

Doktori Műhelytanulmányok 2019

Doctoral Working Papers 2019

DOKTORI MŰHELYTANULMÁNYOK



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Transparency versus data protection in a particular attention to the administration of justice – with a European outlook¹

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Abstract

„Our ability to access previously unimaginably large amounts of information has already had a much greater impact on our lives, on our work, and on our relationships with each other than the automation of human activities.”²

Globalization and the global emergence and spread of info-communication technologies had a serious impact on some aspects of the information society.³

This article seeks to provide an overview of the protective legal framework of privacy and personal data with particular attention to the Hungarian issue of data processing in court proceedings and the changes introduced by the European Data Protection Reform of the GDPR in some EU Member States.

1. INTRODUCTION

The right to a fair trial by an independent and impartial tribunal is a fundamental right everybody is entitled to.⁴ Through such right, transparency and publicity becomes an important guarantee of the administration of justice. a broader sense,

¹This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled *Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy*. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

²BOJÁR GÁBOR: *A III. informatikai forradalom*. https://hvg.hu/tudomany/20180915_A_III_informatikai_forradalom (25. 01. 2019)

³SZÉKELY IVÁN: *Az egyén és az információs hatalom*. http://www.eszmelet.hu/szekely_ivan-az-egyen-es-az-informacios-hatalom/ (25. 01. 2019)

⁴Fundamental Law of Hungary: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100425.ATV (25. 01. 2019)

and as a procedural principle of different court proceedings as well, embodying the so-called civil control.

The administration of justice and the judiciary is as an independent branch of public power – a fundamental subsystem of modern democracies, with the publicity of court proceedings – besides judicial independence – being its foundational principle. The need to realize responsibility and hold people accountable as part of this structure is almost as old as humankind itself. Be it nomadic tribal structures or modern democracies, it can be argued that the administration of justice is a community act, which the individual plays an indispensable part. Members of a community were and are present in the proceedings⁵, but not only as “controllers”, but also in concrete, distinguishable procedural roles, either as plaintiffs or defendants.

The protection of the rights of these persons is quintessential in the respective procedures, and a fair balance should be struck in the privacy vs. transparency dilemma, ensuring that individual rights and expectations of privacy not be unnecessarily and disproportionately sacrificed on the altar of transparency.

This examination is then more and more substantiated by the fact that in the past decade, due to the exponentially growing evolution of information technology, claiming additional fundamental rights’ guarantees has grown in many proceedings. In this context, practically, the social contract itself changes and claims of rights against the state become emphatic.

The so-called information rights that have been so far established in modern democracies are fundamentally interrelated with the activities of the judiciary. Their role in jurisprudence and judicial practice reaches far over the problematic of the effective exercise of the right to the publicity of court proceedings as rules exist not only in relation to the respective proceedings, but also regarding the operation of the judicial apparatus as a whole.⁶ The constitutional regulation of these rights however does not simultaneously mean their limitless enjoyment given that their exercise should not violate concurring fundamental rights and state interests.

The collision⁷ between the requirements of privacy protection and transparency impose challenges on the legislator, the legal practitioners and on the judi-

⁵ For example the jury system or the assessorial / lay judge system.

⁶ SÜLYOK MÁRTON: *Magánszférvédelem a tisztességes eljárásban – Az alapjogsértő bizonyítás összehasonlító alkotmányjogi vizsgálata*. 2017, PhD-értekezés, Szeged. http://doktori.bibl.u-szeged.hu/3953/1/Sulyok_Marton_ertekezés.pdf

⁷ In connection with the conflict of fundamental rights, it is worth mentioning the new practice of the Constitutional Court, which has repeatedly dealt with the obligation to create a fair balance between fundamental rights with the emergence of competing fundamental rights positions. For more information, see 16/2016. (X. 20.) AB Decision

cial practice as well. many fields.⁸ Beyond issues of data protection, these requirements influence the publicity of the courtroom, the publicity of proceedings to the press, and the protection of personality rights.

With the two new procedural Acts (i.e. the Civil⁹ and the Criminal Procedure Codes¹⁰) – entered into force in 2018 –, the regulation of information rights in the Hungarian legal system has changed significantly. The problem is that, so far, court practice in relation to publicity of proceedings has been so divergent in both civil and criminal cases that it even amounted – in some cases – to legal uncertainty.

2. HUNGARY AND DATA PROTECTION

Hungary used to be a pioneer in the protection of personal data. Hungary met the privacy standards of the EU as early as in 2000, first among the countries accessing to the EU in 2004. Since its entry in the European Union, Hungary maintained a data protection law in line with the 1995 Directive but significant concerns over the independence of the data protection authority had put into question the country's achievements.¹¹ From 1 January 2012, the Fundamental Law of Hungary expressly addresses data protection and privacy under Article VI. The Fundamental Law sets forth that everyone shall have to the protection of his or her personal data as well as to access and disseminate data of public interest.¹² A new and independent authority is placed in charge of the regulation of data protection under the Fundamental Law, with the details of its operations defined by the Informational Act (Act CXII of 2011¹³) which also entered into force on 1 January 2012.

In the recent past, due to the European Data Protection Reform embodied by the GDPR – the Hungarian Parliament had to amend the Act on the Informational Self-Determination and Freedom of Information, and the reform was implemented in two steps. As the first step, the Parliament adopted an amendment to the existing Act basically with two major issues: the appointment of the Hungar-

⁸ SÜLYÖK MÁRTON: Egy indítvány nyomában... Alapvető alkotmányjogi jelentőségű kérdések a polgári eljárásjogi magánszféravédelem köréből. *Arsboni*, 2018/1–2. 3–18.

⁹ http://njt.hu/translated/doc/J2016T0130P_20180701_FIN.pdf (25. 01. 2019)

¹⁰ <https://net.jogtar.hu/jogszabaly?docid=A1700090.TV×hift=ffffff4&txtreferer=000001.TXT> (25. 01. 2019)

¹¹ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140053hu.pdf> (25. 01. 2019)

¹² http://njt.hu/translated/doc/TheFundamentalLawofHungary_20190101_FIN.pdf (25. 01. 2019)

¹³ http://www.naih.hu/files/Privacy_Act-CXII-of-2011_EN_201310.pdf (25. 01. 2019)

ian Data Protection Authority and a provision for the Data Protection Authority to give warning instead of imposing fines for first time for infringement the rules of data protection.¹⁴

The second step was the adoption of the General Data Protection Regulation¹⁵ and the implementation of the „Police Directive”.¹⁶ This amendment is effective since 26th of July 2018.

3. JUDICIAL DATA PROCESSING IN HUNGARY

The rapid technological development and globalisation have brought new challenges for the protection on personal data. The scale of the collection and sharing of personal data has increased significantly.

In carrying out their jurisdictional activities, the courts are necessarily contacting the information system that includes personal and public data, which is an essential factor for society and the state as well.¹⁷

The legal relationships being the subject of court proceedings are built on this information system, which will allow all the social, economic, and public information to appear; therefore the courts clearly qualify as data controllers/processors.

These so-called databases separate themselves technically and physically from their original sources, so the data is available to the court, irrespective of space, time and the will of the parties involved.¹⁸

In order to ensure the transparency of courts, the information stored must be provided to the parties, other authorities, and the media, taking into account applicable legal provisions.

When it comes to the operation of courts, one of the biggest problems with regard to the constitutionality of data processing is when the qualification of a particular data is changed several times in different procedural stages, and is – consequently – subject to different legal protection. Needless to say that the same

¹⁴ DLA PIPER: *Data Protection Laws of the World*. 2019, HandBook, 322.

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=HU> (25. 01. 2019)

¹⁶ Directive (EU) 2016/680 of the European Parliament and of the Council. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.119.01.0089.01.ENG (25. 01. 2019)

¹⁷ HARANGOZÓ ATTILA: *Vitaanyag Az igazságügyi adatkezelésről és a bírósági tájékoztatásról szóló törvénytervezet előzetes egyeztetéséhez*. <http://birosag.hu/nyilvanossag/az-igazsagugyi-adatkezesrol-es-birosagitajekoztatasirol-szolo-torvenytervezet> (25. 01. 2019)

¹⁸ SZELECKZI RITA: *Adatkezelés a bírósági eljárásokban*. <https://mabie.hu/index.php/cikkek-tanulmanyok/109-dr-szelecki-rita-adatkezes-a-birosagi-eljarasokban> (25. 01. 2019)

data cannot be considered as both public and protected at the same time in the same procedure.¹⁹

However, compliance with domestic legal provisions, this issue arises regularly, which is quite frankly a legal nonsense requiring an immediate and comprehensive solution.

There is no unified, sectoral law on judicial data processing relating to their judicial activities. Currently, the most important rules on data processing and data protection are set forth in several acts, each of them regulating a certain piece of the area. These legal instruments are the following:

- The Fundamental Law (Art. VI)²⁰
- Act CLXI of 2011 on the organization and administration of the courts²¹
- Act CLXII of 2011 on the Legal Status and Remuneration of Judges²²
- Act XC of 2017 on the Code of Criminal Procedure²³
- Act CXXX of 2016 on the Code of Civil Procedure²⁴
- Act V of 2013 on the Civil Code²⁵
- Act CXII of 2011 on the Informational Self-Determination and Freedom of Information²⁶ (Privacy Act)
- Act CIV of 2010 on the freedom of the press and the fundamental rules on media content²⁷
- Act CLV of 2009 on the Protection of Classified Information²⁸

From among the abovementioned acts, the act on the organization and administration of the courts should be highlighted, as this act provides for the organizational basis of the structure of data processing.

¹⁹ Uo.

²⁰ http://njt.hu/translated/doc/TheFundamentalLawofHungary_20190101_FIN.pdf (25. 01. 2019)

²¹ <https://net.jogtar.hu/jogszabaly?docid=A1100161.TV>, <http://konyvtar.bpugyvedikamara.hu/wp-content/uploads/2012/03/CDL-REF2012007-e-.pdf> (25. 01. 2019)

²² <https://net.jogtar.hu/jogszabaly?docid=A1100162.TV>, [https://www.venice.coe.int/web-forms/documents/default.aspx?pdffile=CDL-REF\(2012\)006-e](https://www.venice.coe.int/web-forms/documents/default.aspx?pdffile=CDL-REF(2012)006-e) (25. 01. 2019)

²³ <https://net.jogtar.hu/jogszabaly?docid=A1700090.TV×hift=ffffff4&txtreferer=00000001.TXT> (25. 01. 2019)

²⁴ http://njt.hu/translated/doc/J2016T0130P_20180701_FIN.pdf (25. 01. 2019)

²⁵ http://njt.hu/translated/doc/J2013T0005P_20180808_FIN.pdf (25. 01. 2019)

²⁶ http://www.naih.hu/files/Privacy_Act-CXII-of-2011_EN_201310.pdf (25. 01. 2019)

²⁷ http://nmhh.hu/dokumentum/162262/smtv_110803_en_final.pdf (25. 01. 2019)

²⁸ <https://mkogy.jogtar.hu/jogszabaly?docid=a0900155.TV>, http://www.europam.eu/data/mechanisms/FOI/FOI%20Laws/Hungary/Hungary_Protection%20of%20Classified%20Information_2009.pdf (25. 01. 2019)

The civil and criminal procedure acts contain procedural provisions for data processing.

In addition to the legislation above, the statutory provisions of the Privacy Act shall also apply during court proceedings.

The act on the protection of classified information is also an important act, as its provisions can significantly affect or restrict data processing, meaning that such provisions can virtually even override the application of general rules.²⁹

Data processing and data protection during court proceedings is quite complex. At the same time, due to the applicable rules, it is also quite chaotic.

To sum up, the root of all problems is that the provisions on data protection are not unified in one single sectorial legal instrument but have been incorporated into various separate but consecutive acts regulating similar legal issues regarding procedures. In addition, the provisions of the Privacy Act should as well be observed simultaneously, which, the absence of constant harmonization, can be an issue.³⁰

The Privacy Act does not take into consideration the special status of judicial proceedings and vice versa, the procedural laws are not in accordance with the Privacy Act and with the relevant provisions of the Civil Code containing additional data protection rules in the context of personality rights.³¹

This chaotic situation is greatly exemplified by the fact that our procedural laws allow some of the clients – for example the defendant, and the plaintiff – to have the right to use the data processed during the judicial procedure and the image (portrait) and sound recording with respect to press and publicity.³²

In this case, the prevailing journalistic practice³³ is to pixelate the portrait of the affected person according to the regulations of the Civil Code, a way that further characteristics like hair, height, possible physical disability or tattoo remain visible.

This practice corresponds to the regulations of the Civil Code, however it is not in harmony with procedural laws and it ignores the provisions of the Privacy Act,

²⁹ HARANGOZÓ ATTILA: Elhangzott „Az igazságügyi adatkezelésről és tájékoztatásról szóló törvény koncepciója” címmel rendezett konferencián, 2014. március 14-én Debrecenben. http://birosag.hu/sites/default/files/debrec-eni_konferencia_szoveg_0424...

³⁰ HARANGOZÓ ATTILA: *Vitaanyag Az igazságügyi adatkezelésről és a bírósági tájékoztatásról szóló törvénytervezet előzetes egyeztetéséhez.* (<http://birosag.hu/nyilvanossag/az-igazsagugyi-adatkezesrol-es-birosagitajekoztatasarol-szolo-torvenytervezet>) (25. 01. 2019)

³¹ SZELECKZI RITA: *Adatkezelés a bírósági eljárásokban* <https://mabie.hu/index.php/cikkek-tanulmanyok/109-dr-szelecki-rita-adatkezes-a-birosagi-eljarasokban> (25. 01. 2019)

³² NAVRATIL SZONJA: *Az igazságszolgáltatás nyilvánossága.* In BADÓ ATTILA (szerk.): *A bírói függetlenség, a tisztességes eljárás és a politika.* 2011, Gondolat Kiadó, Budapest.

³³ PRANCZ BALÁZS: *A büntető igazságszolgáltatás és a média konfliktusa.* *Iustum Aequum Salutare*, IV. 2008/2. 183.

according to which personal data shall mean any data relevant to the data subject, particular by reference to the name and identification number of the data subject or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity as well as conclusions drawn from the data in regard to the data subject. The Act on the Informational Self-Determination and Freedom of Information said, that personal data includes especially:

- The data subject's name.
- Any identification code.
- One or more pieces of information specific to the data subject's physical, physiological, mental, economic, cultural or social identity.

In practice personal data is interpreted broadly. As a result, the term personal data covers (among others):

- Biometric information.
- Sound recordings.
- E-mail addresses.
- IP addresses identifying a computer.
- Websites.

In addition to personal data, the DPA defines the following specific categories of data:

- Sensitive personal data
- Criminal personal data.
- Data of public interest.
- Public data on grounds of public interest.³⁴

4. THE EUROPEAN DATA PROTECTION REFORM

Globalizational changes have become a global phenomenon with the emergence and spread of infocommunication technologies, and as a result of globalization, the development of these technologies is accelerating, which also has a serious impact on some aspects of the information society that is relevant to us.

Due to global digitalization. Europe, the concepts of the GDPR have overwritten national data protection laws all across the Union, and not without reason.

³⁴ Act CXII of 2011 on the Informational Self-Determination and Freedom of Information. http://www.naih.hu/files/Privacy_Act-CXII-of-2011_EN_201310.pdf (25. 01. 2019)

This reason being that digitalization and globalization is boundless, therefore data protection must be unified in the context of the EU.³⁵

A 'Regulation' (unlike the Directive which it replaced) is directly applicable and has consistent effect in all Member States. However, there remain more than 50 areas covered by GDPR where Member States are permitted to legislate differently in their own domestic data protection laws, and there continues to be room for different interpretation and enforcement practices among the Member States.³⁶

The recent European data protection reform (effective since May 2018) is the most important change in data privacy regulation in the last two decades. The reform will fundamentally reshape the way how data is processed across every sector, from healthcare to banking and beyond.

The European Data Protection Reform is implemented in three steps.

4.1. General Data Protection Regulation

The first step of the reform was the General Data Protection Regulation (GDPR) entering into force in 25 May 2018. In the following table you can see which Member States have thus far complied with the provisions of the regulation. Unfortunately, eight of the 28 member states couldn't pass their GDPR implementation acts until 25th May.

According to the GDPR, a company can only process personal data under certain conditions. For instance, the processing should be fair and transparent, for a specified and legitimate purpose and limited to the data necessary to fulfil this purpose. It also must be based on one of the following legal grounds:

- The consent of the individual concerned
- A contractual obligation between the individuals
- To satisfy a legal obligation
- To protect the vital interests of the individual
- To carry out a task that is in the public interest
- And for the companies legitimate interest – only after having checked that the fundamental rights and freedoms of the individual whose data the company processing are not seriously impacted.³⁷

³⁵ Interview with Attila Péterfalvi, President of the National Authority for Data Protection and Freedom of Information. <https://www.jogiforum.hu/interju/171> (25. 01. 2019)

³⁶ DLA PIPER: Data Protection Laws of the World. HandBook 2019.

³⁷ EUROPEAN COMMISSION: *The GDPR: new opportunities, new obligations*. 2018, Publications Office of the European Union, Luxembourg, 8.

In data processing there are numerous potential risk, like an unauthorized disclosure, identity theft, online abuse, just to name a few. But the protection of personal data is a fundamental right for everyone in the European Union.

The GDPR give us more control over our personal data and improve our security in online and offline as well.

GDPR builds on the rights enjoyed by individuals under the current Directive, enhancing existing rights and introducing a new rights to data portability. These rights are making it easier to claim damages for compensation and for consumer groups to enforce rights on behalf of consumers.

The GDPR ensure some new rights for EU citizens such as:

- the right to receive clear and understandable information about the data processors, and what data they are processing, and also why processing that data³⁸
- the right to request access to the personal data an organization has about us³⁹
- the right to rectify: a right to require inaccurate or incomplete personal data to be corrected or completed without undue delay.⁴⁰
- the right to be forgotten⁴¹: Everyone has the right to ask to delete his or her personal data if he or she no longer want it to be processed and there is no legitimate reason for a company to keep it.⁴²
- the right to data portability: the data subject has the right to receive or have transmitted to another controller all personal data concerning them in a structured, commonly used and machine-readable format.⁴³

The Regulation permit every Member State to restrict the rights of individuals and transparency obligations by legislation when the restriction “respects the essence of fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society”⁴⁴ to safeguard one of the following:

(a) national security (b) defence (c) public security (d) the prevention, investigation, detection or prosecution of breaches of ethics for regulated professions, or crime, or the execution of criminal penalties (e) other important objectives of general public interest of the EU or a Member State. particular economic or financial interests (f) the protection of judicial independence and judicial proceedings

³⁸ Art 12–14 of the General Data Protection Regulation

³⁹ Art 15 of the General Data Protection Regulation

⁴⁰ Art 16 of the General Data Protection Regulation

⁴¹ SZÉKELY IVÁN: Jog ahhoz, hogy elfelejtsenek és töröljenek. *Információs Társadalom*, 34/2013, 7–27. (online) http://www.infonia.hu/digitalis_folyoirat/2013/2013_34/i_tarsadalom_2013_3_4_szekely.pdf (25. 01. 2019)

⁴² Art 17 of the General Data Protection Regulation

⁴³ Art 20 of the General Data Protection Regulation

⁴⁴ Art 23 of the General Data Protection Regulation

- (g) a monitoring, inspection or regulatory function connected with national security, defence, public security, crime prevention, other public interest or breach of ethics
- (h) the protection of the data subject or the rights and freedoms of others
- (i) the enforcement of civil law claims

4.2. *Police Directive*

The second step of the European Data Protection Reform was the Directive on the protection of natural persons regarding processing of personal data connected with criminal offences or the execution of criminal penalties, and on the free movement of such data. (2016/680/EU Directive, the so-called Police Directive).⁴⁵

The new technologies allow personal data to be processed on an unprecedented scale in order to pursue activities such as the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

For the prevention, investigation and prosecution of criminal offences, it is necessary for competent authorities to process personal data collected in the context of the prevention, investigation, detection or prosecution of specific criminal offences beyond that context in order to develop an understanding of criminal activities and to make links between different criminal offences detected.⁴⁶

Ensuring a consistent and high level of protection of the personal data of natural persons and facilitating the exchange of personal data between competent authorities is crucial in order to ensure effective judicial cooperation in criminal matters and police cooperation.

The directive protects citizens' fundamental right to data protection whenever personal data is used by criminal law enforcement authorities for law enforcement purposes. It will in particular ensure that the personal data of victims, witnesses, and suspects of crime is duly protected and will facilitate cross-border cooperation in the fight against crime and terrorism.

It is really important that the Police Directive allow the Member States to specifying processing operations and processing procedures in their national rules on criminal procedures in relation to the processing of personal data by courts and other judicial authorities. particular as regards personal data contained in a judicial decision or in records in relation to criminal proceedings.⁴⁷

In the areas of judicial cooperation in criminal matters and police cooperation it is inherent that personal data relating to different categories of data subjects are

⁴⁵ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.119.01.0089.01.ENG (25. 01. 2019)

⁴⁶ Directive (EU) 2016/680 of the European Parliament and of The Council (27)

⁴⁷ Directive (EU) 2016/680 of the European Parliament and of The Council (20)

processed. Therefore, a clear distinction should, where applicable and as far as possible, be made between personal data of different categories of data subjects such as: suspects; persons convicted of a criminal offence; victims and other parties, such as witnesses; persons possessing relevant information or contacts; and associates of suspects and convicted criminals.

So the Directive's provisions said that what extent it is possible to differentiate between the different categories of personal data of the different data subject.

According to Article 6, the data controller has to make a clear distinction between personal data of different categories of data subjects such as:

- in terms of persons. terms of whom there is probable cause to suppose that they have committed a crime or prepare to do so.
- in terms of persons convicted for a crime
- in terms of victims of a crime and those, about whom we have probable cause to think that they have been in fact victims of a crime,
- in terms of other parties affected, concerned by a crime, e.g. such persons that can be called to testify or otherwise have information on a crime during the criminal proceedings, or people being in touch with the above.⁴⁸

4.3. ePrivacy Regulation

*The third step will be the ePrivacy Regulation on the Respect for private life and the protection of personal data in electronic communications, which is – for political reasons and lack of consensus on some core issues – being delayed in legislation and is foreseeable by 2019–2020.*⁴⁹

5. EUROPEAN OUTLOOK IN THE FIELD OF DATA PROTECTION

As it mentioned above, the European Data Protection Reform will fundamentally reshape the way how data is processed across every sector, from healthcare to banking and beyond.

So as an outcome, it will also affect data processing and data protection in court proceedings. It is therefore essential to examine how the provisions of the GDPR have been incorporated into the legal system of each Member State and to apply concepts or provisions differently than those defined in the GDPR. (There are

⁴⁸ Directive (EU) 2016/680 of the European Parliament and of The Council Art. 6

⁴⁹ GIOVANNI BUTTARELLI: *The urgent case for new ePrivacy law*. https://edps.europa.eu/press-publications/press-news/blog/urgent-case-new-eprivacy-law_en (02. 02. 2019)

several areas covered by GDPR where Member States are permitted to legislate differently in their own domestic data protection laws).

5.1. *Austria*

In Austria, the laws concerning the implementation of the GDPR have been adopted gradually.

The former Data Protection Act was amended in summer 2017, and the new Act was intended to enter into force simultaneously with the General Data Protection Regulation.

The new Act considerably amended the former Data Protection Act and it is now the central piece of legislation Austria regulating data privacy.

To adapt to the terminology of the General Data Protection Regulation, further amendments to other statutory laws were adopted. This included the data protection legislation for the research sector.⁵⁰

The new Data Protection Act does not contain any further definitions or derogations as compared to the GDPR. However the first section of the new Act – which provides a general right to data protection – does not use the definition of data subject. Instead, this section uses the term everyone, which means that the general right to data privacy applies to legal entities and other organizations as well.⁵¹

5.2. *Belgium*

In Belgium, the GDPR have been integrated through a couple of new laws. The Data Protection Act 2018 provides for the implementation of the provisions of the GDPR open to additional definition, derogation or further requirements.⁵²

This Act includes the implementation of the 2016/680 Directive (Police Directive) regarding the processing of personal data connected with criminal offences and also the establishment of a Control body on police information (COC).

The Act also regulates the different authorities outside the scope of the European Union's law, including intelligence and security services.⁵³

⁵⁰ https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00010/index.shtml (25. 01. 2019)

⁵¹ DLA PIPER: *i. m.* 44.

⁵² DLA PIPER: *i. m.* 67.

⁵³ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2018073046&table_name=wet (25. 01. 2019)

5.3. Denmark

In Denmark, the data protection and data processing is regulated by the GDPR in addition to the Danish Data Protection Act. The Danish Parliament replaced the former Danish Act on Processing of Personal Data⁵⁴ on 17th of May, 2018 with the Danish Act on Data Protection (came into force simultaneously with GDPR).

Although the Danish Data Protection Act does not apply to Greenland and the Faroe Islands.⁵⁵

5.4. Estonia

In Estonia, the Estonian Parliament adopted the new Personal Data Protection Act on 12th of December 2018, and entered into force on 15th of January, 2019. All of the derogations and additional requirements to the GDPR are provided in the above mentioned Act and the Personal Data Protection Implementation Act.

The Estonian Personal Data Protection Act does not contain any further definitions as compared to the GDPR, the Act uses the same definitions as the GDPR.

5.5. France

In France, the French Parliament implemented the GDPR into the domestic legislation on 20th of June, 2018 with the new Law on Protection of Personal Data.⁵⁶ This new Law generally updates the previous Act on Information technology, Data files and civil liberties.⁵⁷

The French Data Protection Act applies primarily if the data controller is established in France. The French Data Protection Act is also applicable as well, if the data controller is established outside the European Union but uses processing means located on the French territory.⁵⁸ It means that the Act will apply to any processing of personal data in the context of the activities of an establishment of a controller or processor in France, even so if the processing does not take place in France.

⁵⁴ Act no. 429 of 31/05/2000 <https://rm.coe.int/16806af0e6> (25. 01. 2019)

⁵⁵ DLA PIPER: *i. m.* 187.

⁵⁶ Law No. 2018-493 Protection of Personal Data <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037085952&fastPos=1&fastReqId=364642988&categorieLien=cid&oldAction=rechTexte> (25. 01. 2019)

⁵⁷ Act on Information technology, Data files and Civil Liberties, Act N°78-17 OF 6 JANUARY 1978 <https://www.cnil.fr/sites/default/files/typo/document/Act78-17VA.pdf> (25. 01. 2019)

⁵⁸ DLA PIPER: *i. m.* 240.

In addition, if the processing carried out for journalistic, academic or artistic purposes, these are an exception to the territorial scope. In such cases, the domestic rules of the Member State where the controller is established shall apply.

5.6. *Germany*

Germany was the first EU Member State to adopt the new Federal Data Protection Act thereby creating the legal framework for the GDPR. The German Parliament officially published the new Data Protection Act on 5th of July, 2017, and the new Act entered into force simultaneously with the GDPR on 25th of May 2018.⁵⁹

The aim of the New Data Protection Act was to make use of the several opening clauses, which allow the EU Member States to specify or restrict the data processing requirement under the GDPR.

The German Federal Data Protection Act uses the same definitions as the GDPR, but incorporate additional definition for public bodies of the Federation, public bodies of the Länder, and private bodies.⁶⁰

5.7. *Italy*

In Italy, the Italian Parliament implemented the GDPR with a Legislative Decree⁶¹ which came into force on 19th of September 2018. The new Privacy Code uses the same definitions as the GDPR, however it provides further restrictions on data subjects rights for judicial purposes. For example, the provisions of the Privacy Code can be exercised within the limits established in the law on the proceeding and procedures before the courts.⁶²

In addition, the Data Protection Act also provides for data protection rights for deceased persons.

According to the Privacy Code, data protection rights for deceased persons shall exercised by those having an interest of their own, or by those who act to protect the data subject.

⁵⁹ https://www.gesetze-im-internet.de/englisch_bdsch/index.html (25. 01. 2019)

⁶⁰ DLA PIPER: *i. m.* 256.

⁶¹ Legislative Decree 101/2018 http://www.gazzettaufficiale.it/atto/serie_generale/carica-DettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2018-09-04&atto.codiceRedazionale=18G00129&elenco30giorni=false (25. 01. 2019)

⁶² DLA PIPER: *i. m.* 381.

5.8. Lithuania

In the Republic of Lithuania, the Parliament implemented the GDPR with the new Law on Legal Protection of Personal Data, which has been in force since 16th of July 2018.⁶³ The new Law applies to controllers and processors established in Lithuania, and to controllers following the Lithuanian law by virtue of the international public law. However, the case of companies offering goods or services in the European Union or offering a follow-up to the behavior of those concerned, the Act applies only to data controllers and processors who have appointed a representative in Lithuania.⁶⁴

The Lithuanian Data Protection Law applies the definitions given by the GDPR with two differences.

According to the Law the direct marketing shall mean an activity intended for offering goods or services to individuals by post, telephone or any other direct means and/or for obtaining their opinion about the offered goods or services.⁶⁵ And the Institutions and authorities shall mean the state and municipal institutions and authorities, enterprises and public institutions, financed by state or municipal budgets or state monetary funds and authorized by the Law on Public Administration of the Republic of Lithuania.⁶⁶

5.9. Poland

In Poland, the new Act on Personal Data Protection⁶⁷ entered into force 25th of May 2018. The new Act brings the Polish data protection law into conformity with the GDPR. The Polish Parliament published two draft acts on personal data protection law. The above mentioned Act was the first draft. The second draft act is about the provisions implementing the new Data Protection Act. This draft act contains several amendments of sectorial regulations, but the entry into force of the draft has been delayed.

The biggest innovation in the new Polish data protection law is the creation of a new data protection supervision body which has a broader scope than the previous DPA.

⁶³ Law on Legal Protection of Personal Data. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ef70b5d2f14811e78f3dc265493430ae?jfwid=nz8qn7vvf> (25. 01. 2019)

⁶⁴ <https://iapp.org/news/a/lithuania-adopts-new-law-on-the-legal-protection-of-personal-data/> (25. 01. 2019)

⁶⁵ Law on Legal Protection of Personal Data, Article 2. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ef70b5d2f14811e78f3dc265493430ae?jfwid=nz8qn7vvf> (25. 01. 2019)

⁶⁶ DLA PIPER: *i. m.* 434.

⁶⁷ <http://www.dziennikustaw.gov.pl/DU/2018/1000> (25. 01. 2019)

The Act on Personal Data Protection uses the same definitions as the GDPR, however, the second draft act still going through the legislative procedure and it may will include some derogations to the definitions.⁶⁸

5.10. Spain

In Spain, the new law on the Protection of Personal Data and the Guarantee of Digital Rights entered into force 6th of December 2018.⁶⁹ The Law brings the national system of data protection in line with the EU General Data Protection Regulation, and guarantees the digital rights of citizens and employees, beyond the GDPR.

This new law is more than just the implementation of the GDPR. Primarily it adapts the GDPR and provides additional specifications or restrictions of its rules. In addition the law also guarantees the digital rights of citizens beyond the GDPR. The new data protection law includes provisions on the right to internet access, the right to digital education, and the right to correction on the internet.⁷⁰

According to the Law political parties and electoral groups can use personal data obtained from websites and other sources of public access to carry out political activities during an electoral period. This provision may raises several interesting concerns, but the extensive discussion of these issues are not subject of this paper. However according to the report of the Spanish DPA, political parties shall only process political opinions when they have been freely expressed by people in the exercise of their right to freedom of expression.⁷¹

6. CONCLUSION

We do not need to have a crystal ball, looking into the future, to be able to tell, that these issues remain key to the efficiency and fairness of judicial proceedings and that the protections of privacy and personal data are as much important in the judicial perspective as the efficient administration of justice.

The answer to the question: which one of these is the interest of higher order to be served by the administration of justice is a hard one, but hard cases – in this issue, as we have seen from this paper – make good and sustainable law and raise many important questions for the legislator to think about.

⁶⁸ DLA PIPER: *i. m.* 582.

⁶⁹ <https://www.boe.es/buscar/act.php?id=BOE-A-2018-16673> (25. 01. 2019)

⁷⁰ <https://iapp.org/news/a/spains-new-data-protection-law-more-than-just-gdpr-implementation/> (25. 01. 2019)

⁷¹ <https://iapp.org/news/a/spains-new-data-protection-law-more-than-just-gdpr-implementation/> (25. 01. 2019)

REFERENCES

- [1.] BOJÁR GÁBOR: *A III. informatikai forradalom*. https://hvg.hu/tudomany/20180915_A_III_informatikai_forradalom
- [2.] European Commision: *The GDPR: new opportunities, new obligations*. 2018, Publications Office of the European Union, Luxembourg.
- [3.] DLA Piper: *Data Protection Laws of the World*. 2019, HandBook.
- [4.] BUTTARELLI, GIOVANNI: *The urgent case for new ePrivacy law*. https://edps.europa.eu/press-publications/press-news/blog/urgent-case-new-eprivacy-law_en (02. 02. 2019)
- [5.] HARANGOZÓ ATTILA: *Vitaanyag. Az igazságügyi adatkezelésről és a bírósági tájékoztatásról szóló törvénytervezet előzetes egyeztetéséhez*. <http://birosag.hu/nyilvanossag/az-igazsagugyi-adatkezelesrol-es-birosagitajekoztatasrol-szolo-torvenytervezet>
- [6.] Interview with Attila Péterfalvi, President of the National Authority for Data Protection and Freedom of Information. <https://www.jogiforum.hu/interju/171>
- [7.] NAVRATIL SZONJA: *Az igazságszolgáltatás nyilvánossága*. In BADÓ ATTILA (szerk.): *A bírői függetlenség, a tisztességes eljárás és a politika*. 2011, Gondolat Kiadó, Budapest.
- [8.] PRANCZ BALÁZS: *A büntető igazságszolgáltatás és a média konfliktusa. Iustum Aequum Salutare*, IV. 2008/2., 183.
- [9.] SÜLYOK MÁRTON: *Magánszféra védelem a tisztességes eljárásban – Az alapjogsértő bizonyítás összehasonlító alkotmányjogi vizsgálata*. 2017, PhD-értekezés, Szeged. http://doktori.bibl.u-szeged.hu/3953/1/Sulyok_Marton_ertekezes.pdf
- [10.] SÜLYOK MÁRTON: *Egy indítvány nyomában... Alapvető alkotmányjogi jelentőségű kérdések a polgári eljárásjogi magánszféra védelem köréből*. *Arsboni*, 2018/1–2. 3–18.
- [11.] SZELECZKI RITA: *Adatkezelés a bírósági eljárásokban*. <https://mabie.hu/index.php/cikkek-tanulmanyok/109-dr-szelecki-rita-adatkezes-a-birosagi-eljarasokbanu>
- [12.] SZÉKELY IVÁN: *Az egyén és az információs hatalom*. <http://www.eszmelet.hu/szekely-ivan-az-egyen-es-az-informacios-hatalom/>
- [13.] SZÉKELY IVÁN: *Jog ahhoz, hogy elfelejtsenek és töröljenek. Információs Társadalom*, 34/2013, 7–27. (online) http://www.infonia.hu/digitalis_folyoirat/2013/2013_34/i-tarsadalom_2013_3_4_szekely.pdf
- [14.] Directive (EU) 2016/680 of the Eruopean Parliament and of The Council. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016L0680&from=HU>
- [15.] General Data Protection Regulation. <https://gdpr-info.eu/>
- [16.] The Fundamental Law (Art. VI). <https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV>
- [17.] Act CLXI of 2011 on the organization and administration of the courts'. <https://net.jogtar.hu/jogszabaly?docid=A1100161.TV>
- [18.] Act CLXII of 2011 on the Legal Status and Remuneration of Judges. <https://net.jogtar.hu/jogszabaly?docid=A1100162.TV>
- [19.] Act XC of 2017 on the Code of Criminal Procedure. <https://net.jogtar.hu/jogszabaly?docid=A1700090.TV×hift=ffffff4&txtreferer=00000001.TXT>

- [20.] Act CXXX of 2016 on the Code of Civil Procedure. <https://net.jogtar.hu/jogszabaly?docid=A1600130.TV>
- [21.] Act V of 2013 on the Civil Code. <https://net.jogtar.hu/jogszabaly?docid=A1300005.TV>
- [22.] Act CXII of 2011 on the Informational Self-Determination and Freedom of Information. <https://net.jogtar.hu/jogszabaly?docid=A1100112.TV>
- [23.] Act CIV of 2010 on the freedom of the press and the fundamental rules on media content. <https://net.jogtar.hu/jogszabaly?docid=A1000104.TV>
- [24.] Act CLV of 2009 on the Protection of Classified Information. <https://mkogy.jogtar.hu/jogszabaly?docid=a0900155.TV>
- [25.] Act no. 429 of 31/05/2000. <https://rm.coe.int/16806af0e6>
- [26.] Act on Information technology, Data files and Civil Liberties, Act N°78-17 of 6 January 1978. <https://www.cnil.fr/sites/default/files/typo/document/Act78-17VA.pdf>
- [27.] Law No. 2018-493 Protection of Personal Data. <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037085952&fastPos=1&fastReqId=364642988&categorieLien=cid&oldAction=rechTexte>
- [28.] Legislative Decree 101/2018. http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2018-09-04&atto.codiceRedazionale=18G00129&elenco30giorni=false
- [29.] Law on Legal Protection of Personal Data. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ef70b5d2f14811e78f3dc265493430ae?jfwid=nz8qn7vvf>
- [30.] <https://iapp.org/news/a/lithuania-adopts-new-law-on-the-legal-protection-of-personal-data/>
- [31.] Law on Legal Protection of Personal Data. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ef70b5d2f14811e78f3dc265493430ae?jfwid=nz8qn7vvf>