

The Federal Constitutional Court and the Online Searching Judgement of February 27th, 2008

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Online searching of computers

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Background

The new fundamental right

Open questions

Effects

- **Legal discussion**
 - Act on the online searching of computers (Nordrhein-Westfalen)
 - Revision of Federal Police Act (Bundeskriminalamtsgesetz)
- **Technical means**
 - Nordrhein-Westfalen: “secretly access information technology systems through the use of technical means”
 - Very broad definition – possibilities and impossibilities
- **Appeal to Federal Constitutional Court (Bundesverfassungsgericht)**

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Scope of Protection

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- **“Fundamental right to confidentiality and integrity of information technology systems”**
- **“IT systems that may – as such, or within a network – store personal data to an extent that the searching of the system could disclose important parts of the conduct or life of a person or even a significant image of his/her personality.”**
- **“If, given the concrete circumstances, the person affected can assume that he/she is able to control the system, whether alone or with other authorised persons.”**
- **Confidentiality & integrity – technical terms**

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Limits

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- **“Factual evidence indicating a concrete threat for an object of legal protection of utmost importance, such as the physical condition, life or freedom of a person, the fundamentals or continuance of the state or the basis for the existence of humans.”**
- **Warranted by a judge or a body of equal legal and personal independence**
- **Protection of the “core of personal privacy” – 2 steps**
 - Analysis at collection (if possible)
 - Subsequent examination

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Open questions

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- **Application**
 - Relation to other rights – e.g. informational self-determination
 - Which Systems? RFID? Thin clients? Online hard drives? DVDs?
 - Systems at workplaces (assumption of control)?
- **Further effects in national law**
 - Consequences for open searches of IT systems?
 - Horizontal effects (between private parties)? Duty to protect?
- **Beyond – Possibilities of transfer**
 - Other countries?
 - ECJ?
 - ECHR?

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Effects

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- **Most important decision on constitutional privacy since the famous census case (Volkszählungsurteil, 1983)**
- **A fundamental right for the information age**
- **Political and semantical value of a specific right**

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Questions?

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