

DIGITAL RIGHTS IRELAND

*Court of Justice of the European Union
Joined Cases C-293/12 and C-594/12,
Judgment of the Court of 4 April 2014*

Premise

«These requests for a preliminary ruling concern the validity of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

The request made by the High Court (Case C-293/12) concerns proceedings between (i) Digital Rights Ireland Ltd. ('Digital Rights') and (ii) the Minister for Communications, Marine and Natural Resources, the Minister for Justice, Equality and Law Reform, the Commissioner of the Garda Síochána, Ireland and the Attorney General, regarding the legality of national legislative and administrative measures concerning the retention of data relating to electronic communications.

The request made by the *Verfassungsgerichtshof* (Constitutional Court) (Case C-594/12) concerns constitutional actions brought before that court by the *Kärntner Landesregierung* (Government of the Province of Carinthia) and by Mr Seitlinger, Mr Tschohl and 11 128 other applicants regarding the compatibility with the Federal Constitutional Law (*Bundes-Verfassungsgesetz*) of the law transposing Directive 2006/24 into Austrian national law»

Cases C-293/12

«On 11 August 2006, Digital Rights brought an action before the High Court in which it claimed that it owned a mobile phone which had been registered on 3 June 2006 and that it had used that mobile phone since that date. It challenged the legality of national legislative and administrative measures concerning the retention of data relating to electronic communications and asked the national court, in particular, to declare the invalidity of Directive 2006/24 and of Part 7 of the Criminal Justice (Terrorist Offences) Act 2005, which requires telephone communications service providers to retain traffic and location data relating to those providers for a period specified by law in order to prevent, detect, investigate and prosecute crime and safeguard the security of the State.»

Case C-594/12

«The origin of the request for a preliminary ruling in Case C-594/12 lies in several actions brought before the *Verfassungsgerichtshof* by the *Kärntner Landesregierung* and by Mr Seitlinger, Mr Tschohl and 11 128 other applicants, respectively, seeking the annulment of Paragraph 102a of the 2003 Law on

telecommunications (*Telekommunikationsgesetz* 2003), which was inserted into that 2003 Law by the federal law amending it (*Bundesgesetz, mit dem das Telekommunikationsgesetz 2003 — TKG 2003 geändert wird*, BGBl I, 27/2011) for the purpose of transposing Directive 2006/24 into Austrian national law. They take the view, inter alia, that Article 102a of the *Telekommunikationsgesetz* 2003 infringes the fundamental right of individuals to the protection of their data.

The *Verfassungsgerichtshof* wonders, in particular, whether Directive 2006/24 is compatible with the Charter in so far as it allows the storing of many types of data in relation to an unlimited number of persons for a long time. The *Verfassungsgerichtshof* takes the view that the retention of data affects almost exclusively persons whose conduct in no way justifies the retention of data relating to them. Those persons are exposed to a greater risk that authorities will investigate the data relating to them, become acquainted with the content of those data, find out about their private lives and use those data for multiple purposes, having regard in particular to the unquantifiable number of persons having access to the data for a minimum period of six months. According to the referring court, there are doubts as to whether that directive is able to achieve the objectives which it pursues and as to the proportionality of the interference with the fundamental rights concerned»

Some of the questions addressed to the Court

«Is Directive 2006/24 compatible with the right of citizens to move and reside freely within the territory of the Member States laid down in Article 21 TFEU?

Is Directive 2006/24 compatible with the right to privacy laid down in Article 7 of the [Charter of Fundamental Rights of the European Union (“the Charter”)] and Article 8 ECHR?

Is Directive 2006/24 compatible with the right to the protection of personal data laid down in Article 8 of the Charter?

Is Directive 2006/24 compatible with the right to freedom of expression laid down in Article 11 of the Charter and Article 10 ECHR?

Is Directive 2006/24 compatible with the right to [g]ood [a]dministration laid down in Article 41 of the Charter?»