

Fordham International Law Journal

Volume 1, Issue 1

1977

Article 4

Emerging Data Protection In Europe; Community Law Through the Cases

Albert J. Kostelny, Jr.*

*

Copyright ©1977 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

EMERGING DATA PROTECTION IN EUROPE

(By: Frits W. Hondius, North-Holland Publishing Co.--

Amsterdam: Oxford, American Elsevier Publishing Co., Inc., New York, 1975.)

The vastly increased capacities for the retention and dissemination of data on individuals created by the continuing development of computer technology has brought into sharper focus the conflict between the growing needs for information, in both the public and private sectors, of advanced industrial societies and their citizens' rights to personal privacy and individual liberty. In the United States, this concern has been articulated in several studies, most notably Alan Westin's Privacy and Freedom (1967). In Europe, this same concern has prompted a series of national White Papers, including the Swedish Data och integritet (Data and Privacy) (1972) and the British Younger Commission report (1972). Mr. Hondius has examined the most valuable expressions of both public and private opinion in Europe on these issues and has shaped them into a concise analysis of the evolving law of personal data privacy in Europe.

Mr. Hondius provides both a synopsis of national data privacy legislation and a comparative study of the alternative concepts and methods used to approach the regulation of "informatics" in Europe. Of particular interest to the student of data privacy protection law

is the author's discussion of the evolving concept in Germany of "free data", or data which is considered to have virtually no privacy content and which can therefore be freely disseminated. The concept is attempts to classify the types of information which may be contained in personal data files according to their sensitivity to the data subject in order to reconcile the social need for a free flow of information with the individual's right to privacy.

The transnational aspect of data privacy protection is also explored by Mr. Hondius. He is doubtful about the prospects for any general international convention for the protection of personal data privacy for two reasons. The socialist States have so far taken the position that the problem of data privacy protection is one unique to the advanced capitalist States and thus is not a suitable subject for a general international convention. More importantly, the United Nation's pronouncements on human rights have tended to define privacy rights as procedural, and not substantive, ones. However, Mr. Hondius is more hopeful about the possibility of a regional European convention becoming a reality. The member States of the Council of Europe have already agreed to joint declarations of principle for personal data privacy protection covering both the public and private sector's data banks Council of Europe Resolutions (73)22[Private Sector] and (74)29[Public Sector] . Given the increased mobility both of persons and of personal data within Western Europe, Mr. Hondius feels that such a convention is necessary to effect meaningful protection of Europeans' rights to personal data privacy.

Emerging Data Protection in Europe supplies the student with both a review and a projection of the development of data privacy protection law in Europe. For those Americans concerned with the growing threat to personal privacy posed by the unregulated growth of computerized data banks, it provides a clear analysis, supported by a wealth of concrete examples, of how other advanced industrial societies are balancing the social need for information with the personal needs for privacy and freedom.

Albert J. Kostelny, Jr.

COMMUNITY LAW THROUGH THE CASES

(By: Neil Elles, Stevens & Sons, London; Matthew Bender, New York, 1973.)

Mr. Elles' work is valuable because it is an English language text which provides a comprehensive overview of the substantive case law of the European Economic Community. Though a wealth of general studies has been published in English on Community law, these works have tended to concentrate on questions of procedural and constitutional law. They have not emphasized the question of what the law of the Community is in the individual substantive areas. Mr. Elles provides lucid analyses of each of the major areas of Community law, e.g., anti-trust.

There are certain limits to Mr. Elles' volume. The most important is simply that of its publication data. The casebook was originally compiled to serve as a primer for British lawyers on the occasion of Britian's accession to the Common Market. Mr. Elles' book thus does not treat the developments involved in the expansion of the Six into the Nine, including the early and substantial contributions made by Britian to the development of Community law. See, Van Duyn v. Home Office (1974)1 C.M.L.R. 347, (1975)1 C.M.L.R. 1.

Another major weakness is that Mr. Elles' text is a casebook in the purest sense. With the exception of very brief notes at the

head of each chapter, the volume is exclusively devoted to the presentation of the facts, the holdings of the courts, and the reasoning behind the decisions in the selected cases. Since most of the cases in *Community Courts* in recent years has turned less on interpretation of the organic treaties and more on analysis of the subsequent legislation and regulations of the Community organs; the virtual absence from Mr. Elles' volume of any direct discussion of existing corpus of Community legislation and regulations serves only to increase the student's difficulty in analyzing the cases. This gap lessens the utility of the casebook to the student of Community law.

As a text for beginning students or as a concise review and summary for more advanced scholars, Community Law Through The Cases is a valuable resource.

Albert J. Kostelny, Jr.

