

# LAW & DATA

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*University of Padova*

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# History - **RIGHT TO PRIVACY**

## ➤ **UN Convention on the Rights of the Child (1989)**

### **Article 16**

**No child** shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

**The child** has the right to the protection of the law against such interference or attacks.

# History - **RIGHT TO PRIVACY**

## ➤ **European Convention of Human Rights (1950)**

### **Article 8 – Right to respect for private and family life**

*1. Everyone has the right to respect for his private and family private life, his home and his correspondence.*

*2. **There shall be no interference by a public authority** with the exercise of this right **except** such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

# RIGHT TO PRIVACY

➤ Nice Charter (2009) → EU Charter of Fundamental Rights (2009)

## Article 7 – Respect for private and family life

1. *Everyone has the right to respect for his or her private and family life, home and communications.*

2. **There shall be no interference by a *public authority* with the exercise of this right *except* such as is in accordance with the law and is **necessary** in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

# RIGHT TO PRIVACY → PERSONAL DATA PROTECTION

➤ **Nice Charter (2009) → EU Charter of Fundamental Rights (2009)**  
**(EU primary law)**

## **Article 8 – Protection of personal data**

1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *Such data must be processed fairly for **specified purposes** and on the basis of the **consent** of the person concerned or some **other legitimate basis** laid down by law. Everyone has the right of **access** to data which has been collected concerning him or her, and the right to have it **rectified**.*
3. *Compliance with these rules shall be subject to control by an **independent authority**.*

# RIGHT TO PRIVACY → PERSONAL DATA PROTECTION

➤ Nice Charter (2009) → EU Charter of Fundamental Rights (2009)

## Article 52 – Scope and interpretation

1. **Any limitation** on the exercise of the rights and freedoms recognised by this Charter must be **provided for by law** and respect the essence of those rights and freedoms. Subject to the principle of **proportionality**, limitations may be made only if they are **necessary** and genuinely meet objectives of **general interest** recognised by the Union or the **need to protect the rights and freedoms of others**.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

(...)

# RIGHT TO PERSONAL DATA PROTECTION

- **OECD Privacy Guidelines (1980)**  
Soft law universal standards
  - ✓ Collection Limitation Principle
  - ✓ Data Quality Principle
  - ✓ Purpose Specification Principle
  - ✓ Use Limitation Principle
  - ✓ Security Safeguards Principle
  - ✓ Openness Principle
  - ✓ Individual Participation Principle
  - ✓ Accountability Principle

# RIGHT TO PERSONAL DATA PROTECTION

- **CoE Convention 108** (28 January 1981 – Data Privacy Day)  
*Convention for the protection of individuals with regard to automated processing of personal data*

first legally binding instrument  
at the international level  
on data protection

## UNIVERSAL STANDARDS

- **CoE Convention 108+** (adopted on 18 May 2018)



# RIGHT TO PERSONAL DATA PROTECTION

## ➤ CoE Convention 108

### **Main principles:**

- Protection of the individuals against PD abuses
- Regulation of transborder data flows
- Fair and lawful collection
- Legitimate purposes
- Processing for the same purposes for which data were collected
- Storage duration (no longer than necessary)
- Quality of data: adequate, relevant not excessive (proportionality)
- Sensitive data (special categories of data)
- Right to know information stored and to have it rectified
- Possible overriding interests for different processing activities

# Applicable EU Legislation (Primary law)

## RIGHT TO PERSONAL DATA PROTECTION

### ➤ TEU

#### Article 39

*In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the **Council** shall adopt a **decision laying down the rules** relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which **fall within the scope of this Chapter**, and the rules relating to the **free movement** of such data. Compliance with these rules shall be subject to the control of independent authorities.*