



## Privacy in Bavaria

News for the Bavarian public sector

No. 9\_2023 | 30 November 2023

**EDPS, Study on the Essence of fundamental rights to privacy and to the protection of personal data** • In particular, the case law of the European Court of Human Rights (English version only).

[https://edps.europa.eu/node/12792\\_de](https://edps.europa.eu/node/12792_de)

**European Court of Justice, judgement of 9 October 2023, C-319/22** • Assignability to an identified or identifiable person as a prerequisite constituting personal data (here: vehicle identification number – VIN; continuation of CJEU, judgement of 19 October 2016, C-582/14 – Breyer); obligations of the manufacturer to provide, inter alia, the VIN to independent economic operators pursuant to Art. 61 (1) Regulation (EU) 2018/858 as a legal obligation within the meaning of Art. 6 (1) (1) (c) GDPR.

<https://curia.europa.eu>

**Federal Court of Justice, order of 26 September 2023, VI ZR 97/22** • Referral to the European Court of Justice regarding the existence of a preventive right to injunctive relief under EU law for the data subject whose personal data was unlawfully disclosed by forwarding, or the possibility of recourse to national law, and on the concept of non-material damage under Art. 82 (1) GDPR.

<https://www.bundesgerichtshof.de>

**Federal Fiscal Court, judgement of 5 September 2023, IX R 32/21** • Admissibility of the processing of personal data in taxation proceedings pursuant to section 29b Fiscal Code [Abgabenordnung].

<https://www.bundesfinanzhof.de>

**Cologne Higher Regional, judgement of 10 August 2023, 15 U 184/22** • Art. 15 GDPR: Sufficient determination of an action for disclosure. | <https://www.justiz.nrw/BS/nrwe2/index.php>

**Hamm Higher Regional Court, judgement of 26 April 2023, 8 U 94/22** • Admissibility under data protection law of an association member's claim to transmission of a membership list including e-mail addresses on the basis of Art. 6 (1) 1 (b) GDPR (right arising from the membership relationship as "fulfilment of a contract"). | <https://www.justiz.nrw/BS/nrwe2/index.php>

**Baden-Wuerttemberg Higher Labour Court, judgement of 27 January 2023, 12 Sa 56/21** • Employer access to partly privately used email and WhatsApp accounts of the employees is restricted under labour law in accordance with Art. 1, 2 (1) Basic Law [Grundgesetz], section 26 Federal Data Protection Act [Bundesdatenschutzgesetz]. | <https://landesarbeitsgericht-baden-wuerttemberg.justiz-bw.de>

**Berlin-Brandenburg Higher Labour Court, judgement of 30 March 2023, 5 Sa 1046/22** • On the applicability of the right of access under Art. 15 GDPR to prove harassment; balancing of interests pursuant to sections 34 (1), 29 (1) 2 Federal Data Protection Act. | <https://gesetze.berlin.de>

**Datenschutz und Datensicherheit, issue 9/2023, focus topic "Data protection in times of crisis" [„Datenschutz in Krisenzeiten“]** • Articles inter alia on KRITIS (critical infrastructures) regulations (p. 541 ff.), on data protection for live tracking & GPS tracking of employees (p. 548 ff.) and on the right to erasure (p. 560 ff.).

**Recht der Datenverarbeitung, issue 5/2023, Articles on "Artificial Intelligence" [„Künstliche Intelligenz“]** • Essays amongst others on legal bases under the GDPR for the training of artificial intelligence systems (p. 273 ff.), on artificial intelligence in companies and data protection (p. 281 ff.) and on ChatGPT & Co. in the criminal justice system (p. 300 ff.).

**The Bavarian Data Protection Commissioner**

80538 München | Wagnmüllerstraße 18 | Phone: +49 89 21 26 72-0

[poststelle@datenschutz-bayern.de](mailto:poststelle@datenschutz-bayern.de) | <https://www.datenschutz-bayern.de>