

Romania, Înalta Curte de Casa?ie ?i Justi?ie, (High Court of Cassation and Justice), Case no. 3306/1/2015, Decision no. 37 of 7 December 2015

Deciding bodies and decisions

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Area of law

Data protection -lawfulness of processing

Subject matter

Is the anonymization a sufficient guarantee not to undermine data protection by safeguarding the right of information?

Summary Facts Of The Case

The plaintiff registered a request with the Ministry of National Education, based on Law 544/2001, to disclose the content of the Report of the Review Board of the Prime Minister concerning the "Ovidius" University of Constan?a. The Constan?a Tribunal, as court of first instance, rejected the plaintiff's claim, having found that the defendant had disclosed a summary of the findings of that report and the measures taken. The plaintiff filed a special appeal with the Constan?a Court of Appeal, claiming that Law 544/2001 had been incorrectly interpreted. According to the plaintiff, the name alone is insufficient to identify the persons involved, and therefore Law 677/2001 had not been properly interpreted, since disclosing the names of the persons targeted by the control action would have been in agreement with data protection legislation.

The Constan?a Court of Appeal stressed the novelty of the issue claimed in the special appeal, and forwarded a question to the HCCJ for a preliminary decision on the matter.

The Court made express reference to the necessity to comply with both the CFREU and the ECHR, as well as other instruments of EU or Council of Europe legislation. However, no direct reference to the European texts was made, as well as no mention of CJEU or ECtHR jurisprudence.

Commencing with a review of national jurisprudence on the matter, the HCCJ found that sometimes courts had considered that the names alone are not sufficient to identify persons involved, and therefore are not protected by Law 544/2001. Many other courts, however, found that the names represent personal data, and are subject to protection regardless of their ability to lead to the identification of the persons involved.

The Court found that, with regard to the relationship between legislation on information of public interest and that of personal data protection, while in principle these two categories are independent, they may overlap when information of public interest and personal data are found in

the same document, regardless of their form or medium. In such an overlapping situation, a coherent and uniform approach is necessary, which may provide adequate protection of all the rights involved and, in particular, to proportionality and just balance between the right to be informed and the right to private life, essential in a democratic society. The overlap is possible only if information concerning the personal data of private persons is not susceptible to affect the exercise of a public office; in the contrary, that information becomes of public interest, which would then take prevalence over the right to personal data protection.

Taking into account these elements, and the phrasing of the national texts, the Court found that in the sense of art. 2 (1) c) of Law 544/2001 and art. 3 (1) a) of Law 677/2001, the name and surname of a private person represent information related to personal data, regardless of the fact that, in a given situation, they are sufficient to provide identification of that person.

Moreover, in the case of requests of free access to information of public interest based on Law 544/2001, when that information and personal data are present in the content of the same document, regardless of its form or medium, access to information of public interest is granted only after the anonymisation of information regarding personal data; should personal data be anonymous, any refusal to reveal information of public interest by the requested authority would be unjustified.

Relation to the scope of the Charter

In its ruling, the Court did not make a separate analysis of the provisions of the Charter, despite expressly mentioning the necessity to conform with it. Protection of the names of the persons involved in actions covered by information of public interest was analysed in substance exclusively from the perspective of national law.

Impact on Jurisprudence

This case has been mentioned in Decision no. 1430 of 6 April 2017 as grounds for the HCCJ to reject the claim of a plaintiff looking to reveal the name of a person who interrupted by telephone the intervention of a paramedical crew (the phone number was revealed to the plaintiff, yet not the name of the caller).

It is predictable that the decision (still rather recent) will be mentioned by later jurisprudence concerning requests to reveal the names of persons involved in certain activities, on all levels of national courts.
