

Filip Manikowski

**Review of the “The Right to Privacy in the Digital Age – Perspectives on Analysis of Certain Central European Countries’ Legislation and Practice”  
edited by Marcin Wielec, Miskolc–Budapest 2023**

*Recenzja „The Right to Privacy in the Digital Age – Perspectives on Analysis of Certain Central European Countries’ Legislation and Practice”, red. Marcin Wielec, Miskolc–Budapest 2023*

There should be no doubt that the current widespread digitalization of every aspect of our lives favours the violation of privacy. Terabytes of data, including those related to our personal lives, are sent via Internet. This is related not only to the development of social media, but also to the computerization of court and administrative proceedings. The digitalization of court files, remote hearings and the functioning of court information portals are becoming more and more common. As a part of above proceedings, sensitive data is often shared. Sending data via the Internet, keeping them on servers is associated with the risk of hacker attacks. Personal data is desired by advertisers, among others, who can in this way target their advertisements to the desired individual recipients’ groups. Thus, the acquired data often becomes the subject of illegal trade. It clearly shows that the right to privacy is nowadays becoming more and more important. Therefore, the publication of “The Right to Privacy in the Digital Age – Perspectives on Analysis of Certain Central European Countries’ Legislation and Practice”<sup>1</sup> edited by Marcin Wielec should be met with the approval. This monograph addresses the issue of the right to privacy from the perspective of Central and Southern European countries.

---

Dr Filip Manikowski, assistant professor at the Institute of Legal Sciences, Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw, Poland, ORCID: 0000-0001-6859-9230, e-mail: f.manikowski@uksw.edu.pl

The manuscript was submitted by the author on 27 June 2023; the manuscript was accepted for publication by the editorial board on 1 September 2023. Material not reviewed.

<sup>1</sup> M. Wielec (ed.), *The Right to Privacy in the Digital Age – Perspectives on Analysis of Certain Central European Countries’ Legislation and Practice*, Miskolc–Budapest 2023.

However, before I discuss the individual chapters of the reviewed monograph, I would like to make some general remarks regarding the nature of the right to privacy.

The right to privacy belongs to the so-called first generation of human rights, i.e. fundamental rights, resulting from human nature. These rights were catalogued in the International Covenant on Civil and Political Rights of 19 December 1966. It has been ratified by 173 countries, including all Central European countries. According to Article 17 sec. 1 of the abovementioned act "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation". The paragraph 2 guarantees "the right to legal protection against such interference and attacks". The act does not define the right to privacy. The doctrine<sup>2</sup> refers to the characteristics of this concept in the jurisprudence of the Human Rights Committee in the case *Coeriel et al. v. The Netherlands* (Communication No. 453/1991), where it was stated that "the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone".

From the European perspective the most important is the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, amended by Protocols No 3, 5, 8, and supplemented by Protocol No 2, which Article 8 guarantees "the right to respect for private and family life, home and correspondence". The European Court of Human Rights is the guardian of the Convention and 47 countries are parties to the Convention – all member states of the Council of Europe.

From the Polish perspective, the most important source of the right to privacy is the Constitution, where Article 47 provides everyone with the right to legal protection of private and family life, honour and good name as well as the right to make decisions about their personal life. This provision is *lex generalis* to other privacy regulations, including, *inter alia*, Article 49 of the Constitution, ensuring the freedom and protection of the secrecy of communication for everyone, and Article 51 of the Constitution, which is the source of the right to protect personal data<sup>3</sup>. Similar provisions can be found in the Hungarian Constitution of 2011 (Article 6), The Constitution of the Republic of Croatia (Article 35), The Constitution of the Slovak Republic (Article 19), The Constitution of the Czech Republic (Articles 7 and 13), The Constitution of the Republic of Slovenia (Article 35 and Article 37) and The Constitution of the Republic of Serbia (Article 42).

Moving to the discussion of the reviewed monograph – the editor M. Wielec in the first chapter discusses general concept of the right to privacy and the general outline of the research. The author pays special attention to the dignity which is the source of all human rights, including the right to privacy. He rightly noticed that everyone is equally entitled to their natural rights.

<sup>2</sup> A. Gliszczyńska-Grabias, K. Sękowska-Kozłowska, [in:] *Międzynarodowy pakt praw obywatelskich (osobistych) i politycznych. Komentarz*, R. Wieruszewski (ed.), Warszawa 2012, Article 17.

<sup>3</sup> P. Sarnecki, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, L. Garlicki, M. Zubik (eds.), Warszawa 2012, Article 47.

Second chapter “The Right to Privacy in the European Context: Insight into Fundamental Issues” by V.-I. Savić starts with stating the very important role of law in modern world, where personal information, obtained by technological tools, is power, and the State should guarantee protection of this kind of data, balancing between units and collective rights. The author searches for an answer to the question what privacy really means and what the origins of Privacy Law are. The discussed chapter targets Europe and historical evolution of Private Law, focusing on the activity of the European Court of Human Rights. The author also describes the profound role of the Article 12 of the Universal Declaration of Human Rights as the foundation and legal standard for following privacy law regulations. The analysed text also presents The Punta Del Este Declaration of Human Dignity for Everyone Everywhere deriving from the Universal Declaration of Human Rights with human dignity as its core. The author also deliberates over human dignity, emphasizing that it is the source of human rights and the key to understand privacy. Then the author also draws attention to the value of the General Data Protection Regulation among EU privacy law instruments and the controversies surrounding it. The above mentioned directive has been very thoroughly analysed which led to the conclusion that it is the most versatile EU instrument on the protection of privacy.

Another matter extensively analysed in this chapter is family life and regulations concerning it in the Article 7 of the European Union Charter on Fundamental Rights and its twin Article 8 of European Convention on Human Rights. In terms of the judicature of the European Court of Human Rights the author has once again emphasized the importance of balancing between preserving the values of individual countries. The chapter then includes the author’s analysis of the difference between totalitarian and democratic systems in the context of state intervention in individual rights, including the right to privacy. The attention is also drawn to the concept of the family, its role in contemporary society and its due protection by the state. The author rightly points out that even though it is the parents who decide about their children, the state has a responsibility to intervene in special circumstances, as the right to privacy of family life is not limitless. We also have to agree that it is crucial to maintain balance between those issues and the state intervenes only when necessary.

In his concluding remarks, the author rightly points out that the balance between the often opposite worldviews that exist in the society is extremely important. This balance must be reflected in legal regulations regarding individual privacy and the need for state intervention in certain circumstances.

Chapter III “The Protection of Privacy in the Hungarian Legal System, with Special Regard to the Freedom of Expression” by A. Koltay starts with a general overview on privacy and the threats to it connected with technological development, smoothly transitioning to Hungarian regulations concerning the right to privacy. The text is divided into sections regarding provisions of the Fundamental Law, private law, criminal law as well as data protection and administrative procedures. The author points out to the amendment to the Hungarian Fundamental Law, corresponding with challenges of changing world in terms of technology development. He also mentions

the special Hungarian authority for the protection of personal data established on the basis of the Fundamental Law of Hungary. The author then analyses Hungarian Civil Code in the context of private law. He points out, *inter alia*, the disclosure of confidential information, the protection of privacy is autonomous personality right in the Civil Code. At the same time he points out that the right to privacy should be interpreted in the light of the interest in open debate on public affairs. In his opinion the private life of public figures may be protected even if it is partially related to their activities in public affairs. The author also draws attention to the issue of disclosure of identity. He points out that, in accordance with judicial practice, the media may inform about the status of a criminal procedure *inter alia* by publishing the name of the person concerned. Nevertheless, he points out that this information must correspond to the current status of the proceeding and must not violate the constitutional principle of presumption of innocence. The author also analyses the protection of one's image and voice recordings. He points out that the use of images and sound recording require the consent of the data subject every time. The author also indicates the special litigation proceeding for image protection provided in the Code of Civil Procedure. The main purpose of this procedure is to remedy the infringement as quickly as possible. He also discusses the course of the proceedings, emphasizing the rigor of this proceedings. He explains however, that the injured person may initiate a personal rights lawsuit under the general rules.

In the next part the author lists crimes punishable by Hungarian Criminal Code related to disclosure of confidential information and invasion of privacy, including, interestingly, acquiring information using a drone. The author also describes regulations of the Code of the Criminal Procedure regarding gathering information for investigation purposes. The author makes some interesting remarks about development of the data protection, connected with new technologies, and specific parallel privacy protection guaranteed by the Act CVII of 2011 on the Right to Information Self-Determination and General Data Protection Regulation, which could only be exercised by natural person. The author also points to the right to informational self-determination and its limits laid down in the Fundamental Law. Regarding administrative solutions, the author states that the right to fair administration was provided in the Hungarian Constitution (Article XXIV). He refers to the judicial practice, which, after the resolution of the European Parliament, takes into account the principle of respect for privacy. The author also describes *inter alia* the institution of an official inspection used by the state authorities, that must maintain the privacy of the person concerned.

In his final remarks the author points out how in Hungarian legal system the right to privacy is protected in many areas of law, mainly the private law, the criminal law and data protection. Moreover, this protection is supplemented by the case law of the Kúria and the Constitutional Court of Hungary. The author positively assesses the solutions implemented since the Hungarian democratic transformation.

Next chapter, "Report on Privacy and Criminal Law in Croatia – Criminal Offenses Against Privacy in the Croatian Legal System" by M. Dragičević Prtenjača marks the

difference between concepts of privacy, the right to privacy and private space. The text indicates documents, both international and regional, guaranteeing the right to privacy, but mainly the legislative situation in Croatia. It starts with the most important, the Constitution of the Republic of Croatia, stating the right to privacy in several articles, and also the directly implemented General Data Protection Regulation. Croatia has a special agency, the Croatian Personal Data Protection Agency, guaranteeing application of the General Data Protection Regulation. Then the author states that in 2011 a new chapter was introduced in the Croatian Penal Code titled "Criminal Offences against Privacy", protecting privacy, but in other chapters there are also offences against privacy connected with other legal goods mentioned. The author describes those criminal offences with reference to case law both national and European, pointing out, that criminal law is only used, when everything else fails. The text also includes an analysis of the interesting cases of the Croatian courts, the Constitutional Court of the Republic of Croatia and European Court of Human Rights for specific offences, where it was considered whether the right to privacy had been violated or not.

The author presents interesting statistics on privacy criminal offences in 2016–2020, which show that the most common of them is unlawful use of a personal data, both on national and regional level, however these statistics do not include some crimes most recently introduced in the Penal Code. In her final remarks, the author rightly points out that collecting other people's data – shared either because of the lack of desire to protect them or the unawareness of the danger – is a problem recognized by the Croatian legislator.

Chapter V by K. Šmigová, "The Right to Privacy in the Digital Age from the Viewpoint of the Slovak Legal Order", shows Slovakian perspective of privacy protection. The starting point is the concept of digital world. The author rightly assumes that the Internet cannot be perceived only as a virtual world, because it is always connected with the real space and as such cannot function without any rules. The text refers to the indicated problem from the point of view of specific groups, such as politicians, employees or children, the last being both victims and a perpetrators, with pointing the minimum age of the criminal responsibility. Important from the point of view of the latter is the incident that occurred in Miloslavov which was presented, where several children assaulted an 11-year-old girl and could only be accused of "traditional" crimes, as it happened before crimes concerning cyberbullying introducing into the Slovak Criminal Code. Then the author raises the issue of sharing data of children without their consent, pointing out that there is no particular case law in the Slovak Republic to regulate this issue.

The provisions of the Constitution and the case law of the Constitutional Court of the Slovak Republic were also analysed. It was emphasised that the Slovak Constitution was adopted before the spread of the Internet, but even despite that, its articles relating to the protection of privacy are also successfully used today in the age of the Internet. It can be said that Slovak legislation and case law are not constantly adopted to the problems of the digital world, but are a subject of appropriate

interpretation that allows them to be used when necessary. International regulations, such as the General Data Protection Regulation or the European Convention on Human Rights, ratified by the Slovak Republic are also helpful. The author points out that despite the lack of the legal definition of the right to privacy in Constitution, the definition developed by the Supreme Court of the Slovak Republic is successfully used. It is important that the indicated definition includes not only natural persons, but also legal persons. Apart from the Constitution the provisions of other acts were also analysed, such as Civil Code, Criminal Code, Labour Code, Act on Personal Data Protection and Act on Electronic Communications. It was noted that new provisions for the protection of the privacy were introduced to the Criminal Code, in the form of a new crime of dangerous electronic harassment. Despite this, it is necessary to change the definition of cyberbullying, enabling more efficient protection of individuals in the era of digital world.

In the chapter VI titled "Privacy and Data Protection in Serbian Law: Challenges in the Digital Environment" D.V. Popović presents Serbian approach to the concept of the right to privacy. Even though the Serbian legal order also lacks a definition of privacy, the author indicates that protecting privacy in the digital context means protecting personal data. First, the international regulations are analysed with the historical approach, after which the author proceeds to the analysis of the regional regulations. The text points out the fundamental grounds of privacy protection, stated in the Serbian Constitution. The author also mentions that Serbia, as a country aspiring to join the EU, has to harmonize its legislation with the EU rules on personal data protection. It was importantly pointed out that it already has adopted the Law on Protection of Personal Data, the Strategy for Personal Data Protection and also established the Commissioner for Information of Public Importance and Personal Data. The author also states that other regulations concerning processing of personal data must be compliant with the Law on Protection of Personal Data. When it comes to the Commissioner for Information of Public Importance and Personal Data it was pointed out that he may initiate the administrative dispute. The Serbian Penal Code contains a number of crimes directly or indirectly related to breach of privacy. In his text the author also described the right to privacy as a value. He states the potential influence of the main Serbian religion, Orthodox Cristian, on the right to privacy. He points out its social doctrine called "The principles of Social Conception of the Russian Orthodox Church", adopted at the Bishop Council, stating that human rights cannot be superior to the values of the spiritual world. Interests of homeland, community and family come before human rights. Author then analyses other important documents of Orthodox Church on the matter.

From the above mentioned chapter we can find out that in the Serbian legal system the right to privacy is included in the so-called specific personal rights. Interestingly, the beginnings of the protection of the right to privacy can be found in the Serbian Constitution of 1988 in the context of protecting the inviolability of home and the secret of letters and telegraph messages. The current Constitution of 2006 introduces several regulations protecting privacy derived from human dignity,



including a separate right to personal data protection. The author extensively analyses the mentioned constitutional regulations. The author also describes, *inter alia*, the protection of privacy in civil law, where it is guaranteed under the general principles of civil wrongs. He states that although those rules are used when violation of personality rights occurred, they do not provide the mechanism of protection from ongoing violations, which is filled by a special demand to cease with the violation of individual rights. The court or other competent authority may order the mentioned cessation. Then the author extensively analyses the regulations introduced in the Penal Code include several offences against privacy, including e.g. criminal offences against the security of computer data. The author also points to the Law on Protection of Personal Data, the most important legal act regulating personal data protection, and analyses its provisions, as well as giving its definition of personal data protection. He stated that the abovementioned act does not apply to the purely personal or household activity of processing of personal data. The Commissioner is responsible for overseeing the implementation of this document. The author also states that additional legislation in the matter of mass surveillance and protection of children is necessary because of technological development. Then he adds some interesting examples of abuse of mass surveillance, which should induce legislators to regulate this subject matter. As for the second issue – the safety of children – the author points out that it has become particularly important during the COVID-19 pandemic. The rule will be that a minor of at least 15 years old may give consent in the matter of their personal data, below this age the decision will be up to a legal guardian. Then the author provides a number of legal regulations adopted by Serbia on this issue. In his concluding remarks the author states that most violations of privacy in Serbia are dealt with under administrative law framework, in proceedings before the Commissioner for Information of Public Importance and Personal Data Protection, less in civil or criminal proceedings. In author's opinion it is important to raise the level of citizens' knowledge of, *inter alia*, data protection.

In chapter VII D. Sehnálek presents the analysis of "The Right to Privacy in the Digital Age in the Czech Republic". The author first discusses the Charter of Fundamental Rights and Freedoms (hereinafter: Charter) document enacted in 1991 by the Czechoslovak Federative Republic and currently continued as part of the constitutional systems of both the Slovak Republic and Czech Republic. He explains that the regulation of protection of the right to privacy in the Charter is fragmentary and therefore quite complicated. He states that connections between its individual provisions are questionable. The basic provision relating to the subject matter is Article 7 of the Charter according to which "The inviolability of the person and his privacy is guaranteed. It may be restricted only in cases provided for by law" and also Article 10 "1. Everyone has the right to have his human dignity, personal honour, reputation, and name preserved. 2. Everyone has the right to protection from unwarranted interference with his private and family life. 3. Everyone has the right to protection against the unauthorized collection, disclosure, or another misuse of personal data". Referring to the views of doctrine he points out that – on the one hand

Article 7 of the Charter may be considered as *ius generalis* in relation to other provisions of the Charter referring to privacy, while on the other hand it may be considered that it applies only to the physical and mental integrity of the person. The author also refers to the rich jurisprudence of the Constitutional Court pointing evolutionary approach to the concept of the right to privacy in the Czech Charter. The author indicates however, that it is primarily the legislator, not the judiciary, that should be the driver of change. He rightly notices that the legislator not always can keep up with the development of technology. He also mentioned the lack of specific definitions of the right to privacy, the general concept of this right in the Czech Charter and dynamic interpretation of the Charter has undeniable advantages. Therefore, there is no need for legislative changes of the level of constitutional law. In the Czech Republic it is done on sub-constitutional level. The author then elaborates in an interesting way on the protection of the privacy of legal persons, which is provided in private and public law, including among others, the Civil Code, the Criminal Code, the Code of Civil Procedure and the Code of Criminal Procedure. Consideration of the right to privacy and the right to a fair trial deserve special attention. The author indicates, referring to the judgments of the Supreme Court and the Constitutional Court, that the use of evidence that violates privacy, without the consent of the person whose privacy is violated, is only exceptionally admissible. This is the case when a given fact cannot be proven by another evidence. Like a situation in which the weaker party of a given legal relationship uses such evidence in its own defence, although there is other evidence. The author also touches on a very topical issue, the so-called “shar-enting” connected with invasion of children’s privacy by their parents. This is due to the fact that parents often share information, photos about children in social media without their consent. The author points out that there are no legislative solutions foreseen in the Czech Republic regarding this issue, and that so far the courts have not dealt with it. He points out that although parents can make decisions about the child, this right is limited by the best interests of the child. Meanwhile it is difficult to recognise that the disclosure of such information is in the best interests of the child, at best it may be neutral. Another interesting issue raised by the author is the right to privacy during COVID-19 pandemic. He explains that at that time the Czech Republic introduced several anti-epidemic measures based on the use of digital technologies. There were introduced, *inter alia*, applications informing that a person had been vaccinated or had a valid negative test, or had already had a COVID-19 infection. Nevertheless the author notes that the legislator failed to introduce functional legal framework of this solutions, what was, among others, criticised by the Office for Personal Data Protection. He also notes that sometimes the right to privacy is used as a cheap excuse that the Czech Republic public administration failed to introduce successful COVID regulations.

In chapter VIII titled “The Right to Privacy in the Digital Age: A Slovenian Perspective” M. Damjan mainly focuses on how the protection of individuals’ privacy in the digital environment has evolved in the legal system of the Republic of Slovenia. First the author discusses constitutional basis for the protection of privacy



in Slovenia. He points out, *inter alia*, that the basic provision relating to the right to privacy is Article 35 of the Constitution, which guarantees the inviolability of the mental and physical integrity of every person as well as their privacy and personal rights. He then discusses international documents, on the basis of which Slovenia is committed to protection of privacy. He mainly points to the Universal Declaration of Human Rights and The European Convention on Human Rights. He explains that, according to the Slovakian Constitution, they have a direct effect in Slovenian legal system. He is right to notice, that even though those acts have been drafted before digital age, but thanks to their appropriate modification they can effectively protect the right to privacy also nowadays. The author also presents extensive jurisprudence of the Slovenian Constitutional Court concerning the right to privacy. The author also draws attention to the right to privacy of legal entities. He explains, that according to the jurisprudence of the Slovenian Constitutional Court legal entities enjoy the right to privacy but to the limited extent. He points out that a legal person has the right to privacy only in business premises that are not generally accessible to the public. Next, the author raises the issue of general grounds for protecting the right to privacy in Slovenia. He points out that in Slovakian legal system there is no legal act focusing on the right to privacy in the digital environment. Individual provisions on privacy protection can be found in sectoral regulations. Then the author extensively, but in a very interesting way, discusses these regulations. Among other he analysed the matter of civil law and procedure, criminal law and criminal procedure, as well as administrative law. The author introduces also institutions tasked with protecting the right to privacy. He points out that the most important are the general courts adjudicating in civil and criminal cases, as well as examining appeals against decisions of administrative authorities that violate privacy. He also draws attention to the role of the Slovakian Constitutional Court examining complaints in the event of violation of constitutional freedoms and rights.

In the summary of the chapter the author presents the most important conclusions. Among others he points out that the right to privacy extends beyond specific matters, like personal or constitutional rights. The author rightly notes that the understanding of the concept of “the right to privacy” should constantly evolve. He stresses that it should adapt to current changes. One should agree with the author that – due to the development of the Internet – the boundaries between public and private information are blurring. Therefore, the legislator rightly uses the abstract term “privacy” leaving it to the courts and doctrine to provide its exact definition.

In the last chapter (Chapter IX) B. Oręziak analyses the right to privacy from a perspective of the Polish normative system with general theoretical elements. In this matter the author based on “several main analytical segments”. First the author discusses the issue of the digital reality perceived as a new space for the right to privacy. He points out that the key element of the digital reality, regardless of its specific definition or name, is a human. Therefore, it is not possible to create autonomous rules for it. It should be adjusted to the currently applicable rules of law, including those serving the protection of human rights and freedoms.

Next the author defines the right to privacy. He points out that the right to privacy is "the right of every human being, belonging to them only because they are a human being (element of natural law), to be sure that in their sphere of privacy (e.g., private, family, home, home, communication, correspondence), there was no legally unjustified (horizontal aspect) or unjustified by the proportionality test (vertical aspect) interference (protective function) of another private entity or state (positive and negative actions), and in the case of unjustified violation of privacy, that the state from before the violation will be restored or that harm or the damage that has been caused will be repaired". The author also points to the problem of people's lack of awareness of what "the privacy" is. However, despite proposing his own definition of the right to privacy, the author decides that it should not be introduced into the legal order as a legal definition. It would limit the possibility of the dynamic interpretation open to the development of new technologies and the civilisation development. The third of the indicated "segments" is related to the right to privacy from the perspective of the Polish Constitution. The last three segments are related to the right to privacy in the context of civil law, criminal law/trial and administrative law. The author – generally – positively assesses the regulation concerning the means of protection the right to privacy in the above branches of law. However, he rightly points out that the national regulations concerning the protection of the right to privacy have a relatively limited effectiveness due to the principle of territoriality of this right. This is particularly evident when an international corporation is responsible for protecting privacy. Therefore – in my opinion – the author rightly drew attention to the key role of international cooperation in this area.

In his concluding remarks, the author rightly points out that the emergence of new solutions in the 21st century must not limit the right to privacy. The privacy of each person must be protected regardless of the environment in which a person is located.

To conclude, the analysed publication is an interesting voice in the debate on "The Right to Privacy in the Digital Age". The authors, referring to the views of the doctrine, jurisprudence of national and international courts and tribunals, put forward many interesting and accurate theses, making the reviewed monograph one of the most important works dealing with this subject matter.

## References

1. Gliszczynska-Grabias A., Sękowska-Kozłowska K., [in:] *Międzynarodowy pakt praw obywatelskich (osobistych) i politycznych. Komentarz*, R. Wieruszewski (ed.), Warszawa 2012.
2. Sarnecki P., [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, L. Garlicki, M. Zubik (eds.), Warszawa 2012.
3. Wielec M. (ed.), *The Right to Privacy in the Digital Age – Perspectives on Analysis of Certain Central European Countries' Legislation and Practice*, Miskolc–Budapest 2023.