

Joined Cases C-293/12 and C- 594/12 Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others [2014]

Facts: Irish law implemented Directive 2006/24/EC concerning the retention of data relating to electronic communications, obliging Member States to retain data relating, among other things, to data necessary to trace and identify the source of communication, data necessary to identify the destination of a communication, data necessary to identify the type of communication, and data necessary to identify the location of mobile communication equipment. The High Court referred a question to the Court asking whether the Directive violated Art. 5(4) TFEU requiring proportionality as well as the right to privacy, the right to protection of personal data, and the right to freedom of expression, afforded by Arts. 7, 8, and 11 of the Charter of Fundamental Rights respectively.

Held: By adopting Directive 2006/24 the EU legislature exceeded the limits on it imposed by the principle of proportionality in light of Arts. 7, 8, and 52(1) of the Charter. To establish the existence of an interference with the right to privacy, it was not necessary for the information to be sensitive or for the individuals to have been inconvenienced in any way. The obligation to retain data relating to a person's private life constituted an interference with the right to privacy guaranteed by Art. 7 of the Charter. The access of competent national authorities to the data constituted a further violation with the rights afforded by the Charter. Moreover, the processing of personal data constitutes an interference with the rights under Art. 8 of the Charter. Article 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms laid down by the Charter must be provided for by law, respect their essence and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. While the retention of data allowed authorities to have access pursued a genuine objective of general interest, it was disproportionate as it covered all people using electronic communications without exception, which included people required to follow professional secrecy obligations.

Where interferences with fundamental rights were at stake, the EU legislature's discretion may prove limited, depending on a number of factors, including the area concerned, the nature of the right at issue guaranteed by the Charter, the nature and seriousness of the interference and the object pursued by the interference. On the facts, the protection of personal data and the respect of private life were

so important that the EU legislature's discretion had been reduced, which required therefore a stringent review. The Directive was therefore annulled.

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