

Press Release: No. 02/2023

Magdeburg, April 11, 2023

Landtag for data protection

Fear of transparency?!

State representative calls for the amendment to change the data to be stopped

Tenant Protection Act!

The government factions have submitted an application to change the state data protection

law (DSAG LSA) into the state parliament, with which the election of the state

commissioned for data protection is to be re-regulated. The state officer is

as an official supervisory authority for data protection in Saxony-Anhalt. After the

The draft law should make the obligation to publicly

writing is omitted. Instead, the parliamentary groups should have the right to propose

the election to be introduced in the Landtag.

This violates the legal requirement of transparency, i.e. the traceable

ability for third parties. A tender is the only way transparent

to determine which candidates are specifically considered at all

men. It is not possible for the parliamentary groups to come up with an election proposal

recognize which candidates have been approached or are being considered

have been. In particular, there are no specifications for the parliamentary groups, the selection

document and disclose the process.

“Transparency is an essential part of our democracy. She prevented

Abuse of power and corruption and is used by the legislature for the election of the state

commissioned expressly demanded.” Albert Cohaus, the incumbent state

commissioned, off.

The waiver of the public tender violates both the European

legal transparency requirement according to Art. 53 Para. 1 General Data Protection Regulation (DS-

GVO) as well as against the obligation to advertise vacancies in accordance with Section 9 of the state civil service law LSA. "backroom decisions" and "political tweaks".

thus opening the door.

The justification for the draft law does not address the question of European

a legally required transparency. Furthermore, a possible

Violation of the Art. 33 Para. 2 Basic Law (GG) specifying tender

obligation of the State Civil Service Act not discussed. These violations were

in the present draft law (<https://www.landtag.sachsen-anhalt.de/fileadmin/fi->

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les/drs/wp8/drs/d2255rge.pdf) apparently not recognized. The same applies to the individual

en entitlement of potential applicants to an application procedure according to Art. 33 para.

2GG

The Thuringian Court of Auditors came to the conclusion as part of a special audit

come that for public bodies there is a general obligation to advertise

(<https://www.thueringer-rechnungshof.de/files/186E0098A99/Sonderbericht.pdf>).

stands

The State Commissioner for Data Protection therefore also suggests such a

che exam.

To this end, the legislative process must now be suspended or aborted.

the.

Background information:

The state commissioner is the supervisory authority for data protection in person

Saxony-Anhalt. He is not a political official. Rather, are compelling factual

Entry requirements such as B. professional qualifications, experience and expertise

in the area of data protection. The in § 21 paragraph 1 sentence 2 DSAG LSA regulated minimum requirements are stipulated by European law. So you stand not at the disposal of the state parliament.

As a temporary civil servant, the state commissioner is fundamentally subject to statutory regulations Regulations of the State Civil Service Act for this group of people. So also applies for his position the obligation to advertise according to § 9 para. 1 State Civil Service Act LSA.

The following excerpts from the special report of the Thüringer Court of Auditors of March 13, 2023:

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“In the case of recruitment, the procedure is only economical and economical if the Article 33 para. 2 GG required selection of the best is guaranteed. sense and The purpose of selecting the best is the best possible fulfillment of public tasks to be ensured by the best staff - this is the objective legal meaning of Art. 33 (2) GG. The staff in administration should be provided with specialist knowledge, professional performance and loyal fulfillment of duties ensure stable management and thus a balancing factor in relation to which the life of the state tending political forces.” (page 8)

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"In addition, Art. 33 Para. 2 GG grants a right equal to fundamental rights, the named application process claim. "After that, every applicant for a

public office – or, in the absence of an advertisement, anyone who is ex officio

to participate in a selection decision on the award of a public office

refer is - the right, when the public office is awarded, only on grounds

to be disregarded that are in line with Article 33.2 of the Basic Law.

I mean: only if someone else is better." (Page 8)

"Principally, before civil servants are hired, a public

exercise required" (page 8)

(Note: In Saxony-Anhalt: § 9 Paragraph 1 State Civil Service Act LSA)

"Regardless of the extent of the obligation to tender, a best

to perform a selection. This requires both the objective-legal compo-

33 para. 2 GG as well as the subjective-legal candidate

other potential applicants." (Page 9)

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- If a non-performance criterion - such as a political view - becomes

nigen) standard of the selection decision raised, is a violation of the

The principle of selecting the best is objectionable. According to Art. 3 Para. 3 GG,

people are disadvantaged or favored because of their political views

become" (page 9).

"Despite all the peculiarities, the principle of

Best selection unrestricted. Art. 33 GG stipulates that access to all

public offices based on suitability, qualifications and professional performance

has taken place (principle of selection of the best). This principle serves the public

chen interest in the best possible staffing of the public

Service whose level of expertise and legal integrity is guaranteed by the

undiminished application of the best selection principle is guaranteed

should be." (Page 20, 21)

Note: If an obligation to advertise is already in place for political civil servants,
can be demanded, this must apply all the more to "normal" civil servants.

Imprint:

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