



Privacy in Bavaria

News for the Bavarian public sector

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European Court of Justice, judgement of 21 December 2023, C-667/21 • Referral from a claim for damages: Application of Art. 9 GDPR when Medical Review Boards of the Statutory Health Insurance Funds assess their own employees; relationship between Art. 9 and Art. 6 GDPR; Art. 82 (1) GDPR as a fault-based claim for damages with reversal of the burden of proof; limitation of monetary compensation by compensatory interest. | <https://curia.europa.eu>

European Court of Justice, judgement of 14 December 2023, C-340/21 • Referral from a claim for damages: Disclosure of personal data as a result of a cyber-attack does not in itself prove that the controller has failed to take the “appropriate measures” required by Art. 24 and Art. 32 GDPR; individual case analysis required, whereby the burden of proof for the suitability of the measures lies with the controller; requirements for proving excluded fault; non-material damage due to “fear of abuse” after cyber attack.

European Court of Justice, judgement of 14 December 2023, C-456/22 • Referral from a claim for damages: Minor damage is not exempt from compensation (no “de minimis threshold”), but must be proven by the data subject (continuation of European Court of Justice, judgement of 4 May 2023, C-300/21).

European Court of Justice, judgement of 7 December 2023, C-634/21 • On the concept of automated decision-making in individual cases (Art. 22 [1] GDPR) in connection with scoring by credit information agencies.

European Court of Justice, judgement of 7 December 2023, C-26/22 and C-64/22 • Effect of a short deletion period for personal data in a public register on further processing of this data by private parties in accordance with Art. 6 (1) 1 (f) GDPR (here: further processing of information on the granting of residual debt discharge by a credit information agency); on the judicial review of legally binding decisions of data protection supervisory authorities.

European Court of Justice, judgement of 5 December 2023, C-683/21 • Requirements for joint control; use of non-anonymised and non-fictitious personal data for IT tests as processing; administrative fines against a controller only in cases of intent or negligence, but also for personal data processing operations performed by a processor attributable to the controller.

European Court of Justice, judgement of 5 December 2023, C-807/21 • Imposing administrative fines on legal persons that are undertakings (Art. 102 f. TFEU): infringement must not have previously been attributed to a specific board member or employee.

Federal Court of Justice, order of 21 September 2023, V ZB 17/22 • On the application of Art. 17 GDPR in land register law. | <https://www.bundesgerichtshof.de>

Munich Administrative Court, order of 22 November 2023, M 7 E 23.5047 • Art. 4 (1) Bavarian Data Protection Act [Bayerisches Datenschutzgesetz] does not permit the aerial survey of properties with a photo drone in order to obtain information for the calculation of fees and charges in connection with a public drainage system. | <https://www.gesetze-bayern.de>

Federal Administrative Court (Austria), decision of 28 September 2023, W256 2227693-1 • Requirements for consent for profiling; inadmissibility of a subsequent change to another legal basis if consent is invalid. | <https://www.ris.bka.gv.at/>

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