

## Portugal, Tribunal Constitucional (Constitutional Court), 241/2002, 29 May 2002

Deciding bodies and decisions

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Area of law

Data protection - right to privacy in working places

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Subject matter

Whether a court for the purpose of administering justice may order the collection of personal information from citizens who are parties to legal proceedings, even if the information collected concerns the personal data and private lives of those citizens.

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### Summary Facts Of The Case

A Portuguese citizen was fired from a company for allegedly divulging information on the internet. Not accepting the dismissal he brought a case against the company in a Labour Court. For the purposes of proof, the Court ordered, based on the Portuguese Code of Civil Procedure, evidence to be collected from telecommunications operators, including information on traffic data and the detailed billing of telephone lines installed at the address of the dismissed citizen.

Article 519 of the Civil Procedure Code, in force at the time of the decision, stipulated that a person who was party to a judicial case should cooperate in the discovery of the truth by providing what was deemed necessary, unless this would cause an intrusion into private or family life.

The interpretation of the Court ordering that cooperation was that the data collected did not call into question the respect of the citizen's private life, thus the Court delivered a judgment on that basis.

In order to reverse the Court's decision, the citizen decided to appeal against that decision, stating that the evidence obtained was null and void, for violation of his right to inviolability of domicile and correspondence, as well as his right to privacy.

The Constitutional Court firstly notes that the Constitution of the Portuguese Republic has always been concerned with the protection of citizens' private lives. This is protected both under Article 26 and in Article 34 of the Constitution. Based on these fundamental rights, the Court points out that the secrecy of telecommunications covers not only the content of such telecommunications, but also the traffic itself.

The Court recognizes that there may be exceptions to secrecy of telecommunications, particularly at the criminal level. In fact, when such a serious crime is committed on a social level, the Constitution considers that a derogation from that secrecy is warranted to guarantee social peace. The question is whether this derogation is also justified when a public interest in the administration of justice is at stake. Here, the Constitutional Court considers denies that understanding,

concluding that it is not therefore lawful to extend that restriction based on this argument. Because of this understanding, and in the light of the present case, the Court considers that the invoice of a telephone sets personal data of the citizen concerned, thus violating his right to protection of privacy and protection of personal data. Therefore, the Court concludes that the interpretation given to article 519 of the Portuguese Civil Procedure Code by the judge of the Labour Court, in the sense that in labour proceedings may be requested, by judicial order, from telecommunication operators, information on traffic data and detailed invoicing of telephone line installed at the address of a party is unconstitutional.

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### Relation to the scope of the Charter

On the date that the decision of the Constitutional Court was rendered, the ECFR, although it had already been adopted, still had no binding force. It is therefore understandable that the Court has not referred to it. Even so, the Court refers to the Directive 46/95/EC on data protection. If the Charter were already binding, then Articles 7 and 8, with respect to private life and personal data, would certainly be referred to.

There is therefore no direct relation of the case to the CFR, and the Court only considers the possible rights breached from a national perspective, although it is influenced by supranational legal instruments, namely the Directive 46/95/EC.

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