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Judgment of the Court in Case C-548/21 | Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)

Access by the police to data contained in a mobile telephone is not necessarily limited to the fight against serious crime

It presupposes, however, prior authorisation by a court or an independent authority and must be proportionate

Access by the police, in the context of a criminal investigation, to the personal data stored on a mobile telephone may constitute a serious, or even particularly serious, interference with the fundamental rights of the data subject. However, it is not necessarily limited to the fight against serious crime. The national legislature must define the factors to be taken into account for such access, such as the nature or categories of the offences concerned. In order to ensure compliance with the principle of proportionality in each specific case, the examination of which involves weighing all the relevant factors of the individual case, that access must, moreover, be subject to prior authorisation by a court or an independent authority, save in duly substantiated cases of urgency. The data subject must be informed of the grounds for the authorisation as soon as the provision of this information is no longer likely to jeopardise the investigations.

The Austrian police seized the mobile telephone of the recipient of a parcel following the finding, during a narcotics check, that that package contained 85 grams of cannabis. Next, it attempted in vain to unlock the mobile telephone in order to access the data contained therein. It did not have an authorisation from the Public Prosecutor's Office or a court, did not document its attempt to unlock the telephone and did not inform the person concerned thereof.

That person challenged the seizure of his mobile telephone before an Austrian court. It is only in the context of those proceedings that he became aware of the attempts to unlock that telephone. The Austrian court asks the Court of Justice whether the Austrian legislation which, in its view, ¹ allows the police to act in this way is compatible with EU law. ² It observes that the offence of which the person concerned is accused is punishable by a maximum of one year's imprisonment and therefore constitutes only a minor offence.

The Court of Justice states, first of all, that, contrary to what certain governments have argued, the relevant EU legislation applies not only in the event of successful access to personal data contained in a mobile telephone, but also to an attempt to access those data.

Next, it finds that **access to all the data contained in a mobile telephone may constitute a serious, or even particularly serious, interference with the fundamental rights of the data subject**. Indeed, those data, which may include messages, photos and internet browsing history, may, depending on the circumstances, allow very precise conclusions to be drawn concerning that data subject's private life. In addition, they may include particularly sensitive data.

The seriousness of the offence under investigation is one of the main parameters when examining the proportionality of such serious interference. **However, to consider that only the fight against serious crime is**

capable of justifying access to data contained in a mobile telephone would unduly limit the investigative powers of the competent authorities. This would result in an increased risk of impunity for criminal offences in general and therefore in a risk for the creation of an area of freedom, security and justice in the European Union. That being said, such an interference with private life and data protection must be provided for by law, which implies **that the national legislature must define with sufficient precision** the factors to be taken into account, in particular **the nature or categories of offences concerned.**

Such access must, moreover, be subject to a prior review carried out either by a court or an independent administrative authority, save in duly substantiated cases of urgency.³ **That review must strike a fair balance between, on the one hand, the legitimate interests relating to the needs of the investigation in the context of combating crime and, on the other, the fundamental rights** to private life and the protection of personal data.

Last, **the data subject must be informed of the grounds on which the authorisation to access his or her data is based, as soon as the communication of that information is no longer liable to jeopardise the investigations.**⁴

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ It should be noted that the Austrian Government maintained before the Court of Justice that, under Austrian law, an order of the Public Prosecutor's Office is required to seize a mobile telephone or to attempt to access data in it. In a preliminary ruling procedure, the Court is, in principle, required to take as a basis the national regulatory framework as presented by the referring court. The same is also true of the factual background.

² [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

³ In that case, the review must be carried out promptly.

⁴ In the present case, the data subject knew that his mobile telephone had been seized when the Austrian police authorities attempted in vain to unlock it in order to access the data contained therein. Under those circumstances, to inform him that those authorities were going to attempt to access that data does not appear to be liable to jeopardise the investigations; accordingly, he should have been informed thereof beforehand.