
A Reflexion on the Conflict between the Right to Private Life versus the Right to Personal Data Protection

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Summary: The article deals with the description of the legal solution of a particular conflict between the right to protection of privacy and the right to personal data protection, which came from the Czech Republic but has an impact on the entire European Union. The regulation from the Czech Republic at the level of the primary and secondary EU law is stated for the purpose of an easier orientation in the issue. The solution, which complies both with the constitution and with the European Union law, with regard to the conflict of fundamental human rights lies both in finding the facts of the case and above all in assessing the extent of the protection by means of the test of proportionality. Both Nejvyšší soud ČR (the Supreme Court of the Czech Republic) and the Court of Justice of EU contributed to solving this conflict of fundamental human rights.

Keywords: right to privacy, personal data protection, The European Court of Human Rights in Strasbourg, Court of Justice of the European Union in Strasbourg, approximation of laws, exercise of exclusively personal or household activities.

1. Introduction

The legal solution of the conflict between the extent of the protection of the right to privacy and the extent of the right to personal data protection had been one of the recurring topics in the Czech Republic since 2008, which undermined the legal status of an individual. However, it was partially solved only in December 2014.

The Czech Constitution¹ stipulates in Article 1 par. 1, 2 that the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens, and

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¹ The Constitutional Law No 1/1993 Coll., The Constitution of the Czech Republic as amended.

that it shall observe its obligations resulting from international law. From the perspective of the so-called legal licence, it includes the premise of the Czech Constitution that each citizen may do whatever is not forbidden by law, and nobody may be forced to do what the law does not impose.

Protection of individual human rights is not included in the Constitution of the Czech Republic², but in the Charter of Fundamental Rights and Basic Freedoms³, which is part of the so-called constitutional order⁴. From the normative perspective, the Charter is not a direct part of the text of the Constitution of the Czech Republic, but a separate legal regulation, which has a character of a human rights catalogue. Its creation was inspired by the European Convention on Human Rights of the European Council in 1990 – 1991⁵. The constitutional protection of personal integrity and privacy is stipulated in Article 7, par. 1 of the Charter. The constitutional imperative prohibiting unauthorised collection, publishing or another type of misuse of personal data⁶ is indicated in Article 10, par. 3 of the Charter. Like Poland, the Czech Republic has been a member of the European Union since the 1st May 2004 and its legal order includes the EU law. Since the passing of the amendment contract, i.e. The Treaty of Lisbon⁷ in 2009, the EU Charter of Fundamental Rights⁸ is a part of the primary law of the European Union. The article 7 of the Charter of Fundamental Rights (hereinafter referred to as “the Charter”) stipulates that everyone has the right to respect for his private and family life, housing and

² GERLOCH, A. – KYSELA, J. (eds.) *20 let Ústavy České Republiky. Ohlédnutí zpět a pohled vpřed*. Plzeň 2013, page 43.

³ The resolution of the presidium of the Czech National Board no. 2/1993 Coll., about declaring the Charter of Fundamental Rights and Basic Freedoms part of the constitutional order of the Czech Republic.

⁴ The constitutional order is defined in the Article 112 Constitution of the Czech Republic. It has the character of an open catalogue of supreme laws of the constitutional legal force.

⁵ The European Court of Human Rights decided in a case with similar facts – the case *Peck v. The United Kingdom*, complaint no. 44647/98, point 57.

⁶ BOBEK, M. – KMEC, J. – KOSAŘ, D. – KRATOCHVÍL, J. *Evropská úmluva o lidských právech*. Commentary Prague 2012, or BOBEK, M. – KMEC, J. – KOSAŘ, D. – KRATOCHVÍL, J. *Dvacet let Evropské úmluvy v České republice a na Slovensku*. Prague 2013, page 26.

⁷ GERLOCH, A. – WINTR, J. (eds.) *Lisabonská smlouva a ústavní pořádek*. Plzeň 2009, page 16. or SYLLOVÁ, Jindřiška; PITROVÁ, Lenka; PALDUSOVÁ, Helena; a kolektiv. *Lisabonská smlouva. Komentář*. 1st edition, Prague: C. H. Beck, 2010, ISBN 978–80–7400–339–4

⁸ The protocol no. 30 about exercising the Charter of Fundamental Rights of the European Union in Poland and United Kingdom was added to the EU Charter of Rights, where both countries jointly made an objection to the fact that the Charter may not expand the possibilities of the Court of Justice of EU to state that any procedures or customs are not in compliance with the Charter. The Czech Republic made an objection to the Charter related to its application in the form of the so-called opt-out declaration, which has a political and not legal character. The Charter of Fundamental Rights of EU must be applied within the territory of the Czech Republic without restrictions.

communication. It is stipulated in article 8 par. 1 of the Charter that everyone has the right to protection of personal data relating to them.

Besides general provisions of the Charter, provisions of secondary law can be applied for the issue of personal data protection, as it includes particular procedures of protection of this fundamental right. The directive of the European Parliament and Council 95/46/EC from the 24th October 1995 about protection of natural persons in relation to personal data processing and about the free movement of these data includes an extensive adjustment of the given area. The mentioned directive does not apply to personal data processing, which is performed by natural persons for the exercise of exclusively personal or household activities.

The conflict between the two above-mentioned constitutional and EU rights, which are subject to the same extent of legal protection, which is guaranteed in the Czech Republic above all by the Constitutional Court of the Czech Republic⁹, took place between citizens of the Czech Republic and on the territory of the Czech Republic. On one side, it was Mr. Ryněš (hereinafter referred to as “Complainant”), who was an owner of a house, and on the other side there were two citizens, who repeatedly burglarised the given house, and they were not caught, until Mr. Ryněš installed a safety camera system on his house.

This constitutional conflict between the constitutionally guaranteed right of the person, who protected their privacy, and the person, who defended their identity, was subsequently transferred not to the European Court of Human Rights in Strasbourg, but to the Court of Justice of the European Union in Luxembourg. The Court of Justice of EU is not primarily intended for the protection of fundamental rights and freedoms, but it is the main court body of EU, which supervises the uniformity of interpretations of the Community law and European Union law. The path to the legal solution of this conflict of two fundamental rights from the national level to the European Union level consisted of the preliminary-ruling proceedings¹⁰, which is regulated by the Treaty on the Functioning of the European Union¹¹.

The facts of the entire dispute included the following events. An unknown person repeatedly attacked the property of the Complainant, the Complainant

⁹ The Constitutional Court of the Czech Republic, as the supreme body for the protection of constitutionality in the Czech Republic is anchored in the Article 83 of the Constitution and its competences are enumerated in the Article 87 of the Constitution. The operation of the Constitutional Court is regulated by the special Law No 182/1993 Coll., about the Constitutional Court of the Czech Republic, as amended.

¹⁰ DOUGLAS-SCOTT, S.: *Constitutional Law of the European Union*. Harlow: Pearson Education, 2002.

¹¹ Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

himself and his family for several years and the police did not manage to find this person. Windows of the house of his family were repeatedly broken by this unknown person in 2005 and 2007. The Complainant attempted to solve these attacks on his property and family, i.e. on the area falling under the term “privacy”, by contacting the Police of the Czech Republic, but this was unsuccessful. Police officers even recommended to him to install a camera on his house, as the police had no camera in the street, where the Complainant lived. Consequently, the Complainant decided to install a camera system under the ledge of the roof at that time. The system was placed there from the 5th October 2007 to the 11th April 2008. The camera was placed in a fixed position, so it could not be rotated and it recorded only the entrance to the house, but it also recorded the public street and the entrance to the house on the opposite side of the street. The system used only video recording, which was saved into the recording equipment on a hard disk in the form of an infinite loop. As soon as it reached full capacity, the equipment would record over the existing recording, erasing the old material. No monitor was installed on the recording equipment, so the images could not be studied in real time. Only the Complainant had access to the system and its data.

The Complainant, who was repeatedly harmed, decided to buy the camera system at his own expense not for the purpose of focusing on the privacy of passers-by or neighbours living in the opposite house, but for the sole purpose of protecting his property, health of his family and his own health. On the night of 6 to 7 October 2007, a further attack took place. One of the windows of Mr Ryneš’s home was broken by a shot from a catapult. The video surveillance system at issue made it possible to identify two suspects. The recording was handed over to the police and relied on in the initiated criminal proceedings against these persons, whom the Police of the Czech Republic identified.

The procedural defence of one of the persons, who was suspected from committing the crime, was the claim that the Complainant was not authorised to place this camera system on his house, and the suspect submitted a request for confirmation, if the operation of the camera system of the Complainant was lawful, to the Office for Personal Data Protection (hereinafter referred to as “the Office”)¹². To the surprise of the Complainant, on the 2nd April 2008, the Police of the Czech Republic notified the Office that the Complainant committed offences against *order* in state *administration* and against order in territorial self-government. The Office examined the request of the suspect and of the Police of the Czech Republic and found on 4th August 2008 that the

¹² The Office for Personal Data Protection: *Stanovisko č. 1/2006, leden 2006, Provozování kamerového systému z hlediska zákona o ochraně osobních údajů*, <http://www.uoou.cz>.

Complainant infringed the Law No 101/2000 Coll., about personal data protection, as amended¹³, since:

- as a data controller, he had used a camera system to collect, without their consent, the personal data of persons moving along the street or entering the house opposite;
- he had not informed the affected persons of the processing of their personal data, the extent and purpose of that processing, by whom and by what means the personal data would be processed, or who would have access to the personal data; and
- as a data controller, Mr Ryneš had not fulfilled the obligation to report that processing to the Office.

2. As regards the possibility of operating a camera system in general according to the Czech Law No. 101/2000 Coll. about personal data protection

As it was already mentioned above in this article, the provision of the Law No 101/2000 Coll. does not have to be applied on every camera system and not always. In compliance with the provision § 3 par. 3 of the Law No 101/2000 Coll., this law does not apply to personal data processing, which is performed by a natural person exclusively for personal needs. Another situation, when the law is not used, follows from the Law No 101/2000 Coll. in connection with the opinions of the Office. This is a situation, when the camera system is operated without making a recording, i.e. it is only used to watch something on-line. In such case it is not considered personal data processing according to § 4 letter e) of the Law No 101/2000 Coll.¹⁴

The Czech Office for Personal Data Protection is a very strict institution with regard to punishing any unlawful collection of personal data and it often imposes high penalties. Penalties are imposed both on state administration bodies and on private subjects, e.g. for an unreported – and thus unregulated – collection of data about third persons. The Office bases its decision-making especially on the Law No 101/2000 Coll., the provisions of which reflect

¹³ This law was passed in the Czech Republic and, in compliance with the law of the European Community, international treaties and to exercise the right of any person to protection against an authorised infringement on privacy, it regulates rights and obligations for processing of personal data and it stipulates conditions, under which personal data are handed over to other states.

¹⁴ The Office for Personal Data Protection: Informační bulletin 2/2011 see <https://www.uouu.cz>.

international law regulations¹⁵ and European Union regulations, especially the Directive 95/46¹⁶.

The Office is entitled to issue both decisions and opinions, which it then also uses as a precedent, in all matters falling under its competence. The Office issued its opinion¹⁷ in this respect on January 2006. According to the opinion of the Office, what is considered crucial for the issue – regardless of whether the operation of a camera system is personal data processing or not – is the fact, whether, besides the camera surveillance, recording is made as well or data are stored in the recording equipment – and at the same time, whether the purpose of the recorded data is their use for identification of natural persons in relation to a certain behaviour.

In compliance with the Law No 101/2000, the processing of personal data by operating a camera system is in principle only possible with the consent of the data subject. However, this condition cannot be fulfilled in most cases, as it is virtually impossible to clearly define a circle of persons, who find themselves or could find themselves in the reach of the camera. This means that we can only use the provisions of the Paragraph 5(2), letter e) of Law No 101/2000, under which the processing of personal data is possible in the absence of consent of the data subject, “*where doing so is necessary to safeguard the legally protected rights and interests of the data controller, recipient or other data subjects. However, such processing must not adversely affect the data subject’s right to respect for his private and family life*”.

According to the Law No 101/2000 Coll., also the period, for which recordings from the camera system is stored, is important. According to the provision § 5 par. 1 letter e) of the Law No 101/2000 Coll., the data controller is obligated to store personal data only for the period, which is necessary for the purpose of their processing. The Law No 101/2000 Coll. does not include any more specific provisions with regard to the issue of adequacy of the period of storage of data. Therefore, it is necessary to proceed on the basis of interpretations included in opinions of the Office¹⁸.

¹⁵ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data no. 108, declared under no. 115/2001 Coll. m. s

¹⁶ The Directive of the European Parliament and Council 95/46/ES from 24th October 1995 about protection of individual in relation to personal data protection and free movement of these data

¹⁷ The Office for Personal Data Protection: Opinion no. 1/2006, January 2006, *Provozování kamerového systému z hlediska zákona o ochraně osobních údajů*. See <http://www.uoou.cz>.

¹⁸ The Czech Office for Personal Data Protection considers 3 days as an adequate period for storage of a common recording.

3. The procedural solution of the conflict of constitutionally guaranteed rights

The decision of the Office in the matter of the Complainant from the 4th August 2008, as the decision of the administrative body of the first instance, was in principle confirmed by the decision of the chairman of the Office from the 5th January 2009.

The Complainant subsequently brought an action challenging that decision of the Office, which sanctioned the Complainant, before the referring court. Městský soud v Praze (the Municipal Court in Prague) dismissed his action and stated the reasons for this decision in a very extensive finding from the 25th April 2012.

Mr Ryneš brought a cassation complaint against that judgment of the Městský soud v Praze (the Municipal Court in Prague) to Nejvyšší správní soud (the Supreme Administrative Court). According to the Civil Procedure Code and in compliance with Article 267 of the Treaty on the Functioning of the European Union, Nejvyšší správní soud (the Supreme Administrative Court) decided to stay proceedings and to refer the following question to the Court of Justice of the European Union (hereinafter referred to as “SDEU”)¹⁹ for a preliminary ruling:

“Can the operation of a camera system installed on a family home for the purposes of the protection of the property, health and life of the owners of the home be classified as the processing of personal data “by a natural person in the course of a purely personal or household activity” for the purposes of Article 3(2) of Directive 95/46/EC ..., even though such a system also monitors a public space?”

This brought the entire case to the grounds of the European Union and its significance for the entire European Union was reflected in the number of secondary participants, which intervened in the preliminary-ruling proceedings. Besides the participants of the original dispute: i.e. the Complainant and the Office, opinions regarding the preliminary ruling were also expressed by the Committee, Czech, Italian, Austrian, Portuguese, Polish, Spanish and UK government.

Moreover, the Advocate General Niil Jääskinen added his opinion about the matter on the 10th June 2014, the content of which was similar to the opinion of the Czech Office for Personal Data protection. Advocate General ²⁰ dealt marginally with arguments of both side of the dispute at the national level, but he

¹⁹ CRAIG, P. – DE BURCA, G. *EU Law. Text, cases and materials*. Fifth Edition. Oxford 2011, page 442.

²⁰ HAKENBERG, Waltraud. *Základy evropského práva*, 1st edition, Prague: C. H. Beck, 2000, ISBN 80–7179–301–6

focused on the interpretation of the European Union rights. Above all, he stated that the Charter, and especially its articles 7 and 8 can obviously be applied to the given case. He assumed that this was a conflict between fundamental rights of the “data controller” and fundamental rights of the “data subject”. It concerned a conflict between the Complainant and the identified attackers in the particular case, but – in the context of the use of the Directive 95/46 in general, it concerned a conflict between the right to protection of private life of every natural person operating camera surveillance of a public space and the right to respect for personal data of every data subject, which finds themselves in this space.

The Advocate General stated that the nature of the entire conflict between both rights is the interpretation of the words “*for exercise of exclusively personal or household activities*“, on which it depends, whether the Directive 95/46 is to be applied on the camera surveillance performed by the Complainant. He refused to differentiate between the facts whether the camera surveillance fulfilled its purpose, i.e. whether it led to identification of the attackers, or whether it just led to recording of persons, who found themselves on the public space in front of the house of the Complainant. He emphasised that the substantial fact is that someone is recorded without their consent and awareness of it. Moreover, he emphasised the fact that there is a difference between the situation, when the camera surveillance is performed by public authorities or by legal persons. In case of public authorities the Directive 95/46 is used with the exception of the situations mentioned in article 3 par. 2 of the first bullet of this directive. In case of legal persons the Directive 95/46 is used without restrictions.

The Office responded positively to his opinion by stating that: “*The content of the opinion corresponds to the attitude of the Office for Personal data Protection and to its expressed opinion that cameras monitoring a public space and serving for identification of persons are not used for personal data processing exclusively for private or household needs, which the Office already claimed since the beginning. Therefore, such cases cannot be excluded from the effect of the European Directive and the Law about personal data protection. The Office welcomes the fact that its legal opinion was confirmed within the European context. As the particular case will be decided by Nejvyšší správní soud (the Supreme Administrative Court) in its final phase, the Office will not express any more opinions in this matter. We can just add that the subject of the proceedings was not any intervention into the privacy of the vandals, as some media claimed, but monitoring of persons on the street and inhabitants of the opposite house and infringement of their right to privacy.*”²¹

²¹ The Office for Personal Data Protection: The Opinion from the 11th July 2014. See <http://www.uouu.cz>.

4. Exploring the regulation of the use of camera systems in the labour law of the Czech Republic

The use of camera systems has become a very relevant issue in the Czech Republic. Camera systems appear on streets, in schools, in social facilities, in shops. The labour law takes camera systems into account, especially in the Law No. 262/2006 Coll., of the Labour Code, as amended (hereinafter referred to as “Labour Code”).

Reasons for installation of the camera system may be varied from the perspective of the employer, both with regard to the protection of life and health of the employer, employees or other persons, protection of property of all the mentioned persons, monitoring of work performance of employees or prevention of criminality both on part of employees or third persons. Employers are entitled to protect their property even from the point of view of monitoring the work performance of employees. Restrictions following from the Labour Code must be applied to cases, when the monitoring of employees was too intensive, permanent and systematic. At the same time, it is necessary to emphasise that all employers have the right to monitor their employees, not just the employers who perform activities, which are extraordinarily dangerous or which represent an extraordinary threat.²²

In any case, such an employer is also a data collector according to the Law No 101/2000 Coll. and as such he/she is obligated to report personal data processing to the Office before installing the camera system, including the information about the purpose of processing, extent of processing, facts, whether the personal data will be processed with the consent of the data subject or not, about the number, type, location and regime of the cameras. It is therefore obvious that the manner of solving this issue should have an expected impact on all camera system administrators.

5. The question for the preliminary-ruling proceedings before the EU Court of Justice, which was presented by Nejvyšší správní soud ČR (the Supreme Administrative Court of the Czech Republic).

The EU Court of Justice had the very precise wording of the preliminary question at its disposal. The question was focused on the interpretation of the words

²² BĚLINA, M. a kol.: *Zákoník práce. Komentář*. 1st edition. Prague: C. H. Beck, 2012. page 1634.

“for the exercise of exclusively personal or household activities“. According to the interpretation of these words, it would then be clear, whether the Directive 95/46 should be applied to the camera surveillance performed by the Complainant as an individual natural person, who does not have the public legal authorisation, which public authorities have at their disposal.

The Court of Justice assessed above all the interpretation no. 3 par. 2 of the Directive 95/46, which specifies two exceptions, under which the Directive 95/46 will not be used for personal data processing. In case of the Complainant it could be possible to use the exception included in the second bullet of this paragraph, according to which the Directive 95/46 does not apply to personal data processing performed by a natural person for the exercise of exclusively personal or household activities. The court compared the wording of the Czech legal regulation (§ 3 par. 3 of the Law No 101/2000 Coll.) with the wording of the European Union regulation (Article 3 par. 2 of the second bullet of the Directive 95/46) and it declared that the wordings correspond to each other in principle. The basic issue was, when the natural person performs personal data processing for their personal needs and when we can talk about personal data processing by the natural person for the exercise of exclusively personal or household activities.

The Czech²³, Italian, Polish and UK governments expressed their opinions in favour of the Complainant with regard to the preliminary ruling as well, stating that the exception according to Article 3 par. 2 of the Directive 95/46 applies to the Complainant. According to this opinion, the operation of the camera system, which was performed by the Complainant, and the purpose of which is the protection of property, health and life of owners of the house, can be considered an exercise of exclusively personal or household activities, despite the fact that the given camera system monitored a public space as well. The Austrian, Portuguese and Spanish governments, and also the Committee, had an opposite opinion, i.e. that the above-mentioned exception cannot be applied to the given case, and this opinion corresponded to the conclusions of the Advocate General. It is therefore obvious that the polarity of opinions among

²³ For more information see The report about the activity of the Government Agent for representation of the Czech Republic in front of the Court of Justice of the European Union for 2013, page 22: “The declaration sent to the Court of Justice on the 2nd August 2013 expresses the opinion that the mentioned exception includes activities, which purpose a legitimate interest connected with personal or household activities (including the protection of life, health, property, private and family life and housing), if this activity goes beyond the pursued interest and if it does not infringe rights of third persons more than it is necessary. Application of this exception is not a priori excluded just for the reason of monitoring of a public space (if the principle of adequacy is fulfilled), nor for the reason of handing over the recording to the police (which is a legitimate procedure to protect the mentioned interests).” See <https://isap.vlada.cz>.

the member countries of EU was crucial and that arguments on both sides were convincing.

The Court of Justice based its interpretation activity²⁴ especially on the general rule of interpretation that any exceptions are interpreted restrictively²⁵. The use of an exception depended on finding the intention or aim of the Complainant, who performed the data processing exclusively for his own personal needs. According to the opinion of the Advocate General, which the Court of Justice of EU agreed with later, this concept is impossible.

From the perspective of the application of EU law in member states, it is not possible for the effect of the instrument of the European Union law to depend on a subjective purpose of the given natural person, as such an aim cannot be objectively found and verified, and such an aim is not relevant for the data subjects.

Did the Complainant perform personal data processing as a natural person exclusively for personal or household activities, when operating his camera system? What can be included in the term exclusively personal or household activities? Does the fact that the camera also monitored the public space and entrance to the opposite house play a role here?

The Court of Justice assessed the situation of the Complainant by means of a comparison test²⁶, when it compared obligations of legal persons and public authorities related to the operation of a camera system with the situation of natural persons, who operate a camera system for their own needs. The court came to the conclusion that in the situation, when the natural person performs a systematic camera surveillance of a public space, even if the purpose is to protect property, health and life of his/her entire family, the given person is still obligated to observe the same conditions, which are imposed by the Directive 95/46 on other persons.

If we proceed from the equality principle of subjects of law²⁷, the method chosen by the EU Court of Justice is correct. However, if we want to apply the rule of the so-called legal licence²⁸, it means exceeding competences on part of state administrative bodies, as no such obligation is explicitly stipulated for natural persons in the particular regulation.

²⁴ VERNY, Arsén; DAUSES, Manfred A. *Evropské právo se zaměřením na rozhodovací praxi Evropského soudního dvora*, 1st edition, The Institute of International Relations, 1998, ISBN 80-85864-41-X

²⁵ e.g. the of the Court of Justice in the matter C-101/01 *Lindqvist* (2003), and the decision of the Court of Justice in the matter C-73/07 *Satakunnan Markkinapörssi a Satamedia* (2008).

²⁶ FOREJTOVÁ, M.; TRONEČKOVÁ, M.: *Evropské právo v praxi*. 1st edition. Plzeň: The publishing house Aleš Čeněk, 2011. page 34.

²⁷ See FREDMAN, S.: *Discrimination law*. New York: Oxford University Press, 2011.

²⁸ Each citizen may do whatever is not forbidden by law, and nobody must be forced to do what the law does not impose, see the Article 1 par. 2 Constitution of the Czech Republic.

The Court of Justice based its decision on Article 7 letter f) of the Directive 95/46, which stipulates that personal data processing may only be performed, if:

- it is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed
- except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection under Article 1(1) of this Directive.²⁹

It further stipulated that, within the second condition, it is always necessary to measure individually and according to each particular case rights and interests, which are contrary to each other on the side of the data controller and on the side of the data subject. Therefore, the Court of Justice emphasised the principle of proportionality when assessing the extent of protection.³⁰

In this respect, we can refer to the previous judicature of the EU Court of Justice related to the interpretation of the European Union law, when the court applied the Charter of Fundamental Rights of the European Union in the case of *Google Spain and Google*³¹. Here, SDEU decided that in the extent in which it regulates personal data processing, which can interfere with fundamental rights and freedoms, the provision of the Directive 95/46 must be interpreted in compliance with the Charter, and furthermore, the significance of the Directive 95/46 was emphasised in relation to ensuring an efficient protection of fundamental rights and freedoms of natural persons, especially the right to privacy in relation to personal data processing.

The issue of personal data processing in relation to respect for private life was also dealt with by the Court of Justice of EU in its recent decision in the case *Digital Rights Ireland and Seitlinger and others*³². Here, the Court of Justice of EU stated that: “*As it concerns the right to respect for private life, according to the established practice of the Court of Justice, the protection of that fundamental right requires that derogations and limitations in relation to the protection of personal data must apply only in so far as is strictly necessary.*”

²⁹ “In compliance with this directive, member states shall ensure the protection of fundamental rights and freedoms of natural persons, especially their privacy, in relation to personal data processing.”

³⁰ E.g. The protocol about the use of principles of subsidiarity and proportionality for the Treaty on the Functioning of the European Union.

³¹ E.g. decision of the Court of Justice of EU in the case C-131/12, *Google Spain and Google* (2014)

³² Joint matters C-293/12 and C-594/12, *Digital Rights Ireland and Seitlinger and others* (2014), point 52, 53

6. Conclusion

The legal theorist Rudolf von Jhering stated in his work „Struggle for Law“³³ that: „*The end of the law is peace. The means to that end is war. So long as the law is compelled to hold itself in readiness to resist the attacks of wrong—and this it will be compelled to do until the end of time—it cannot dispense with war. The life of the law is a struggle,—a struggle of nations, of the state power, of classes, of individuals. Every principle of law which obtains had first to be wrung by force from those who denied it; and every legal right—the legal rights of a whole nation as well as those of individuals—supposes a continual readiness to assert it and defend it. The law is not mere theory, but living force. And hence it is that Justice which, in one hand, holds the scales, in which she weighs the right, carries in the other the sword with which she executes it. The sword without the scales is brute force, the scales without the sword is the impotence of law. The scales and the sword belong together, and the state of the law is perfect only where the power with which Justice carries the sword is equalled by the skill with which she holds the scales.*“

There can be certain doubts in this particular issue about achieving an individual justice for the Complainant. However, there can be obviously no doubts about the meaning of the decisions of both national courts of the Czech Republic and of the EU Court of Justice, which have a joint preventive character. Their aim is to regulate activities of natural persons, which could inadequately infringe on rights of others. It is also certain that a real jural battle for both rights – the right to privacy and right to personal data protection – took place at all levels. It is apparent that when you use a camera system, you may restrict a human right or freedom, especially the right to personal data protection. Each such restriction, each individual case of the use of a camera system must be subjected to the test of proportionality.

The right to protection of personal data still prevails over the right to privacy protection in the hitherto practice of SDEU, despite the fact that personal data are a subset of the right to privacy. In his opinion, the Advocate General pointed out that SDEU has not judicated any fulfilment of the conditions in any matter for the use of the exception according to Article 3 par. 2 from the bullet of the second Directive 95/46, although SDEU dealt with the possibility of using this exception in the case *Lindqvist*³⁴.

³³ JHERING R. Š.: *Boj o právo (Struggle for Law)*, *Právní věda všedního dne*. Plzeň: The publishing house Aleš Čeněk, s.r.o. 2009. Page 6.

³⁴ The decision of SDEU in the matter of C-101/01 *Lindqvist* (2003).

The EU Court of Justice thus preserved the continuity of its decision-making and came to the conclusion that article 3 par. 2 from the second bullet of the Directive of the European Parliament and the Council 95/46/EC from the 24th October 1995 about the protection of natural persons in relation to personal data processing and free movement of these data must be interpreted in the following way: the visual recording of persons is saved in the form of an infinite loop into a recording equipment, such as a hard disk – placed by a natural person on his/her family house for the purpose of protection of property, health and life of owners of the house, and even if such a system monitors a public space, it does not represent data processing for the exercise of exclusively personal or household activities on the basis of the mentioned provision.³⁵

³⁵ The decision of the Court of Justice (the fourth senate) from the 11th December 2014 in the matter C212/13 *Ryneš proti Úřadu pro ochranu osobních údajů (Ryneš vs the Office of Personal Data Protection)*, the subject of which is a request for a preliminary ruling on the basis of the Article 267 SFEU, submitted by the decision of Nejvyšší správní soud (the Supreme Administrative Court of the Czech Republic) from 20th March 2013, delivered to the Court of Justice on the 19th April 2013.