



New Passport only with Finger Print

Findings of the Court of Justice of the European Union

The CJEU was asked to answer the following question: whether Article 1(2) of Regulation No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States is invalid *inter alia*

- because Article 1(2) of that regulation breaches certain fundamental rights of the holders of passports issued in accordance with that provision.

The Court therefor examined whether taking fingerprints and storing them in passports, as provided for in Article 1(2) of Regulation No 2252/2004, constitutes a threat to the rights to respect for private life and the protection of personal data. Article 7 of the Charter states, *inter alia*, that everyone has the right to respect for his or her private life. Under Article 8(1) thereof, everyone has the right to the protection of personal data concerning him or her.

According to the Court it follows from a joint reading of those articles that, as a general rule, any processing of personal data by a third party may constitute a threat to those rights.

The Court also states that

- fingerprints constitute personal data, as they objectively contain unique information about individuals, which allows those individuals to be identified with precision
- processing of personal data means any operation performed upon such data by a third party, such as the collecting, recording, storage, consultation or use thereof.
- measures that national authorities have to take according to Article 1(2) of Regulation No 2252/2004, namely to take a person's fingerprints to keep those in the storage medium in that person's passport must be viewed as a processing of personal data.

Justification:

Processing of data for the issuance of passports is provided for by law (Regulation 2252/2004) and appropriate for attaining the aim of preventing the falsification of passports (even if not wholly reliable)

No other measures which would be both sufficiently effective in helping to achieve the aim of protecting against the fraudulent use of passports and less of a threat to the rights recognised by Articles 7 and 8 of the Charter than the measures deriving from the method based on the use of fingerprints.

The court in this regard stresses that that Article 1(2) of Regulation No 2252/2004 does not provide for the storage of fingerprints except within the passport itself, which belongs to the holder alone.

See: *Michael Schwarz v Stadt Bochum*, Case C-291/12, Judgement of 17.10.2013



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