

Public disclosure of data regarding persons involved in criminal activities

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Legal Framework

- Articles 8, 10 ECHR
- Convention 108/1981 CoE
- Articles 7, 8 Charter of Fundamental Rights
- Directive 95/46/EC
- Since 2001, a specific constitutional provision (article 9A for the protection of personal data) has been added to the general constitutional provisions for the protection of human rights. Hellenic DPA: constitutionally consolidated supervisory body of implementation of data protection legislation
- Law 2472/1997 for personal data protection



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Legal Framework (2)

- ❑ Law 2472/1997 for personal data protection
 - processing of personal data for journalistic purposes - mass media treatment (article 9 of Directive 95/46/EC)
 - ◆ Mass media and privacy: Balancing between respect of private life and protection of personal data on the one hand and freedom of expression and information on the other. Mass media: duty to inform the public on issues of public interest, public: right of information about the above-mentioned issues
 - special provision in law 2472/1997 (as amended by law 3625/2007) concerning processing of personal data by the public prosecution authorities
- ❑ no DPA's guideline (yet) concerning publication of personal data by mass media (only decisions by case)
- ❑ DPA's opinion 67/2002 concerning disclosure of personal data in Police Press Releases



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The DPA's approach to public disclosure of data of persons involved in criminal activities

- ❑ Opinion 67/2002 - disclosure of personal data in Police Press Releases
 - controller: Police
 - sensitive personal data according to art. 2 item b of Law 2472/1997: criminal prosecutions or convictions (i.e. name of wanted or arrested persons)
 - two cases:
 - ◆ public disclosure of wanted persons (names, photos etc.) allegedly involved in criminal activities in order to be arrested
 - ◆ public disclosure of arrested persons

The DPA's approach to public disclosure of data of persons involved in criminal activities (2)

- Principle of processing personal data only for specific, explicit and legitimate purposes
- Processing of personal data without consent only as an exception based on specific legal grounds (article 5 par. 2 sections d and/or e and article 7 par. 2 section e case bb of Law 2472/1997)
- Legitimate purpose of Police/Public Authorities filing system is to meet the needs of criminal or correctional policy, pertaining to the detection of offences, criminal convictions or security measures
- Lawful processing only in view of and within the above-mentioned legitimate purpose of the file (for crime verification or for the implementation of a judicial decision imposing a sanction or security measures)
- Unlawful processing exceeding the purpose of the file

The DPA's approach to public disclosure of data of persons involved in criminal activities (3)

- View of Hellenic DPA:
 - ◆ Lawful the press release/disclosure of an arrest without a reference to the name
 - ◆ Generally, in the case of an arrest made, reference to the name of the suspect is prohibited. Exception: disclosure allowed, if there are specific reasons for the public disclosure in order to meet criminal policy, i.e. to find and arrest the accessory of the arrested person. Nevertheless, the word “guilty” should be avoided in view of the principle of the presumption of innocence
 - ◆ Journalistic research on the person arrested and the relevant press release is governed by the constitutional provision of the freedom of press and it is irrelevant to the aforementioned rationale



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New Provision concerning public disclosure of criminal charges or convictions with the order of the Public Prosecutor's Office

- Necessity for public disclosure of the conviction of a discharged prisoner who raped a minor and is recidivist
- DPA was not asked to deliver an opinion with respect to the suggested amendment
- Moved amendment: exemption from the definition of sensitive personal data of criminal prosecutions or convictions. Withdrawn motion due to possible violation of Convention 108/1981 CoE
- Article 2 b of Law 2472/1997, as amended by Law 3625/2007: public disclosure of criminal charges or convictions (which remain sensitive data) is allowed with the order of the Public Prosecutor's Office for offences punished as felonies or misdemeanors with intent



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New Provision concerning public disclosure of criminal charges or convictions with the order of the Public Prosecutor's Office (2)

- Interference of Public Authorities in data protection and privacy
- Competence of the Public Prosecutor to order the public disclosure of criminal charges or convictions
- Public disclosure of the above-mentioned sensitive data is, according to the provision, lawful for the purpose of the protection of the community, of minors and of vulnerable or disadvantaged groups, and the facilitation of the punishment of those offences by the State



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New Provision concerning public disclosure of criminal charges or convictions with the order of the Public Prosecutor's Office (3)

➤ Arising issues:

- ◆ The purpose of public disclosure of criminal charges or convictions. Protection of the community/ vulnerable groups, facilitation of the punishment of the offences: alternative or cumulative purposes? Both purposes can be satisfied in the case of wanted offenders. What about the case of the convicted but discharged persons?
- ◆ Is the public disclosure of criminal charges or convictions proportionate to the purpose aimed and in all cases justified and lawful? In which offences and to what extent can the public disclosure be allowed? Should an ad hoc judgment be made according to the principle of necessity and proportionality?

New Provision concerning public disclosure of criminal charges or convictions with the order of the Public Prosecutor's Office (4)

- ◆ Other parameters: consider the principle of the presumption of innocence, the public disclosure of served sentences as an additional penalty
 - ◆ Competence of Public Prosecutor. No legal remedies against the order of the competent Public Prosecutor
 - ◆ Restriction of competence of the DPA? Provision possibly against article 9A of Constitution
- Final conclusions:
- ◆ Application of criteria for lawful processing: principles of necessity and proportionality
 - ◆ Public Prosecutor could ask for the opinion of the DPA

For discussion

- Is there any national legislation with regard to this issue in your respective countries? Please, let us know your experience with this and how you have dealt with it.



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Thank you for your attention!

Contact Data

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