

Request for a preliminary ruling from the Verfassungsgerichtshof (Austria) lodged on 19 December 2012 - Kärntner Landesregierung and Others

(Case C-594/12)

Language of the case: German

Referring court

Verfassungsgerichtshof

Parties to the main proceedings

Applicants: Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl, Andreas Krisch, Albert Steinhauser, Jana Herwig, Sigrid Maurer, Erich Schweighofer, Hannes Tretter, Scheucher Rechtsanwalt GmbH, Maria Wittmann-Tiwald, Philipp Schmuck, Stefan Prochaska

Other party to the proceedings: The Federal Government

Questions referred

1. Concerning the validity of acts of institutions of the European Union:

Are Articles 3 to 9 of Directive 2006/24/EC ² compatible with Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union?

2. Concerning the interpretation of the Treaties:

2.1. In the light of the explanations relating to Article 8 of the Charter, which, according to Article 52(7) of the Charter, were drawn up as a way of providing guidance in the interpretation of the Charter and to which due regard must be given by the Verfassungsgerichtshof, must Directive 95/46/EC and Regulation (EC) No 45/2001 be taken into account, for the purposes of assessing the permissibility of interference, as being of equal standing to the conditions under Article 8(2) and Article 52(1) of the Charter?

2.2. What is the relationship between 'Union law', as referred to in the final sentence of Article 52(3) of the Charter, and the directives in the field of the law on data protection?

2.3. In view of the fact that Directive 95/46/EC and Regulation (EC) No 45/2001 contain conditions and restrictions with a view to safeguarding the fundamental right to data protection under the Charter, must amendments resulting from subsequent secondary law be taken into account for the purpose of interpreting Article 8 of the Charter?

2.4. Having regard to Article 52(4) of the Charter, does it follow from the principle of the preservation of higher levels of protection in Article 53 of the Charter that the limits applicable under the Charter in relation to permissible restrictions must be more narrowly circumscribed by secondary law?

2.5. Having regard to Article 52(3) of the Charter, the fifth paragraph in the preamble thereto and the explanations in relation to Article 7 of the Charter, according to which the rights guaranteed in that article correspond to those guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, can assistance be derived from the case-law of the European Court of Human Rights for the purpose of interpreting Article 8 of the Charter such as to influence the interpretation of that latter article?

¹ - Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

² - Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

³ - Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).