

The Lithuanian Case: GDPR, Mobile Apps, and Data Protection

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On May 4, 2023, the Advocate General (“AG”) of the Court of Justice of the European Union (“CJEU”) issued an opinion in case C-683/21, examining key GDPR concepts such as “controller,” “joint controller,” and “processor,” as well as the GDPR’s liability system.

Background:

In April 2020, a significant event unfolded, setting the stage for a prominent legal case centered around data protection in Lithuania. It all began with the development of a mobile application designed to track Covid-19 contacts, known as the “App.” The Lithuanian National Public Health Centre (“NVSC”) engaged the services of an IT company, ITSS, with the intention of potentially acquiring the App at a later stage. However, it’s important to note that NVSC never officially approved the App.

Despite the attribution of both ITSS and NVSC as separate controllers, NVSC neither processed personal data nor provided formal authorization for ITSS’s data processing operations. Nevertheless, NVSC did issue instructions for the App’s development, although no formal agreement existed regarding the purposes and methods of personal data processing.

The App’s data collection was extensive, involving 677 individuals and encompassing sensitive personal information such as identification numbers, geographic coordinates, and contact details. Crucially, data processing extended beyond Lithuania’s borders, covering Europe and even including countries like India and the USA.

Investigation and Administrative Fines:

Following an investigation, The Lithuanian Data Protection Authority (DPAI) imposed administrative fines on both NVSC and ITSS, categorizing them as “joint controllers” for violating several articles of the General Data Protection Regulation (GDPR). NVSC appealed this decision to the Vilnius Regional Administrative Court, which subsequently referred six questions to the Court of Justice of the European Union (CJEU) for clarification.

The Lithuanian Data Protection Authority (DPAI) played a pivotal role in this case, conducting a thorough investigation that uncovered several critical aspects. Initially, it found that both NVSC and ITSS shared the status of joint data controllers, despite both organizations initially denying this status.

When assessing the imposition and magnitude of the administrative fines, the Lithuanian Data Protection Authority (DPAI) considered the intentional, large-scale, systematic, and unlawful nature of data processing by both NVSC and ITSS. It also noted ITSS’s failure to comply with instructions to cease processing and delete certain personal data.

Insights from the CJEU Advocate General:

The Lithuanian court sought clarity on several key questions, and the CJEU Advocate General provided insightful answers:

- 1. Controller Status:** The determination of whether NVSC qualifies as a “controller” hinges on whether it expressly or implicitly agreed to make the app available to the public, thereby initiating personal data processing. The influence exercised by an entity must directly relate to the processing of personal data.
- 2. Joint Controllership:** Two entities can be considered joint controllers even in the absence of a formal agreement or coordination. Joint participation in data processing can manifest in various forms, provided that both controllers exert a tangible impact on determining the purposes and methods of processing.
- 3. Definition of “Processing”:** The definition of “processing” encompasses the use of personal data during the testing phase of a mobile application, irrespective of the purpose for which the data is used.



4. Administrative Fines: Administrative fines require an intentional or negligent breach of the GDPR. A controller may be fined if a processor, acting on the con

troller's behalf, breaches the GDPR intentionally or negligently. This holds true even if the controller did not directly process the data, as long as the processor acts in accordance with the controller's instructions.

It should be stressed that this is just the Advocate General's insight, as the CJEU has not yet given a preliminary ruling.

Navigating the Complexities of GDPR and Data Protection:

The Lithuanian GDPR case offers a multifaceted exploration of the roles and responsibilities of data controllers, joint controllers, and processors under the GDPR. It underscores the importance of compliance and accountability within data processing activities, serving as a reminder of the ever-evolving landscape of data privacy regulations.