



Data Protection

Audiotranscript

Injunction, remediation of consequences and blocking

[Danielle Kaufmann]: When a public body processes data about someone, the data subject has legal rights vis-à-vis this body: namely, the right to access their own personal data and the right to have inaccurate personal data corrected.

However, the data subject also has other rights, namely when data about them have been processed unlawfully. In these kinds of cases, they can demand that this unlawful processing be discontinued; that is, that the public body cease processing the data unlawfully. The data subject can also demand that the consequences of the unlawful processing be remediated.

But when is processing personal data unlawful? Processing personal data is unlawful in cases where there is no legal basis for doing so or if the processing is disproportionate. For example, this may be the case if more personal data are being processed than are necessary to perform the statutory task. In this kind of case, the data subject can demand that the public body desist from the unlawful processing of the personal data.

If the public body comes to the conclusion that its processing of the personal data in question is lawful, it needs to prove that this is the case. Equally, it needs to prove that the processing is proportionate.

If, however, the processing is unlawful or disproportionate, the data subject can demand that the consequences of the unlawful processing be remediated. Let's look at an example: The public body has passed the unlawfully processed personal data on to other public bodies and private individuals. It now has to notify these data recipients that the data transmitted to them have been processed unlawfully and that the recipients need to destroy them.

Under the amended IDG of 2022, the data subject can also demand that the disclosure of unlawfully processed data to third parties be blocked. It may be that the public body is as yet unable to delete the unlawfully processed data. This can, for example, be due to legal retention periods or to the fact that it must be proved that the public body has processed these data unlawfully. In this kind of case, the blocking of disclosure prevents the unlawfully processed data from being disseminated.

In cases where neither an injunction request nor a request for remediation of consequences is possible, the data subject can still demand that the public body make a note of the unlawful processing of their personal data. Such a statement of illegality can, for example, be used as evidence in a government liability procedure.