

Previous practice of inventory data disclosure unconstitutional

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BVerfG

With the decision published today, the Federal Constitutional Court (BVerfG) has declared § 113 of the Telecommunications Act (TKG) and various federal specialist laws, which enable so-called inventory data information, to be disproportionate and therefore unconstitutional. After the regulations were put to the test in 2012, they still do not meet the legal requirements and now have to be improved again by the end of 2021 at the latest.

The regulations on which the decision is based enable security authorities such as intelligence services, the police and the Federal Criminal Police Office to obtain information on inventory data such as the name, date of birth and telephone number of a subscriber, but also IP addresses, to investigate criminal offenses from telephone providers. With its decision, the BVerfG confirmed that disclosure of inventory data to make criminal prosecution more effective and to avert danger and to fulfill the tasks of the intelligence services can in principle be compatible with the requirements of the constitution, but emphasized the need for a proportionate design of such regulations. Thus, it is not sufficient if such information is used solely for the performance of the tasks of security authorities, but limiting intervention thresholds are required to justify the associated interventions in the general personality rights of the persons concerned. With regard to the activity of intelligence services aimed at averting danger, this requires the existence of a specific danger in the individual case, and for the activities of the federal police and the Federal Criminal Police Office aimed at criminal prosecution, the existence of an initial suspicion. The more intrusive assignment of dynamic IP addresses is also to be limited to the protection of legal interests with a high priority. If these encroachment thresholds are not reached, the principle of proportionality must be taken into account through increased requirements for the weight of the legal interests to be protected.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "Measures based on the rule of law require filters based on the principle of proportionality to protect the rights and freedoms of those affected. This means that

the practice of collecting inventory data in the dark is not possible. The Federal Constitutional Court has once again done justice to its important role as the guardian of the fundamental rights of citizens in the digital world.”

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