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#### 596 Prohibition of discrimination

Constitution (*Grundgesetz*) and therefore was unconstitutional (Decision of 4 April 2006 (1 BvR 518/02) [2006] 59 *Neue Juristische Wochenschrift* 1939).

As this last example illustrates, data protection legislation (and particularly, the restrictions imposed on the processing of 'sensitive' personal data relating, *inter alia*, to race or ethnicity, national origin or religion) may protect from ethnic profiling, when it is formalized and takes the form of the processing of data. Yet, if interpreted too broadly, data protection legislation may also create an obstacle to the identification of ethnic profiling: where it is practised informally, ethnic profiling can only be documented by monitoring the impact on certain groups of the practices of law enforcement officers, which requires some form of processing of data relating to the victims of such practices in order to assign them to specific groups. Thus, if it is to be effectively consistent with combating discrimination in the form of ethnic profiling, data protection legislation should focus, not only on the more or less sensitive nature of the data which are processed, but also and perhaps primarily on the objective of the processing of personal data and the proportionality of the means of processing. For a discussion of these issues, see O. De Schutter and J. Ringelheim, 'Ethnic Profiling: a Rising Challenge for European Human Rights Law', *Modern Law Review*, 71 (2008), 358-84.

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