

Federal Constitutional Court strengthens data protection

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With its decision today, the Federal Constitutional Court (BVerfG) has declared Section 49 of the Hamburg Law on Data Processing by the Police (HmbPoIDVG) to be null and void. The provision violates the general right of personality in its expression as informational self-determination.

§ 49 PoIDVG permitted the automated evaluation of data available from the Hamburg police for the preventive fight against certain criminal offences. It allowed the automated processing of unlimited amounts of data using legally unlimited methods. No distinction was made between people who gave cause for a measure and the data of others. As a result, there was a risk that numerous legally uninvolved persons would also have been affected by further police measures, e.g. as witnesses or reimbursers: in a report in a police data system.

In the future, it is not about a fundamental ban on the use of evaluation software by the police, but rather about a clear definition of the so-called intervention threshold and thus a limitation of use to specific threats to significant legal interests or impending serious criminal offences. For less reason, such evaluations will only be possible in the future if the evaluation methods are more clearly limited by the legislature and the intervention weight is also lower as a result.

The decision of the BVerfG does not initially have any direct practical effects on the work of the Hamburg police and the HmbBfDI, because automated evaluations of data on the basis of § 49 PoIDVG have not yet been carried out in Hamburg. For this reason, the BVerfG did not order a transitional application of the standard for Hamburg – unlike for Hesse – since this is practically not necessary for Hamburg.

However, the decision has an impact on the potential use of analysis software as part of the federal and state project "Police 2020". In this context, the Bavarian State Criminal Police Office was responsible for awarding the contract to the company Palantir for a new cross-process research and analysis system (VeRa). The Hamburg police have expressed their interest in

VeRA, but have not yet made a decision. For the time being, the legal basis for the use of this software no longer applies.

Thomas Fuchs, who acted as an expert at the hearing of the Federal Constitutional Court in Karlsruhe, welcomes the verdict:

"The court essentially followed our argument that the serious encroachments on fundamental rights possible through new data analysis technologies can only take place on the basis of clear legal foundations. This was not given by the very vague Hamburg law.

In addition, the judgment provides important information on the possibilities and limits when using automated systems. The Hamburg Parliament is now called upon to regulate this in a new way that conforms to fundamental rights. On this occasion, other police intervention standards should also be tightened and brought into line with the current case law of the Federal Constitutional Court".

Press release from the Federal Constitutional Court of February 16, 2023

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