TELEPHONE LOGGING: GERMAN WORKERS TO FIGHT FOR THEIR RIGHTS

Companies should expect German labour unions to challenge the federal labour court's decision which weakened workers' data protection rights on telephone logging.

The court's May 27th 1986 decision was again discussed at the annual meeting of Germany's Data Security and Data Protection Managers' Society in Cologne held from November 11th to 13th last year. There was widespread dissatisfaction with the court's decision.

The issue was whether data subjects can lose their statutory data protection rights by agreement. The case was about workers wishing to exercise their rights of co-determination over the storage and use of data on telephone calls, like the number called, the time, date and its duration.

The facts were that firstly, the workers' council tried to reach agreement with the company's management (Betriebsvereinbarung) on the right to be consulted and exercise influence on the logging and use of this data - and a right to raise objections if it were dissatisfied. When they failed to agree, the issue was passed to a settlement jury (Einigungsstelle) consisting of representatives of the employers' association and the labour unions. Its function is to have an informal hearing to avoid a formal court hearing. The settlement jury ruled that the workers' council did not have such co-determination rights. The federal labor court agreed with the jury.

Commentary: There is agreement that -

* Telephone logging data is personal data of both the caller and of the person called, as defined in the Data Protection Act.

* The logging of numbers connected to the work of employees is allowed under data protection legislation.

However, the court's controversial decision was that it considered section 3 of the the Data Protection Act (making the processing of personal data dependent on a legal provision permitting processing or dependent on the data subjects' consent) only as a way of "understanding" the agreement. But the court ruled that there was no need to fulfill the conditions of section 23 of the Act, which requires that data storage is part of a contractural relationship and that the interests of the data subject are not harmed.

Section 23 states that "The storage of personal data is permissible if it serves the purpose of a contractural relationship or a quasi-contractural relationship of trust with the person concerned or insofar as it is necessary in order to safeguard the legitimate interests of the storage unit and provided there is no reason to suppose that interests of the person concerned warranting protection will be harmed."

In short, if a workers' council agrees with the storage of data against data protection principles and law, it can lose rights by agreement. Critics of the federal labor court's decision say that the court has not properly understood the concept and principles of data protection legislation. One cannot weaken one's statutory rights by agreement.