

The Recording of Personal Data in the Spanish Criminal Justice System and Its Impact on the Right to Privacy

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Abstract : When a person goes through the criminal justice system, either as a suspect, arrested, prosecuted or convicted, certain personal data are recorded, and a wide range of persons and organizations may have access to it. The recording of data can have a great impact on the daily life of the person concerned during the period of time determined by the legislation. In addition, this registered information can refer to various aspects not strictly related directly to the alleged or actually committed infraction. In some areas, the Spanish legislation does not clearly determine the cancellation period of the registers nor what happens when they are cancelled since some of the files are not really erased and remain recorded, even if their consultation is no more allowed or it is stated that they should not be taken into account. Thus, access to the recorded data of arrested or convicted persons may reduce their possibilities of reintegration into society. In this research, some of the areas in which data recording has a special impact on the lives of affected persons are analyzed in a critical manner, taking into account Spanish legislation and jurisprudence, and the influence of the European Court of Human Rights, the Council of Europe and other supranational instruments. In particular, the analysis cover the scope of video-surveillance in public spaces, the police record, the recording of personal data for the purposes of police investigation (especially DNA and psychological profiles), the registry of administrative and minor offenses (especially as they are taken into account to impose aggravating circumstances), criminal records (of adults, minors and legal entities), and the registration of special circumstances occurred during the execution of the sentence (files of inmates under special surveillance -FIES-, disciplinary sanctions, special therapies in prison, etc.).

Keywords : ECHR jurisprudence, formal and informal criminal control, privacy, disciplinary sanctions, social reintegration

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