

Editorial

It is now final - the European Court of Human Rights (ECtHR) has acknowledged that there are actually two types of cases admissible under Article 8 of the European Convention on Human Rights (ECHR), and two corresponding roles that the Court may adopt. Although the ECtHR has for a long time held that it will only accept cases in which the applicants can claim to be the victims of a certain policy or act by the state, in *Szabo and Vissy v Hungary*¹, and especially *Zakharov v Russia*,² it has finally recognised what some commentators have already pointed to,³ namely that there are in fact a number of cases in the Court's jurisprudence that diverge from this line. Although the Court seemed hesitant to officially acknowledge this fact, and instead tried to obscure the exception to the victim-requirement by turning to concepts such as the 'reasonable likelihood' of being a victim, being a victim by virtue of being a citizen of a certain country and being a 'hypothetical victim', it has now said in plain words that it will also accept so-called *in abstracto* claims, that is, cases in which a law or a policy is assessed on its quality as such, without the need for the claimants to substantiate that they are victims, ie that they have actually been harmed by the application of a law or policy. To understand the importance of these two cases, discussed in detail by Mark Cole and Annelies Vandendriessche in this edition of EDPL, a brief historical reflection is needed.

When the Universal Declaration on Human Rights (UDHR) and, in its wake, the European Convention on Human Rights were drafted, the Second World War had just ended and while most fascist regimes had fallen, totalitarian regimes in communist countries still thrived. Consequently, the core vision behind both documents was to prevent the abuse of power by states. The human rights violations that took place were not so much focused on specific individuals, but rather on large groups in society, which were denied their most basic rights and freedoms. This fact, of course, affected the way in which the rights and freedoms contained in the ECHR were protected by the authors of the Convention. Right from the start, a difference was made between the European Commission of Human Rights (ECmHR) and the European Court of Human Rights. The Commission had no other authority than filtering cases; it could declare cases admissible or inadmissible for a variety of reasons. It did not, however, have the power to decide on the substance of the matter. The Court did. But while individual complainants (individuals, legal persons and groups of natural persons) had a right to petition to the Commission, they did not have a similar right to take a case to the ECtHR. Only the Commission or a state could do so. Therefore, human rights violations would only be assessed in substance by the Court if either a national state or the

1 *Szabó and Vissy v Hungary* App no 37138/14 (ECtHR, 12 January 2016).

2 *Roman Zakharov v Russia* App no 47143/06 (ECtHR, 4 December 2015).

3 See most clearly: Bart van der Sloot, 'Is the Human Rights Framework Still Fit for the Big Data Era? A Discussion of the ECtHR's Case Law on Privacy Violations Arising from Surveillance Activities' in Serge Gutwirth et al (eds), *Data Protection on the Move, Law, Governance and Technology Series 24* (Springer 2016). This editorial also contains parts from that chapter.

Commission felt that it was in the general interest to pursue a certain claim. Other claims, even if declared admissible by the Commission, would not be assessed by the Court.⁴

It should furthermore be kept in mind that the right to individual petition is open to three types of complainants: individuals, non-governmental organisations and groups of individuals. Besides, there is the possibility of inter-state complaints. Consequently, not only can a natural person complain about a violation, a legal body may also claim to be the victim of an interference with its rights. Such an infringement is non-subjective in the sense that a church might, for example, complain about a violation of its freedom of religion when it is prevented from ringing the church bells in the morning. It is not so much that the church has suffered from harm, as a church has no religion. The question here is rather: did the state have sufficient reason to use its power in such a way? The right to petition of a group of individuals was inserted to broaden the right to petition and to ensure that no one was excluded from access to the Commission.⁵ The term 'group of individuals' referred specifically to minority groups, which must be interpreted against the background of the Second World War.⁶ Thus, the Convention authors allowed such groups, as a whole or as an aggregation of individuals who are members to such groups, to submit a complaint before the Commission. Again, such application is not so much focused on specific personal and subjective interests, since the applicants do not claim to have suffered themselves specifically and individually from a certain governmental practice - that is already covered by the right of individual petition by natural persons. Rather, a group of individuals has the opportunity to represent the general interests of the (minority) group as such. And finally, with inter-state complaints, the applicant state is of course also not claiming to be a direct victim of the violations committed by the defendant state.

More generally, the Convention focused on negative duties for states. For example, the respect for life, except deaths resulting from lawful acts of war, (Article 2 ECHR), the commandment that no one shall be subjected to torture or to inhuman or degrading treatment or punishment (Article 3 ECHR), the commandment that no one shall be held in slavery or servitude (Article 4) and the prohibition of retrospective legislation (Article 7 ECHR), are principles which may never be overridden by states, not even in the state of emergency (Article 15 ECHR). Besides the prohibition of retrospective legislation, the Convention lays down rules on fair trial (Article 6 ECHR), safeguards against unlawful or arbitrary detention or arrest (Article 5 ECHR) and the right to an effective remedy (Article 13 ECHR). These are all minimum conditions, which states need to abide by; if they do not, for example by adopting retrospective legislation, it is not so much that individual rights have been interfered with, but that the state is held to have abused its powers. Also, there is a general prohibition of abuse of power (Article 18

4 <http://www.echr.coe.int/Documents/Collection_Convention_1950_ENG.pdf>, art 48.

5 A H Robertson, 'Collected edition of the 'travaux préparatoires' of the European Convention on Human Rights = Recueil des travaux préparatoires de la Convention Européenne des Droits de l'Homme, vol 2 (Nijhoff 1975) 270.

6 *ibid*, vol 1, 160-162.

ECHR) and of discriminatory practices (Article 14 ECHR). With regard to the qualified rights, the limitation clause of Articles 8-11 specifies that the administrative power may only curtail these rights if the infringement was prescribed by law, if it was aimed at a general interest, such as national security or the protection of the rights and freedoms of others, or if it was necessary in a democratic society. It should be noted that this is a binary test: either an infringement is necessary, and in that case legitimate, or it is not, in which case it is illegitimate. To take as an example the sanctity of one's home, as protected under Article 8 ECHR, if the police enters a person's house with a good and legitimate reason, for example it has reason to believe that this person had committed a murder, and it wanted to search for a murder weapon in that house, this is necessary for the protection of national security and thus legitimate. If the police enters a person's home without a legitimate reason, however, it is not. Note that no balancing of interests takes place, the test is simply whether an infringement is necessary or not, the focus is on the legitimacy of the actions of the state as such.

It is exactly on these points that the European Court of Human Rights radically diverged from the intentions of the authors of the Convention. The Court has accepted that Article 8 ECHR not only protects the negative freedom of citizens, but also the right to develop one's personality to the fullest; it has accepted that states may not only have a negative duty not to abuse its powers, but also a positive duty to use its powers to protect its citizens and to facilitate their quest for full personal development.⁷ Moreover, the Court puts a strong emphasis on individual interests and personal harm when assessing a case on a potential violation of Article 8 ECHR. This is linked to the notion of *ratione personae* - the question whether the claimant has individually and substantially suffered from a privacy violation, and in part to that of *ratione materiae*, which asks if the interest said to be interfered falls under the protective scope of the right to privacy. From this focus on individual harm and individual interests follows that certain types of complaints are declared inadmissible by the European Court of Human Rights, which means that the cases will not be dealt with in substance:

- So-called *in abstracto* claims are in principle declared inadmissible. These are claims that regard the mere existence of a law or a policy, without them having any concrete or practical effect on the claimant.⁸
- *A-priori* claims are rejected as well, as the Court will usually only receive complaints about injury, which has already materialised. *A-contrario* claims about future damage will in principle not be considered.⁹
- Hypothetical claims regard damage which might have materialised, but about which the claimant is unsure. The Court usually rejects such claims because it is

7 Bart van der Sloot, "Privacy as Personality Right: Why the ECtHR's Focus on Ulterior Interests Might Prove Indispensable in the Age of "Big Data"" (2015) 80 *Utrecht Journal of International and European Law* 25.

8 *Lawlor v the United Kingdom* App no 12763/87 (ECtHR, 14 July 1988).

9 *Tauira and others v France* App no 28204/95 (ECmHR, 04 December 1995).

unwilling to provide a ruling on the basis of presumed facts. The applicant must be able to substantiate his claim with concrete facts, not with beliefs and suppositions.

- The ECtHR will also not receive an *actio popularis*, a case brought up by a claimant or a group of claimants, not to protect their own interests, but that of others or society as a whole. These types of cases are better known as class actions.¹⁰
- The Court has held that applications are rejected if the injury claimed, following from a specific privacy violation, is not sufficiently serious, even although it does fall under the scope of Article 8 ECHR. This can also be linked to the more recent introduction of the so-called *de minimis* rule in the Convention, which provides that a claim will be declared inadmissible if ‘the applicant has not suffered a significant disadvantage’.¹¹

The same focus on individual interests can be witnessed with regard to the material scope of the right to privacy, Article 8 ECHR. In principle, it only protects the private life, family life, correspondence and home of an applicant. However, the Court has been willing to give a broader interpretation, for example, by holding that the right to privacy protects the personal development of an individual,¹² includes protection from environmental pollution and may extend to data protection issues. Still, what distinguishes the right to privacy from other rights under the Convention, such as the freedom of expression, is that it, in principle, only provides protection to individual interests. While the freedom of expression is linked to personal expression and development, it is sometimes also connected to societal interests, such as the search for truth through the market place of ideas and the well-functioning of the press, a precondition for liberal democracy. By contrast, Article 8 ECHR only protects individual interests, such as autonomy, dignity and personal development. Cases that do not regard such matters are rejected by the Court.

This focus on individual interests has also had an important effect on the type of applicants that are able to submit a complaint about the right to privacy. The Convention, in principle, allows natural persons, groups of persons and legal persons to complain about an interference with their rights under the Convention. Indeed, the Court has accepted that churches may invoke the freedom of religion (Article 9 ECHR) and that press organisations may rely on the freedom of expression (Article 10 ECHR). However, because Article 8 ECHR only protects individual interests, the Court has said that in principle, only natural persons can invoke a right to privacy.¹³ Consequently, the ECtHR has rejected most complaints by legal persons, a position which it is prepared

10 *Asselbourg and 78 others and Greenpeace Association-Luxembourg v Luxembourg* App no 29121/95 (ECtHR, 29 June 1999).

11 ECHR art 35, para 3 (b). *Trouche v France*, App no 19867/92 (ECmHR, 1 September 1993). *Glass v The United Kingdom* App no 28485/95 (ECmHR, 16 October 1996). *Murray v The United Kingdom*, App no 14310/88 (ECtHR, 10 December 1991).

12 *X. v Iceland* App no 6825/74 (ECmHR, 18 May 1976).

13 *Church of Scientology of Paris v France* App no 19509/92 (ECmHR, 9 January 1995).

to leave only in exceptional circumstances.¹⁴ In similar fashion, the Court has rejected the capacity of groups to complain about a violation of human rights. Against the intention of the authors of the Convention, the Court has stressed that only specific individuals, who all have been harmed personally and significantly by a violation of their rights, can bundle their claims. Groups cannot, however, protect group interests, neither can specific individuals belonging to a certain group submit a claim on behalf of a group or a minority. The last non-individual mode of complaint under the Convention, the possibility of inter-state complaints, has had almost no role of importance under the Convention's supervisory mechanism.¹⁵

As a result, the Court has focused almost exclusively on individual rights and the protection of individual interests, relating to, inter alia, human dignity, individual autonomy and personal freedom. This has had an important effect on the way in which the Court resolves cases revolving around Article 8 ECHR. First, it should be stressed that Article 18, providing the first safeguard against the abuse of power by states, has been of almost no relevance. In only five cases has the Court found a violation of Article 18 and even in these cases, it stressed that Article 18 cannot be invoked as a separate doctrine but only in combination with an individual right, protected under the Convention. Thus, it is first necessary for a claimant to demonstrate that his individual right and personal interest have been harmed and only then it is possible for the Court to hold that a state had abused its powers. Holding states accountable for abuse of power as such is out of the question. The same holds true for the prohibition on discrimination (Article 14 ECHR), which can only be invoked if one of the subjective rights under the Convention has also been infringed. Moreover, in most cases under Article 8 ECHR, the necessity test has been replaced by a balancing test, in which the societal and the personal interest involved with a specific privacy violation are balanced and weighed against each other.¹⁶

For a long time, the Court has struggled with its own interpretation, focused on individual rights and individual interests, in three types of cases particularly. The first group contains cases about discriminatory practices, especially regarding laws that prohibited homosexual conduct. Cases were put forward, in which claimants were neither convicted, nor prosecuted for homosexual conduct, nor was there a reasonable chance that they would be, eg because the law had not been applied or enforced for decades. Still, the ECtHR acknowledged, the mere fact that homosexual conduct was prohibited could have a negative impact on the claimants, because they felt discriminated against or because they might have felt inclined to curtail their sexual inclinations – hence they were recognized as victims. The second group of cases regarded environmental pollution. The problem with many of these types of cases is twofold. First, there often exists only gener-

14 See among others: *Stes Colas Est and others v France* App no 37971/97 (ECtHR, 16 March 2002). See further: Bart van der Sloot, 'Do privacy and data protection rules apply to legal persons and should they? A proposal for a two-tiered system' (2015) 1 *Computer Law & Security Review* 26.

15 P van Dijk, F van Hoof, A van Rijk and L Zwaak (eds), *Theory and Practice of the European Convention on Human Rights* (Intersentia 2006) 50.

16 C Ovey and R C A White, *European Convention on Human Rights* (Oxford University Press 2002) 209.

ic data about pollution, for example, statistical information about the general emission of toxic gasses over the period of a year in a certain area, not about the pollution on a specific day in a specific neighbourhood or in the living area of a claimant. Second, the effects of pollution on a claimant are often difficult to prove. Even if harm could be shown, eg a certain medical condition the applicant suffers from that could have been caused by the pollution, the causal relationship is often impossible to prove. That is why the ECtHR has introduced the notion of 'quality of life', which by the Court's own admission is a very vague and subjective term. The ECtHR uses this term to accept many cases regarding environmental pollution, namely if a situation might have potentially affected the claimant's 'quality of life', which is primarily up to the claimant to determine.¹⁷

The ECtHR used the same strategy with regard to the third group of cases that qualify as an exception to the victim-requirement, namely cases that revolve around (mass) surveillance. Like environmental pollution, mass surveillance does not affect specific persons, but everyone or large groups in society. Like prohibitions on homosexual conduct, the mere awareness of the fact that a person knows that he might be surveilled might lead him to pre-emptively restrict his behaviour (chilling effect). It often proves difficult to demonstrate that a specific person has been subjected to (mass) surveillance and to what extent, especially when conducted by intelligence agencies, because for security reasons, they often do not disclose who they have targeted or why. Furthermore, even if it is known that a specific person had been subjected to mass surveillance, it is often very difficult to substantiate the harm that follows from it on a personal level. That is why the Court, from *Klass and other v Germany*¹⁸ onward, has been willing to relax its stance on the victim requirement in these types of cases. Still, it refrained from acknowledging explicitly that it accepted *in abstracto* claims, using instead tests like 'reasonable likelihood', 'victimhood by virtue of being a citizen' or 'future harm'.

Now, the Court has finally explicitly stated that it will also accept *in abstracto* claims: 'Having regard to the secret nature of the surveillance measures provided for by the contested legislation, the broad scope of their application, affecting all users of mobile telephone communications, and the lack of effective means to challenge the alleged application of secret surveillance measures at domestic level, the Court considers an examination of the relevant legislation *in abstracto* to be justified.'¹⁹ This could be viewed as positive for two reasons. First, the Court finally acknowledges clearly what it has actually been doing for years. Second, it provides protection to a broader range of cases, allowing for an analysis of the quality of the national laws and policies. The ECtHR can now unequivocally assess the foreseeability, necessity, effectiveness and quality of these laws without the applicants needing to show damage; in particular, it can and will assess whether the laws allowing for (mass) surveillance provide enough safeguards against the abuse of power by states.

17 Van der Sloot (n 7).

18 *Klass and others v Germany* App no 5029/71 (ECtHR, 6 September 1978).

19 *Zakharov v Russia* (n 2) § 178.

Still, diverging so explicitly from the very fundamentals of the right to privacy, the Court itself has developed the means for a whole new branch of cases to arise. All notions connected to the victim-requirement, such as the *de minimis* rule, the prohibition on hypothetical, future and abstract harm, the prohibition of class actions and of legal persons instituting a complaint, and the focus on individual interests, are inapplicable to these types of cases. Also, the normal assessment of cases by the Court revolves around, roughly, three questions: (1) has there been an infringement of the right to privacy of the claimant, (2) is the infringement prescribed by law and (3) is the infringement necessary in a democratic society in terms of, inter alia, national security, ie does the societal interest in this particular case outweigh the individual interest. Obviously, the first question does not apply to *in abstracto* claims, because there has been no infringement of the right of the claimant. The third question is also left untouched by the Court, because it is impossible, in the absence of an individual interest, to weigh the different interests involved. This means of course that another principle by the Court, namely that it only decides on the particular case before it, judging on a case by case basis, is also overturned.

Even the second question is not applicable as such, because there is no infringement that is or is not prescribed by law. Rather, it is the mere quality of the policy that is assessed - the content of the law or policy and the use of power, may be deemed inappropriate. The question of abuse of power could of course be addressed by the Court, but not under Article 18 of the Convention, because the ECtHR has said that it can only rule on the abuse of power when a material interest of a victim, related for example to the right to privacy, is at stake. Presently, in a rather curious twist, it has stressed that it can assess potential abuse of power under article 8 ECHR itself, without any material interest by the claimant needing to be at stake.

The test the ECtHR employs in *in abstracto* cases is in fact based on assessing the legality and legitimacy of a law, which is well known to countries that have a constitutional court or body, such as France and Germany. These courts can assess the 'constitutionality' of national laws in abstract terms. Not surprisingly, the term 'conventionality' (or '*conventionnalité*' in French) has been introduced in some cases before the Court.²⁰ The term is defined as 'the review of the compatibility of a national law with the Convention independently of a specific case where this law has been applied.'²¹ The Court has explicitly acknowledged it will not only act as a court of last instance, that a human rights court typically is, but also as a court of first instance, assessing the legality of national laws before the national courts have done so, especially when national laws do not allow for *in abstracto* claims.²² Consequently, there seem to be now two officially accepted branches of privacy claims and two faces of the ECtHR. One

20 *Michaud v France* App no 12323/33 (ECtHR, 6 December 2012); *Vassis and others v France* App no 62736/09 (ECtHR, 27 June 2013); *Py v France* App no 66289/01 (ECtHR, 11 January 2005); *Kart v Turkey* App no 8917/05 (ECtHR, 8 July 2008); *Duda v France* App no 37387/05 (ECtHR, 17 March 2009); *Kanagaratnam and others v Belgium* App no 15297/09 (ECtHR, 13 December 2011); *M.N. and F.Z. v France and Greece* App nos 59677/09 and 1453/10 (ECtHR, 8 January 2013).

21 *Vallianatos and others v Greece*, application nos. 29381/09 and 32684 (ECtHR, 7 November 2013).

22 *Lenev v Bulgaria*, application no. 41452/07 (ECtHR, 4 December 2012).

branch, in which personal interests are at stake and another, in which societal interests are at stake; one branch which revolves around balancing the interests at stake and another, which is based on an assessment of whether a law conforms to the minimum principles of legitimacy and legality. The Janus-faced ECtHR would now act both as a human rights court of last instance and as a constitutional court in first instance. Consequently, *Zahkarov* and *Szabó* will have an enormous impact on the case law of the ECtHR.

This issue of EDPL contains five insightful contributions by professors and professionals from around the globe. In 'Privacy, Security and Data Protection in Smart Cities: A Critical EU Law Perspective', *Lilian Edwards* discusses the issue of smart cities, one of the many buzzwords of the moment. The paper addresses in detail empirical research on smart cities and the regulatory framework applicable to their many different aspects. Edwards identifies a number of avenues for further promising investigation, such as exploring the development of a holistic privacy impact assessment for smart city data flows, finding new means for obtaining some kind of standing, or 'sticky', consent to data processing decoupled in time from when the data is actually pervasively collected via the Internet of Things and implementing a legal right to algorithmic transparency and finding ways of making this knowledge useful to ordinary users. However, the paper reverts to pessimism with the view that to preserve privacy in smart cities we may need to move entirely away from the liberal notion of 'notice and choice' or, in European terms, 'consent' and informed specific control over processing. Instead, we should look into an 'environmental' model of toxic processes, which should be banned or restricted, notwithstanding user permission or substitute grounds for processing.

In 'Is the Subject Access Right Now Too Great a Threat to Privacy?' *Andrew Cormack* argues that legal and technological developments have brought new classes of data controllers within the scope of European data protection law. Most of these have no direct relationship with the data subjects whose data they may process. His article considers the implications for the subject access duty: whether it still fulfils its original purposes and whether it creates new threats to privacy. Treating subject access as involving a conflict between the fundamental rights to data protection and privacy, the paper identifies a better balance and considers whether General Data Protection Regulation's modified subject access right will achieve it.

In 'eCall and the Quest for Effective Protection of the Right to Privacy', *Tijmen Wisman* discusses the objective of the eCall Regulation, which is to increase road safety through the mandatory installation of the so-called eCall in-vehicle system in every car certified for the European market from 2018 onwards. Besides benefits, Wisman argues, eCall presents challenges to the EU enshrined right to privacy and the protection of personal data. Part of these challenges follow from eCall's design which introduces the risk that eCall will be used to perform functions and serve purposes it was not originally intended for, eg surveillance. His paper illustrates why the legislator, throughout the legislative process, has fallen short in adequately addressing the challenges posed

by eCall to the right to privacy. The paper investigates the European Commission's impacts assessment, which is an instrument intended to identify the impact of its policy measures on fundamental rights, in order to gain insight into the question why the negative impacts on the right to privacy were not identified and mitigated. Wisman points to the problematic relationship between the unmitigated aspects of the design, delegated acts and their essential elements.

In 'Data Protection in India and the EU: Insights in Recent Trends and Issues in the Protection of Personal Data' *Asang Wankhede* shows that India's surge to become the world's preferred destination for investment in IT and product management services encounters a major legal hurdle. The obstacle is in the area of protection of personal data, where India lacks specific legislation. That legal gap makes data processing in the country more vulnerable to cyber hacking, theft and related crimes. His article examines the limited protection under the IT Act 2000 and the IT Rules 2011, and provides a brief analysis of the landmark Indian judgments on data protection. Another focal point in the article is the comparison between the Indian experience in data protection and that of the European Union (EU) - a major source of foreign direct investments in India's IT and outsourcing sectors. An analysis of the EU Data Protection Directive and a tabular comparison of the data protection laws in the EU and India highlight the differences between the two regimes.

Finally, in 'Imposition of Monetary Sanctions as a Mechanism for Protection of Personal Data: Comparative Analysis of Kosovo and Slovenia' *Njomeza Zejnullahu* argues that the right to personal data protection is an individual right, whose importance and dynamics changes according to the latest developments in technology. In addressing the developments that influence the protection of personal data, special attention should be paid to the mechanism for ensuring such protection. The right to protection of personal data is guaranteed by international and national legislation, including mechanisms for the implementation of such legislation. Data protection rights are also provided for by law in Slovenia and Kosovo. However, there are a few differences in the way the two legal regimes regulate this area, especially in terms of monetary sanctions. Zejnullahu's article aims to compare the imposition of monetary sanctions in both countries, focusing on the role of the implementing institution in imposing fines and the role of courts in this process. The analysis concludes that the lack of authority to impose fines on the part of the implementing institution has a negative effect on the protection of personal data.

As always, one of the aspects that makes this journal outstanding is the report section. It is again full of informative contributions on data protection developments in diverse countries in Europe. *Eleni Kosta* has written on changes regarding the Regulation of cookies in the Netherlands, *Lorna Woods* discusses the draft Investigatory Powers Bill in the UK, *Sebastian Schweda* analyses the Guidelines for Smart TV Services by the German DPAs, *Tobias Raab* addresses the developments in Germany trying to strengthen the power and independence of the DPAs, in similar fashion, *Sharon McLaughlin* discusses the independence of the Data Protection Commissioner in Ireland, inter alia

in the light of the Digital Rights Ireland case, *Valentina Pavel Burloiu* reflects on the attempts in Romania to adopt Cybersecurity regulation and finally, *Lina Jasmontaite* analyses the EDPS' opinion on a new digital ethics.

As previously mentioned, the case note section contains a comment by *Mark Cole* and *Annelies Vandendriessche* on the *Zahkarov* and *Szabó* cases. Then there is an insightful discussion of the most recent *Satamedia* case, this time before the ECtHR, although it is in many ways connected to the earlier case before the European Court of Justice.²³ Finally, the case note section contains a detailed discussion by *Maarten Truyens* of the Belgian *Facebook* decision, which was analysed in the report section in one of the earlier editions of EDPL. The book review section contains a careful discussion by *Alessandro Mantelero* of the latest book by Samantha Barbas *Laws of Images. Privacy and Publicity in America*. Finally, this edition of EDPL starts with the keynote speech of *Martin Schulz*, held at CPDP2016 conference, entitled 'Technological, Totalitarianism, Politics and Democracy'. We felt this to be an important contribution to the academic and professional debate and received a kindly permission for reprint. We hope you will enjoy reading EDPL's first edition of 2016!

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²³ Case C-73/07 *Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy, Satamedia Oy* (CJEU, 16 December 2008).