacy. For this reason, recognising data protection as an individual freedom could help diminish the gaps in interpretation among EU Member States in this field.

Unfortunately, the EU legal framework regarding data protection is quite fragmented. The Directives regulating this area of data protection (Directive 95/46, Directive 2002/58, Directive 2002/2) are overlapping, cover the same legal field and also have vague definitions (at least regarding the Location Based Services LBS). are overlapping, cover the same legal field and also have vague definitions. This comes against normal consumer-provider relations because the consumers will not be effectively and uniformly protected in their rights and the providers, by not knowing and understanding the regulations, will diminish or stop their services that goes against the consumer again because the choice of services in a field will be diminished.

The ruling of European Court of Justice (ECJ) in Case C-101/01, Bodil Lindqvist\(^7\) regarding data protection (the first of its kind), has important implications because it clarifies to individuals and companies that personal data is protected and no one can use it without prior authorisation. This was a useful warning given by ECJ to those interested in using, manipulating, and accessing data, with no right or consent. It was a useful start, because since then more and more EU countries used this Directive in the right direction. Also, it was a clarification given to those countries, which did not know what the Directive 95/46/EC\(^8\) meant: data is protected not just through the privacy perspective but as a fundamental right as well.

Ruling on this case, ECJ tried to make a fair balance between fundamental rights and fundamental freedoms as well (the right to data protection and the freedom of expression). Dealing with these sensitive issues, it is always hard to make a decision regarding fundamental rights and harm fundamental freedoms and vice-versa. It is very hard to find the proper balance in ruling in these matters. One cannot acknowledge one fundamental right

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\(^7\) EJC, 6 November 2003 (Lindqvist, C-101/01), Criminal Proceedings against Bodil Lindqvist, Accessed 10/06/2010.

over another in a categorical manner. In this particular case the human right to data protection was definitely weighting more than the human right to freedom of expression in the ECJ’s view, because someone’s private information has the same value as someone’s right to express his/her own beliefs, when that person uses a third party’s private information with no consent. In this case, violating fundamental freedoms such data protection for the purpose of expressing personal beliefs, was found to be wrong by the ECJ.

As a conclusion, data protection is a fundamental right and should be granted and protected as any other fundamental rights. Many people are not aware that the information concerning their person is protected which leads unfortunately to many abuses from authorities, internet providers, online businesses and many others. We all could hope that in time, following important ECJ rulings as the one described above⁹, people will consider more and more seriously their fundamental right to data protection.

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