



C-524/06 Huber v Federal Republic of Germany, judgment of 16 December 2008

The Court sanctions discrimination on the basis of nationality in the processing and storage of personal data.

In Germany, a centralised register is held which contains certain personal data relating to foreign nationals – both EU citizens and non-EU citizens alike – who are resident on German territory for a period of more than three months. In addition to basic data (name, date and place of birth, sex and nationality), that register includes both information on the person's entry into and residence in Germany, including details of any expulsion proceedings, and on any involvement of the person concerned in particularly serious crimes (contraventions of the laws on drugs or immigration or participation in terrorist activities). These data are used to different ends, *inter alia* to apply the legislation relating to the right of residence, for statistical purposes and for the purposes of fighting crime. There is no comparable database for German nationals.

Mr Huber, an Austrian national, resides in Germany where he carries on his profession. Taking the view that he was being discriminated against on account of the entry of his personal data into the centralised register, Mr Huber unsuccessfully applied for that data to be removed from the register, before bringing the matter before the administrative courts. The Higher Administrative Court for the *Land* North-Rhine Westphalia referred questions to the Court of Justice concerning the compatibility of the processing of personal data within the German centralised register with the prohibition on any discrimination on grounds of nationality provided for in Article 12 EC as well as with the requirement, laid down in Directive 95/46/EC, that the legitimacy of processing personal data is to turn on whether such processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority.

In view of the fact that the scope of application of Directive 95/46/EC does not cover the processing personal data concerning public security, defence, State security, or the activities of the State in areas of criminal law, the Court considered only the compatibility of data processing with a view to applying the legislation relating to the right of residence and for statistical purposes in the light of that directive, whereas it examined the compatibility of data processing for the purposes of fighting crime with Article 12 EC.

The Court pointed out that the right of residence of a Union citizen in the territory of a Member State other than his own is not unconditional, and may be subject to limitations. Therefore, the processing by a centralised register of personal data in order to apply the legislation relating to the right of residence satisfies the requirement of necessity within the meaning of Directive 95/46/EC provided that only the data necessary for that purpose are processed and that the centralised nature of the register enables that legislation to be more effectively applied.

With regard to data processing for statistical purposes, the Court noted that the Member States are entitled to adopt measures to ensure access to exact knowledge of population movements on their territory. However, it took the view that such statistics do not necessitate the collection and storage of individualised information as in this case. Such processing of personal data does not therefore satisfy the requirement of necessity within the meaning of Directive 95/46/EC.

Finally, with regard to the fight against crime, the Court pointed out that that objective is focused on the prosecution of crimes and offences committed, irrespective of the nationality of their perpetrators. It follows that, as regards a Member State, the situation of its nationals cannot be different from that of the nationals of other Member States who are resident in its territory. Since the German register does not contain the personal data of German nationals, the systematic processing of personal data relating



Summaries of important judgments

only to nationals of other Member States for the purposes of fighting crime constitutes discrimination on grounds of nationality which is prohibited by Article 12 EC.