

A European perspective on access rights

Paul de Hert, Vrije Universiteit Brussel

Antonella Galetta, Vrije Universiteit Brussel

IRISS project Workshop
Sheffield, 24-26 June 2014



INTERDISCIPLINARY
STUDIES OF LAW
[META] JURIDICA
VRIJE UNIVERSITEIT BRUSSEL



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
Vrije Universiteit Brussel
www.lsts.vub.ac.be

 Vrije
Universiteit
Brussel

The content of the right

- Art. 8.2 of the Charter of Fundamental Rights of the EU and Art. 12 of Directive 95/46/EC
- Right of access = right to obtain from the data controller:
 - confirmation as to whether or not data are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients *or* categories of recipients to whom the data are disclosed
 - communication in an intelligible form of the data undergoing processing and of any available information as to their source
 - knowledge of the logic involved in any automatic processing of data at least in the case of automated decisions



INTERDISCIPLINARY
STUDIES OF LAW
[METAJURIDICA]
VRIJE UNIVERSITEIT BRUSSEL



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
Vrije Universiteit Brussel
www.lsts.vub.ac.be

 Vrije
Universiteit
Brussel

The scope of the right

1. Mere access to personal data
2. Right of the data subject to have his data rectified, erased or blocked

The right of access to data is an active right. It requires action not only from the data subject but also from the data controller (i.e. the data subject should be able to locate the controller).

Although one could see a certain naivety in claiming access to personal data (especially in the case of mere access), this right is too often denied or limited.



INTERDISCIPLINARY
STUDIES OF LAW
[META]JURIDICA
VRIJE UNIVERSITEIT BRUSSEL



LSTS
LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
Vrije Universiteit Brussel
www.lsts.vub.ac.be

 Vrije
Universiteit
Brussel

European case law

- ECtHR

considers the right of access in a holistic and rather relative way. Access is balanced against other fundamental rights. The case law of the Court focuses on the proportionality principle, which hinges upon the existence of an independent, neutral and impartial authority which handles data access requests at national level (i.e. *Gaskin*, *Leander* and *Odièvre*).

- ECJ

Emphasis on the rights and interests of the data subject and data controller. Broad interpretation of Art. 12. Access refers also to the past (*College van burgemeester*) and limitations to this right are accepted only when necessary (*Institut professionnel des*



Role of the EDPS

- Recent “Guidelines on the rights of individuals with regard to the processing of personal data” (Feb. 2014). According to the guidelines, the right of access can be exercised at any time, free of charge and information has to be disclosed within 3 months from the receipt of the request.
- EDPS Guidelines on video surveillance (2010). Access requests should be answered within 15 calendar days. If specific access requests are introduced, access should be granted “by allowing the individual to view the recordings or by providing a copy to him/her”.
- BUT, they apply to data and images processed by EU institutions only and they are not legally binding.



LSTS

LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
Vrije Universiteit Brussel





INTERDISCIPLINARY
STUDIES OF LAW
[META]JURIDICA
VRIJE UNIVERSITEIT BRUSSEL



LSTS

LAW, SCIENCE,
TECHNOLOGY &
SOCIETY STUDIES
Vrije Universiteit Brussel
www.lsts.vub.ac.be



Vrije
Universiteit
Brussel

Access rights and the DP reform

- Right to object to profiling. More on the concept of consent, transparency, rights to data portability and deletion of unnecessary data.
- Art. 15 of the new Regulation: data controllers should inform data subjects about the storage period, rights to rectification and erasure and how to lodge a complaint.
- Art. 10 of the new Directive: data controllers should have transparent and easily accessible policies for the exercise of access rights. Access shall be exercised free of charge and follow-up to access rights requests shall be provided "without undue delay".

Conclusions

- Art. 12 of Directive 95/46/EC could be strengthened and improved to better protect access rights. The DP reform is going in this direction.
- Still, it is questionable if and to what extent access rights has contributed and contributes to ensure an effective protection of personal data.
- There is too little case law at EU level.
- Given the scale of today's surveillance and the consequences it entails, it is reasonable to say that European citizens will become more familiar with access rights in the future and that this right will thus develop further from theory to practice.

