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New Grounds for Civil Liability under National Law in the Light of Article 79 of the GDPR*

1. INTRODUCTION

The subject of this paper is to analyse legal provisions on the protection of personal data; i.e., more precisely, Article 79 of the GDPR, which regulates the right to an effective judicial remedy against a controller or processor³. The analysis of this issue should begin with the explanation of the meaning of personal data protection. First of all, it should be examined why personal data protection has become so important in recent years. Nowadays, information can prove to be extremely valuable and may have an impact on decision-making, often that of strategic importance. More and more often, we can refer to the concept of information warfare, which is important not only from a military point of view, but also from an economic and social perspective. Thanks to information we possess about a person, we are able to predict their behaviour and, thanks to this, we can gain advantage in a given field⁴. Information about individuals is a valuable source of data and can be used in a variety of ways⁵. Protection of personal data has gained in importance with the recognition of the threats resulting from the emergence of various databases, also without the knowledge of the natural persons concerned. The malfunctioning of databases, including those that are insufficiently secured, poses many threats and may result in violation of the integrity or leakage of data. The need to introduce provisions regulating the scope and method of creating data sets, their use and sharing by public authorities, as well as the scope and method of accessing the existing files and correcting their irregularities was noted.

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³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4 May 2016, pp. 1–88).

⁴ J. Taczowska-Olszewska, M. Nowikowska, *Prawo do informacji publicznej. Informacje niejawne. Ochrona danych osobowych* [Right to Public Information. Non-Public Information. Personal Data Protection], Warszawa 2019, pp. 97–98.

⁵ A. Gałach, S. Hoc, A. Jędruszczyk, P. Kowalik, A. Kuszel, M. Kuźma, R. Marek, B. Nowakowski, *Ochrona danych osobowych i informacji niejawnych w sektorze publicznym* [Protection of Personal Data and Non-Public Information in the Public Sector], Warszawa 2015, pp. 3–4.

2. PROTECTION OF PERSONAL DATA AS A HUMAN RIGHT

Protection of personal data is inextricably linked with the right to privacy, which includes the protection of personal data. By the right to privacy we understand the autonomy of the individual and freedom from interference by other entities, especially public entities, within the sphere of the family, home, correspondence, honour and reputation⁶. Currently, the right to privacy is guaranteed in almost all the most important documents relating to the protection of human rights. We can find them, among others, in the International Covenant on Civil and Political Rights⁷, the Convention on the Rights of the Child⁸, the European Convention on Human Rights⁹, and the American Convention on Human Rights¹⁰. It is particularly noteworthy that the Charter of Fundamental Rights of the European Union protects not only the right to privacy (Article 7), but also personal data (Article 8)¹¹. In accordance with that legal norm, everyone has the right to protection of his or her personal data and such data must be processed fairly for specified purposes and on the basis of consent of the person concerned or some other legitimate basis laid down by law. According to this provision, everyone has the right to access his or her data and to have it rectified. Additionally, it should be kept in mind that the right to privacy is often protected also by national laws. For example, Poland guarantees the right to privacy in the Constitution of the Republic of Poland of 1997¹² and in legal provisions on the protection of personal rights, which are based on civil law¹³. Data collection in the context of the right to privacy has been the subject of judgments by the European Court of Human Rights, which more and more often urged states to adopt detailed legal regulations in this area¹⁴. Protection of personal data is a complex and important issue regulated by international, European, and national regulations. Specialized institutions have been established to deal with the protection of personal data and specific laws passed solely and exclusively to regulate the issue of personal data protection. From the perspective of the protection of human rights the protection of personal data is extremely important, therefore, it is indeed important to guarantee its full protection and the possibility of applying effective legal remedies, which should be guaranteed in a democratic state ruled by law. The following considerations on the issue of the

⁶ L. Garlicki (ed.), *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności* [Convention for the Protection of Human Rights and Fundamental Freedoms], Vol. I, *Komentarz do artykułów 1–18*, [Commentary on Articles 1–18], Warszawa 2019, p. 23.

⁷ International Covenant on Civil and Political Rights, opened for signature in New York on December 19, 1966 (Journal of Laws of 1977, No. 38, item 167).

⁸ Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989 (Journal of Laws of 1991, No. 120, item 526).

⁹ Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on November 4, 1950, subsequently amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284).

¹⁰ American Convention on Human Rights on 22 November 1969 (Registered by the Organization of American States on 27 August 1979, 08/27/79, No. 17955).

¹¹ Charter of Fundamental Rights of the European Union (OJ C 326, 26 October 2012, pp. 391–407).

¹² Act of 2 April 1997 of the Constitution of the Republic of Poland (Journal of Laws No. 78, item 483, as amended).

¹³ Act of 23 April 1964 – the Civil Code (Journal of Laws of 2020, item 1740, as amended).

¹⁴ L. Garlicki (ed.), *Konwencja...*, Vol. I, *Komentarz...*, p. 45; European Court of Human Rights, Case of Amann v. Switzerland (Application No. 27798/95), Strasbourg 2000; European Court of Human Rights, Case of Segerstedt-Wiberg and Others v. Switzerland (Application No. 62332/00).

right to an effective remedy before a court against a controller or processor will not only be dogmatic, but also comparative. Specific features of Polish regulations will be discussed, also juxtaposed against examples from other countries such as France, Germany and Great Britain, and presented in reference to the regulations related to this issue functioning within their legal system.

3. THE IMPACT OF ARTICLE 79 OF THE GDPR ON NATIONAL LEGISLATION WITH REGARD TO THE PROTECTION OF PERSONAL DATA

In this part we will analyse the impact of Article 79 paragraph 1 of the GDPR on the national laws. This provision, based on Article 22 of Directive 95/46/EC¹⁵, ensures the right of data subject to an effective judicial remedy where he or she considers that his or her rights under the GDPR have been infringed as a result of processing of his or her personal data in non-compliance with the Regulation¹⁶. Article 79 paragraph 1 of the GDPR includes both substantive and procedural measures which in the event of more than one processor or controller provide for liability of each infringer¹⁷.

It should be decided whether this Article 79 paragraph 1 of the GDPR requires that additional provisions be introduced into national legal systems. It can be argued that this is not necessary if effective legal protection measures already exist in a given legal system. An example are the existing provisions on the protection of personal rights. In our opinion, the GDPR does not impose upon Member States the obligation to introduce new legal protection measures, if existing provisions constitute a sufficient and effective basis for exercising claims based on infringement of the GDPR.

Additionally, implementation of the measure referred to in Article 79 paragraph 1 of the GDPR may not directly affect the effectiveness of the measure laid down in Article 82 of the GDPR. In other words, it cannot limit the pursuit of claims based on this legal basis¹⁸. The provisions of Article 79 and Article 82 of the GDPR provide for legal measures that allow civil claims to be separately enforced by persons whose personal data have been violated.

4. ANALYSIS OF PERSONAL DATA PROTECTION PROCEDURES IN POLAND AND OTHER COUNTRIES

In Poland, the lawmaker decided to introduce a dedicated data protection regulation. The Act of 10 May 2018 on Personal Data Protection (hereinafter: the “PDP Act”)¹⁹ which aims at transposing the GDPR, includes Chapter 10 (Articles 92–100)

¹⁵ Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM/2012/011 final – 2012/0011 (COD); Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23 November 1995, pp. 31–50).

¹⁶ R. Walters, L. Trakman, B. Zeller, *Data Protection Law: A Comparative Analysis of Asia-Pacific and European Approaches*, Singapore 2019, p. 78.

¹⁷ B. Goodman, S. Flaxman, *European Union regulations on algorithmic decision-making and a “right to explanation”*, “AI Magazine” 2017, Vol. 38.3, p. 52.

¹⁸ A. Polanowski, Ł. Lasek, *Private enforcement RODO*, 2018, available at: <http://www.codozasady.pl/private-enforcement-rodod/> [accessed on: 6 March 2021].

¹⁹ Act of 10 May 2018 on the Protection of Personal Data (Journal of Laws of 2019, item 1781, as amended).

on civil liability and proceedings before the court. On the one hand, pursuant to Article 92 of the PDP Act, in matters not regulated in the GDPR, the provisions of the Act of 23 April 1964 – the Civil Code²⁰ apply to claims arising from a breach of personal data protection provisions referred to in Article 79 and Article 82 of the GDPR. On the other hand, according to Article 100 of the PDP Act, in matters not regulated in PDP Act, the provisions of the Act of 17 November 1964 – the Code of Civil Procedure²¹ apply to the procedure in the case concerning a claim arising from an infringement of personal data protection provisions referred to in Article 79 and Article 82 of the GDPR. Thus, there is no doubt that, in the light of applicable law in Poland, the data subject may revert to claims in substantive and procedural aspects. In Poland, deep-rooted and proven legal grounds apply in the field of personal rights as well as liability under tort and contract. There are no new grounds to file claims in case of a personal data breach. Interestingly, the Civil Code provides for the reversal of the burden of proof in terms of the unlawfulness of the processor's acts. Furthermore, the district court has jurisdiction over cases for infringement of provisions on the protection of personal data, including claims under Article 79 and Article 82 of the GDPR, regardless of the disputed subject value.

In France, on 14 May 2018, the National Assembly adopted a new law on the protection of personal data²², which modified the French law to make it compliant with GDPR²³. It was a major amendment to Act No. 78–17 of 6 January 1978²⁴, which had not been altered for 25 years since its adoption. The first modification was adopted on 6 August 2004²⁵ with a view to implement the Directive 95/46 EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Nevertheless, there was a problem with this new French law and as a result of its alleged incongruence with the Constitution of the French Republic (hereinafter: the “CFR”)²⁶, sixty senators sent a request for compliance to the French Constitutional Court (hereinafter: the “FCC”)²⁷. The

²⁰ Act of 23 April 1964 – the Civil Code (Journal of Laws of 2020, item 1740, as amended).

²¹ Act of 17 November 1964 – the Code of Civil Procedure (Journal of Laws of 2020, item 157, as amended).

²² Loi n° 78–17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés. Version consolidée au 14 mai 2018, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEX-T000006068624&dateTexte=20180514> [accessed on: 20 June 2019].

²³ J. Demotes-Mainard, C. Cornu, A. Guérin, P.-H. Bertoye, R. Boidin, S. Bureau, J.-M. Chrétien, C. Delval, D. Deplanque, C. Dubray, L. Duchossoy, V. Edel, C. Fouret, A. Galaup, F. Lesaulnier, M. Matei, F. Naudet, V. Plattner, M. Rubio, F. Ruiz, S. Sénéchal-Cohen, T. Simon, A. Vidal, A. Viola, M. Violleau, *Quel impact du nouveau règlement européen sur la protection des données sur la recherche clinique et recommandations*, “Thérapie” 2019, Vol. 74.1, pp. 17–29; F. Jault-Seseke, C. Zolynski, *Le règlement 2016/679/UE relatif aux données personnelles*, “Recueil Dalloz” 2016, Vol. 32, pp. 1874–1880; G. Mancosu, *L'accès aux données publiques et aux codes source en Italie. À la recherche d'une «transparence algorithmique», à l'aube du Règlement général sur la protection des données*, “Revue française d'administration publique” 2018, Vol. 3, pp. 575–584; A. Duțu, *Franța: protecția datelor cu caracter personal. Transpunerea Regulamentului General de Protecție a Datelor (RGPD/GDPR) și modificările impuse de senatul francez*, “Pandectele Romane” 2018, Vol. 2, pp. 219–222; J. Eynard, *Une application systématique du RGPD?*, “Juristourisme” 2018, Vol. 207, pp. 19–23.

²⁴ Loi n° 78–17 du 6 janvier 1978.

²⁵ Act No. 2004–801 of 6 August 2004 on the Protection of Individuals with Regard to the Processing of Personal Data, available at: https://www.cnil.fr/sites/default/files/typo/document/Decree_20_October_2005_English_version.pdf [accessed on: 21 June 2019].

²⁶ Constitution de la République Française. Constitution du 4 octobre 1958, version mise à jour en janvier 2015, available at: <http://www.assemblee-nationale.fr/connaissance/constitution.asp> [accessed on: 21 June 2019].

²⁷ In France, this is „Conseil Constitutionnel”, <https://www.conseil-constitutionnel.fr> [accessed on: 20 June 2019].

senators challenged the constitutionality of some of the provisions and criticized their availability and comprehensibility. In the Decision No. 2018–765 DC of 12 June 2018²⁸, the FCC stated that it partially recognized the complaint as the new law was in some parts constitutional and unconstitutional in others²⁹. Therefore, a new law of 6 January 1978, i.e., the “Informatique et Libertés” (hereinafter: the “IeL Act”) applies from 1 June 2019. The IeL Act includes, in particular, provisions adapting the French law to the GDPR. This is another amendment, but in the consolidated version, so understanding the law is simplified. The aim of the IeL Act is not to fully reproduce the provisions of GDPR, even if it explicitly refers to it in some cases. The IeL Act in this new wording is fully applicable in all the territories of France. It contains Section 3 on corrective measures and sanctions (Articles 20–23). A hybrid formula was adopted with a view to implement Chapter VIII GDPR on remedies, liability and penalties. Pursuant to Article 21 of the IeL Act, if the failure to comply with the provisions of GDPR or the Act entails violation of rights and freedoms associated with the protection of personal data or if the President of the Commission for Information Technology and Freedom³⁰ believes that it is urgent to intervene, a number of legal protection non-judicial measures may be used. For instance, this may include a temporary suspension of certification issued to the controller or processor or a call to order. However, in the event of a serious and immediate violation of rights and freedoms associated with the protection of personal data, the President of the Commission may also request that court proceedings be instituted to protect these rights and freedoms. It is associated with Article 79 of the GDPR, but time and applicable case law will be show if it is a real right to an effective judicial remedy against a controller or processor³¹. Nevertheless, new grounds to filed claims for personal data violations have been introduced in France.

In Germany, the lawmaker introduced an act supporting the coming into force of the GDPR³². The Federal Data Protection Act of 30 June 2017 (hereinafter: the “FDP Act”)³³ contains Section 20 on judicial remedies. Thereinunder, recourse

²⁸ Commentaire. Décision n° 2018–765 DC du 12 juin 2018. Loi relative à la protection des données personnelles, available at: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2018765dc/2018765dc_ccc.pdf [accessed on: 22 June 2019].

²⁹ „Les mots «sous le contrôle de l'autorité publique ou» figurant au 1° de l'article 13 de la loi relative à la protection des données personnelles sont contraaires à la Constitution”, Décision n° 2018–765 DC du 12 juin 2018, available at: <https://www.conseil-constitutionnel.fr/decision/2018/2018765DC.htm> [accessed on: 22 June 2019].

³⁰ The National Commission for Information Technology and Freedom is an independent administrative body. It is a national supervisory body in charge of the understanding and application of GDPR, available at: <https://www.cnil.fr> [accessed on: 23 June 2019].

³¹ K. Seymour, N. Benyahia, P. Hérent, C. Malhaire, *Exploitation des données pour la recherche et l'intelligence artificielle: enjeux médicaux, éthiques, juridiques, techniques*, “Imagerie de la Femme” 2019, Vol. 29.2, pp. 62–71.

³² M. van der Ree, R. Scholte, P. Postema, J. de Groot, *Playing by the rules: Impact of the new General Data Protection Regulation on Retrospective Studies: A Researcher's Experience*, “European Heart Journal” 2019, Vol. 40, pp. 1900–1902; J. Holling, *Neue Bestimmungen, komplexe Anwendungen*, „SW Sozialwirtschaft” 2018, Vol. 28.2, pp. 30–31; R. Singer, B. Beck, *Das „Recht auf Vergessenwerden” im Internet*, „JURA-Juristische Ausbildung” 2019, Vol. 41.2, pp. 125–135; T. Wennemann, *TOM und die Datenschutz-Grundverordnung*, „Datenschutz und Datensicherheit-DuD” 2018, Vol. 42.3, pp. 174–177; F. Schiffner, *Wann braucht man einen Datenschutzbeauftragten?*, „InFo Hämatologie+ Onkologie” 2019, Vol. 22.6, pp. 66–67; M. Schönfeld, *Big Data and Automotive – A Legal Approach* [in:] *Big Data in Context*, T. Hoeren, B. Kolany-Raiser (eds.), Cham 2018, pp. 55–61.

³³ Federal Law Gazette I, p. 2097, available at: https://www.gesetze-im-internet.de/englisch_bdsgr/englisch_bdsgr.html#p0087 [accessed on: 28 June 2019].

to administrative courts shall be provided for disputes between natural or legal persons and a supervisory authority of the Federation or a Land. However, it applies only to the circumstances provided for in Article 78 of the GDPR, i.e. right to an effective judicial remedy against a supervisory authority. This is the one and only judicial remedy stipulated in the FDP Act. Nevertheless, pursuant to Section 44 the FDP Act, proceedings against a controller or a processor for violation of data protection law within the scope of GDPR or the rights of the data subject contained therein may be instituted by a data subject before the court in the place where the controller or processor is established. This directly applies to Article 79 of the GDPR. The German lawmakers did not decide to create separate legal grounds to pursue claims against a controller or processor, but only regulated the method of filing the claims. Thus, the FDP Act did not make reference to the right to an effective judicial remedy against a controller or processor, which that the legal measures already existing in the German civil law should be applied³⁴. In addition, the FDP Act (Section 60 thereof) also provides for the right to file a complaint with a supervisory authority (Article 77 of the GDPR). Accordingly, without prejudice to any other administrative or judicial remedies, every data subject has the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of his or her personal data infringes the GDPR.

In Great Britain, a new law was passed to fully implement the GDPR in the domestic legal system. The Data Protection Act 2018 (hereinafter: the “DPA Act”)³⁵, which came into force on 23 May 2018³⁶, regulates the processing of personal data of private and public persons, law enforcement agencies and intelligence agencies. It provides rules on general data processing, law enforcement data processing, data processing by the intelligence services, and regulatory oversight and enforcement by the national supervisory authority (the Information Commissioner’s Office)³⁷. The DPA Act contains Section 167 “Compliance orders” on remedies in the court, which applies if, on an application by a data subject, a court is satisfied that there has been an infringement of the data subject’s rights under the data protection legislation in contravention of that legislation. In such circumstances, the court may make an order for the purposes of securing compliance with the data protection legislation which requires the controller in respect of the processing, or a processor acting on behalf of that controller, to take steps specified in the order, or to refrain from taking steps specified in the order. The order may specify the

³⁴ W. Hoffmann-Riem, *Rechtliche Rahmenbedingungen für und regulative Herausforderungen durch Big Data*, [in:] *Big Data-Regulative Herausforderungen*, W. Hoffmann-Riem (ed.), Baden-Baden 2018, pp. 9–78; T. Hoeren, *Big Data und Zivilrecht*, [in:] *Big...*, pp. 187–194; G. Hornung, *Erosion traditioneller Prinzipien des Datenschutzrechts durch Big Data*, [in:] *Big...*, pp. 79–98; N. Steffen, *Zivilrechtliche Haftung von Datenschutzbeauftragten für Bußgelder*, „Datenschutz und Datensicherheit-DuD” 2018, Vol. 42.3, pp. 145–150.

³⁵ Data Protection Act 2018, c. 12, available at: <https://www.legislation.gov.uk/ukpga/2018/12/contents> [accessed on: 28 June 2019].

³⁶ Available at: <https://www.gov.uk/government/collections/data-protection-act-2018> [accessed on: 28 June 2019].

³⁷ The Information Commissioner’s Office is an independent administrative body. It is a national supervisory body in charge of the understanding and application of GDPR, available at: <https://ico.org.uk> [accessed on: 29 June 2019].

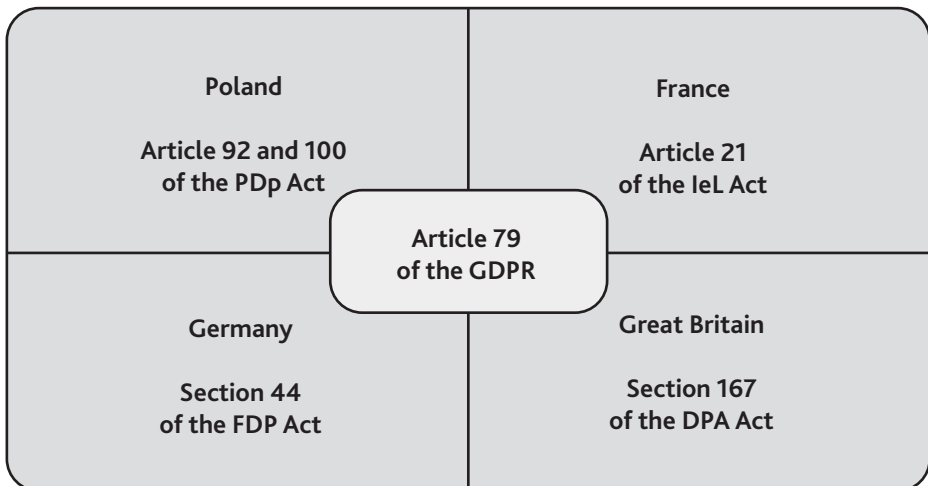
time or the period when each of the steps must be taken. So, the reference to an application by a data subject includes an application made in exercise of the right under Article 79 of the GDPR³⁸.

5. COMPARISON OF LEGAL PROTECTION MEASURES FOR THE PROTECTION OF PERSONAL DATA BINDING IN POLAND AND OTHER COUNTRIES

Despite its identical wording, Article 79 of the GDPR had a different impact on national legal systems. In Poland, data protection regulations relied on established ways of protecting personal rights in the Civil Code and Code of Civil Procedure, i.e. by reference to direct legal grounds, without introducing new ones. In France, new legal grounds have been introduced for claims under Article 79 of the GDPR, but the entity that files cases to the court is not a natural person, but the French supervisory body (the Commission for Information Technology and Freedom). These new legal grounds have been created in both substantive and procedural aspects. Alike Poland, in Germany the law maker has decided not to create separate legal grounds for pursuing claims against a controller or processor, but regulated the method of pursuing claims by creating new legal grounds in procedural aspects. In Great Britain a new legal measure was introduced, according to which it could be required to take the steps specified in the court order or to refrain from taking steps specified in this order. These are new legal grounds in both substantive and procedural aspects. The impact of Article 79 of the GDPR on national laws was illustrated in Figure below.

Figure.

The impact of Article 79 of the GDPR on national laws.



Source: Own elaboration.

³⁸ Data Protection Act 2018, c. 12, section 167, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/167/enacted> [accessed on: 29 June 2019].

6. CONCLUSIONS

We would like to present the final conclusions in the aspect of Article 79 of the GDPR regarding the new grounds for civil liability under national laws.

Article 79 paragraph 1 of the GDPR includes both substantive and procedural measures which in the event of more than one processor or controller provide for the liability of each of the infringers. The right to an effective judicial remedy against a controller or processor requires effective legal remedies in these two aspects.

Implementation of the measure provided for in Article 79 paragraph 1 of the GDPR may not directly affect the effectiveness of the measure expressed in Article 82 of the GDPR. It cannot limit the pursuit of claims based on the other legal basis. These are two different rights under the GDPR, each of which can be exercised separately.

The GDPR does not impose an obligation upon Member States to introduce new legal protection measures, if existing provisions constitute a sufficient and effective basis for exercising claims in the case of infringement of the GDPR. It entails a real right to an effective judicial remedy against a controller or processor, which cannot be illusory.

Article 79 of the GDPR had a different impact in Poland, France, Germany and Great Britain. This is not out of the ordinary; each Member State is free to adapt its legislation to the GDPR. It is, however, important that the national legal system provides for an effective legal remedy.

It does not seem reasonable to introduce additional grounds for the liability of entities processing personal data, including the processors, bearing in mind the risk of an excessive build-up of possible claims.

Eventually, if possible, the results of analyses in the field of legal sciences should be presented in a synthetic manner and include *de lege ferenda* postulates. As regards Article 79 of the GDPR as the new grounds for civil liability under national laws, it is directly effective and does not require implementation into the national orders. However, in some circumstances, it is necessary to adapt the national legislation to GDPR requirements, yet it is endorsing rather than implementation of the GDPR. Nevertheless, *de lege ferenda*, if there is an effective judicial remedy, it is not sufficiently justified to create additional domestic legal grounds for the liability of entities processing personal data, including processors, considering the risk of an excessive build-up of possible claims. In our opinion, the GDPR does not require such normative actions. The whole analysis presented in this paper clearly supports the validity of the key problem discussed. For this reason, postulates and research conclusions are presented with regard to both the theory and practice of law. Therefore, the proper understanding of the GDPR requires respect for the fact that it is a directly binding law in the Member States. This means that in contrast to the directive, this is unification of provisions, and not their harmonization.

Summary

Bartłomiej Oręziak, Klaudia Łuniewska, *New Grounds for Civil Liability under National Law in the Light of Article 79 of the GDPR*

The subject of the paper is the functioning of Article 79 of the GDPR in the Polish legal system and in other countries. The above provision establishes the right to an effective judicial remedy against a controller or processor, which is to guarantee the protection of personal data in relation to the data subjects. The paper submits to a dogmatic and comparative analysis those regulations that concern the right to an effective legal remedy in the field of personal data protection based on the example of Polish legal regulations, but also with reference to France, Germany and Great Britain to comprehensively study solutions on the issues in question.

Keywords: protection of personal data, right to an effective remedy, data processing, data controlling, Article 79 of the GDPR

Streszczenie

Bartłomiej Oręziak, Klaudia Łuniewska, *Nowe podstawy prawne odpowiedzialności cywilnej na gruncie prawa krajowego w świetle art. 79 RODO*

Przedmiotem artykułu jest funkcjonowanie art. 79 RODO zarówno w polskim systemie prawnym, jak i w innych porządkach prawnych. Powyższy przepis ustanawia prawo do skutecznego środka ochrony prawnej przed sądem przeciwko administratorowi lub podmiotowi przetwarzającemu, co ma zagwarantować ochronę danych osobowych względem osób fizycznych, których te dane dotyczą. Artykuł poddaje pod analizę dogmatyczną, ale i komparatystyczną regulację dotyczącą prawa do skutecznego środka ochrony prawnej w zakresie dotyczącym ochrony danych osobowych, w odniesieniu zarówno do polskich regulacji prawnych, jak i na przykładzie: Francji, Niemiec oraz Wielkiej Brytanii, dzięki czemu możliwe jest kompleksowe poznanie rozwiązań dotyczących omawianej problematyki.

Słowa kluczowe: ochrona danych osobowych, prawo do skutecznego środka ochrony prawnej, przetwarzanie danych, administrowanie danymi, art. 79 RODO

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