

Protection of Personal Data in Transatlantic Security Cooperation

Human Rights and Transatlantic Security Cooperation

Overview

- (1) US human rights record
- (2) European human rights obligations
- (3) How to ensure an equivalent level of protection

Systematic US violation of human rights

- Extrajudicial killings (“drones”) and death penalty
- Extrajudicial, indefinite detention without charge
- Extrajudicial abduction and rendition to torture states
- Deprivation of fair trial (“Military Commissions”)
- Impunity (“State Secrets Privilege”)
- ...

European human rights obligations

“In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the **substantive guarantees** offered and the **mechanisms controlling their observance**, in a manner which can be **considered at least equivalent** to that for which the Convention provides”

European Court of Human Rights

Equivalent substantive guarantees (1)

Human rights preconditions

- make International Covenant on Civil and Political Rights self-executing
- ratify First Optional Protocol
- ratify American Convention on Human Rights

Equivalent substantive guarantees (2)

Data protection preconditions

- strict conditions for transfer and use
- deletion
- notification
- data subject rights

Equivalent enforcement mechanisms

- Comprehensive judicial redress
- Independent oversight

Recommendations

- (1) Make equivalent protection of human rights a precondition to information sharing
- (2) Achieve equivalent level of data protection
- (3) Create equivalent enforcement mechanisms