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PORTUGAL/ASJP

GROUP 2

2023 Questionnaire of the 2st Study Commission IAJ-UIM

“How data protection rules are impacting on the way judges work in civil litigation?”

1. In your jurisdiction is a court considered to be a data controller for data protection law purposes in all, or any, of the following situations:

a. When performing its judicial functions?

Answer:

Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), as is apparent from articles 37(1)(a), 55(3) and recitals 20 and 97 thereof, does not cover the processing of personal data carried out by courts in the exercise of their judicial function.



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In Portugal, Law 34/2009 of 14 July 2009, which predates the GDPR, establishes the legal regime applicable to the processing of data relating to the judicial system, is still in force and is now applicable as it does not contradict the provisions of the GDPR.

No specific body has been created in the Portuguese courts to supervise the activities of the courts when they act in the exercise of their jurisdictional function by assuming the role of Data Protection Officer.

The processing of personal data and access are therefore the responsibility of the judge hearing the case.

b. For purposes connected with the administration of justice, including the publication of a judgment or court decision, or a list or schedule of proceedings or of hearings in proceedings?

Answer:

In Portuguese law there is no distinction between judicial and non-judicial data for data protection purposes, which often raises doubts about the management of certain matters, and the definition of this dividing line depends on a case-by-case assessment, which is not always easy.

Management is done on a case-by-case basis, but when it comes to the publication of a judgment, care is taken to anonymise it, and judges often take care of it.



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c. For purposes connected with the efficient management and operation of the courts and for statistical purposes?

Answer:

At the level of court management and statistical purposes, data processing is done on a case-by-case basis, involving the Superior Council of the Judiciary, the Administrative and Tax Courts, and the Presiding Judges of the District Courts of the first Instance.

2. In your jurisdiction does a data subject (e.g. a party to litigation, a witness, or a party whose interests may be affected by the litigation) have a right to information regarding the processing of their personal data by or on behalf of the courts?

Answer:

In the civil jurisdiction, as a rule, the proceedings are public and the parties and their lawyers have access to the information contained in the court file relating to their case.

The publicity of the proceedings entails the right to examine and consult the case file electronically, to obtain copies or certificates of any documents incorporated in it, by the parties, by any person capable of exercising the judicial mandate or by anyone who shows an interest in it.



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Even so, Article 132 of the CPC (Code of Civil Procedure) provides, in general terms, that the electronic processing of proceedings, which is now the rule, must comply with the regimes for the protection and processing of personal data and, in particular, that relating to the processing of data concerning the judicial system, and Article 164 provides that access to information on the case may be restricted, in compliance with the legal regime for the protection and processing of personal data, when, with regard to personal data contained in the case file, they are not relevant to the fair composition of the dispute.

Access or any restriction depends on the judge's order, but the IT resources assigned to the Judicial System remain under the dependence of the Ministry of Justice, specifically the Institute for Financial Management and Equipment of Justice (Gestão Financeira e Equipamentos da Justiça, I.P.).

3. In your jurisdiction does a data subject whose personal data is published in a court document such as a judgment, have the right to seek rectification of allegedly inaccurate or inappropriately disclosed personal data?

Answer:



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It depends on the nature of the personal data that is allegedly inaccurate or improperly disclosed. If it is only a clerical error that resulted in the inaccurate or inadvertent disclosure of personal data, procedural rules allow judges to rectify the error. The person in question can apply to the judge and the judge can rectify the error.

4. In your jurisdiction is personal data contained in a judgment or decision of a court, or in a list or schedule of proceedings or hearings, generally made accessible to the public? If so, are there exceptions and what are they? If not, is there a redaction requirement, or alternative requirement, to be implemented before a judgment / list / schedule can be published so as to safeguard the rights of data subjects?

Answer:

As a rule, proceedings and hearings are public. However, in the higher courts, the decisions that are published are anonymised. This is due to a great effort by the judges themselves to reduce or eliminate information that is not relevant to the decision.

5. How are complaints addressed in your jurisdiction concerning alleged breaches by the courts of the rights of data



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subjects? Does your jurisdiction have a person or body with special responsibility for the supervision of data processing operations of courts when acting in their judicial capacity?

Answer:

As we have said, no specific body has been created in the Portuguese courts to supervise the activities of the courts when they act in the exercise of their jurisdictional function by assuming the role of the Data Protection Officer.

The higher courts, as well as the Councils, have appointed DPOs with duties limited to the processing of data carried out in the exercise of their administrative, management or internal organisation activities.

Likewise, in the district courts of the first instance, the presiding judges endeavour to put into practice the Regulation in force, in collaboration with the DPO appointed by the Superior Council of the Judiciary.

6. In your experience have data protection rules impacted adversely on your judicial independence? If so, how have they done so?

Answer:



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As the processing of personal data carried out by the courts in the exercise of their judicial function is not covered by supervisory authorities, the rules imposed in the GDPR had no impact on judicial independence. Only a few rules have been introduced in the Code of Civil Procedure to generally ensure that courts are mindful of the processing of such data, which in no way impacts judicial independence.