

Commonly applied worldwide method of data collection that could be useful in combating serious crimes, especially espionage and terrorism, is mechanism so-called retention of telecommunications data. The way it works is that: telecommunications services entrepreneurs are obliged to store call data records, i.e. data regarding who communicated with whom, at what time was the connection undertaken, how long did it last, and even where interlocutors were to be found. This data is to be stored mostly for 2 years. It can be accessed by state organs, especially investigative authorities and secret services, as well as by courts and prosecution, with the aim of identifying a criminal or discovering crime evidence, or preventing crime.

Data retention (collection) and giving access to them, and later analyzing by state organs this kind of information on telecommunications data, undoubtedly interferes in constitutionally protected freedom of communications and privacy.

Provisions regulating telecommunications data retention were adopted both at European Union level as well as by legal systems of member states. Those regulations from the beginning were questioned on the grounds of their constitutionality.

Within years 2008-2014 constitutional courts of Austria, Bulgaria, Cyprus, Czech Republic, Ireland, Germany, Poland, Romania, Slovenia and Slovakia declared that domestic provisions regulating telecommunications data retention and granting access to them are unconstitutional. In 2014 EU directive that obliged member states to introduce data retention was declared invalid by the Court of Justice of European Union on the same grounds.

Primary effect of this project is to explore impact of jurisprudence of European constitutional courts, that dealt with constitutional evaluation of data retention provisions legal and of Court of Justice of European Union on understanding freedom of communications in the digital era.

Research problem of this project is to obtain an answer to the question whether understanding of freedom of communications, guaranteed by constitutions of EU member states and EU Charter of Fundamental Rights that was developed in the era of analogous communications (in the past), will continue in the era of electronic communications and developing of mass surveillance.

Designed research presents a unique opportunity to explain whether a universal understanding of freedom of communications and conditions to interfere with such freedom has been developed in Europe. Uniqueness of this research results arises from the fact that the problem of constitutionality and validity of legal provisions concerning telecommunications data retention and its impact on freedom of communication and privacy – has been simultaneously looked into by constitutional courts of EU member states as well as by the Court of Justice of European Union. This will enable establishing whether and what are possible concurrences and discrepancies between understanding of the same problem in different European legal systems.

Firstly, this will enable to understand impact of technological changes on law-making as well as interpretation (and reinterpretation) of constitutional provisions on human rights and freedoms. Secondly, knowledge will be gained about factors that are being taken into account by European constitutional courts while ruling on such a sensitive matter as conflict between freedom and security. Thirdly, better understanding will be gained about effects of judgments on unconstitutionality/invalidity provisions that regulate data retention for legal systems of EU member states as well as EU itself. Fourthly, this project will enable to establish mutual interplay of jurisprudence of constitutional courts in the EU on the basis of a single, common issue.