

CO.18 Right to Property

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The right to protection of personal data is not an absolute right, but must be balanced against other fundamental rights, in accordance with the principle of proportionality [[Title CO.01](#)]. The right to informational self-determination “must be balanced against the freedom to gather, process and use information for one’s own purposes, including for changing purposes” [[BVerfG, Order of 6 November 2019 - 1 BvR 16/13 -, para. 87](#)].

This multidimensionality of fundamental rights is insufficiently recognised by the GDPR as a whole. Among the rights and freedoms of natural persons that the GDPR seeks to protect, the fundamental rights of the controller are hardly explicitly taken into account. Therefore, the fundamental rights of the Charter of Fundamental Rights must be used directly for the interpretation of the term “rights and freedoms”.

It is conceivable that the processing of personal data is related to the exercise of his right to property - for example, if the owner protects his property by means of video surveillance. In such a case, the controller may rely on Art. 17 I CFR to justify his data processing:

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”

In the GDPR, the right to property is only sparsely mentioned. Art. 88 I GDPR reads:

“Member States may [...] provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees’ personal data in the employment context, in particular for the purposes of [...] protection of employer’s or customer’s property [...].”

According to Art. 17 II CFR, intellectual property is also protected. The fact that intellectual property may conflict with the right to data protection is confirmed by Rec. 63 sent. 5 GDPR:

“That right [of access] should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software.”

In the absence of provisions in the GDPR that are adequate for fundamental rights, the principle of proportionality (Art. 52 I CFR) must be applied in order to weigh up the rights of the data subject against the controller’s or a third person’s right to property (see Practical Concordance, [Tile P.04](#)). Cf. furthermore [Art. 1 II GDPR](#) and especially Rec. 4 (2) GDPR:

“The right to the protection of personal data is not an absolute right; it must be [...] balanced against other fundamental rights, in accordance with the principle of proportionality.” **[see also [Tile CO.01](#)].**