

USE-CASES

Case 1

Personal data of the owner of a café shop are sought for and processed by the police after a known terrorist was visiting its place and met another person there. A file is open on his name and he is labelled as potential aid for terrorism. 2 years after he files an access request which is declined by the police based on public safety grounds. (In the meantime, the police arrest the terrorist, but charges are dropped against him because of lack of evidence). After insisting the police reply that it does not process personal data on him as the data it processes is public information.

- Art 2a – Large definition of personal data, issue of publicly available data
- Art 11 on restricting rights of the data subject on public safety grounds (objective and subjective criteria) vs prevention, investigation and prosecution of criminal offences and the execution of criminal penalties
- Art 9b – right of access, issue of “neither confirm nor deny” formula

(GDPR Art 4.1, Art 23d and Art 15)

Case 2

A loan request of a person is declined by a bank. The person files an access request and finds out that the decision was made by a software powered by big data analytics. His request on knowing the reasoning of the analysis the software provided on him is turned down as it would infringe on intellectual property rights and secrecy of business claims the bank.

After asking for the data the bank processes on him, he finds out that data from a third parties were among them including the ones relating to his plan on buying an expensive car.

- Issues of rights vs. interests (balancing vs integrating)
- Art 9c – right to obtain knowledge of the reasoning underlying data processing (where the results of such processing are applied to him/her)
- Art 5 – legal base for the processing of data (consent, legitimate interest of the data controller – balancing test, performance of a contract – civil law principles, such as cooperation, good faith, etc.)

(GDPR Recital 1,4; ~ Art 13.2.f; Art 6)

Case 3

A religious association publishes financial contributions of its members on its internal portal. Due to a security vulnerability the portal is accessible from the internet and several non-members enter it and download several files, including the ones on financial contributions. One newspaper publishes the list.

- Art 6 – special categories of data (issue of complementary safeguards)
- Art 7 – data security
- Art 7 – data breach notification
- Nuances with the GDPR (processing of sensitive data and data breach notification)
- Guidelines on safeguarding privacy in the media (<https://rm.coe.int/prems-guidelines-on-safeguarding-privacy-in-the-media-2018-/168090289b>)

(GDPR Art 9, Art 32-34)

Case 4

A local government puts in place a new electronic system to optimise the allocation of social allowances. Because of including data on beneficiaries' addresses combined with ethnic origins it is found that inhabitants of one low-income district of the town would receive far less than previously according to the system's predilection.

- Art 10 – privacy impact assessment, privacy-by-design, privacy-by-default principles
- Guidelines on Artificial Intelligence and data protection (<https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8>), (dedicated recommendations to legislators, policy makers)

(GDPR Art 35, 25)

Case 5

One company in the EU decides to outsource some of its HR services. For this, it contracts a data processor in a country which is party to Convention 108.

Next, it would like to purchase a new document management system which uses a cloud-based technology.

- Art 14 – transborder flow of personal data
- Cloud Services (data controller, data processors, art 10 – accountability principle - to be able to demonstrate that they took all appropriate measure to comply, art 14 – transborder flow of data)

(GDPR Chapter 5, art 24)

Case 6

A doctor informs health-care administration and the patient's employer that he/she is infected with Covid-19.

- Art 5 – legal base for the processing of personal data (law, legitimate interest of the controller)
- Art 6 – processing special categories of data

- [Recommendation CM/Rec\(2015\)5 of the Committee of Ministers to member States on the processing of personal data in the context of employment](#) (art 9 – including processing of sensitive data for only a limited number of specific purposes) (Barbulescu v. Romania)
- [Joint Statement on the right to data protection in the context of the COVID-19 pandemic by the Chair of the Committee of Convention 108 and the Data Protection Commissioner of the Council of Europe](#) (Part on “Data processing by employers”)

(GDPR Art 6, Art 9)