

Changed Rules of Data Protection and Private Policy in New Hungarian Civil Law Parallel with Regulation of EU

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Abstract

The main principles of data protection and private policy are changed particularly in Hungary March 15, 2014, because the new Hungarian Civil Code entered into force at this point. A number of principles of data protection and private policy transformed by the rules of new Civil Code of Hungary. Both of the theoretical and practical lawyers (who dealing with data protection and privacy rights) faced with these changes occurred in all of substantive law, procedure law and law-consequence also. The new practice evolving is the proposition of courts, which are able to do it through theirs' judgment. The consummation of this paper is the showing of possible solutions.

Keywords: *new principle of private policy in Hungary*

1. INTRODUCTION

At first, it is worth asking the question, what is the reason of the new principles of data protection and private policy in Hungary. According to me, the reasons of these are searchable the changing of source of rules of civil law and in conjunction with the new Civil Code¹ the new data protection act.² New rules and principles introduced in Hungarian law system by changing of both of these acts.

Secondary, necessary to exam the real contains of the old and new acts and differences between them especially. We can try to find the answers following questions on these bases; what is the reason of new principles of private policy and data protection actually? The new acts or new practice of the courts, or both of them?

The answers of these questions searchable in all of these legal conditions and interaction with each others. Firstly, the new acts – which had private policy

¹ Act V of 2013 on Civil Code.

² Act CXII of 2011 on right to informational self-determination and freedom of information.

contents – started the new (law) attitude of mind of data protection and private policy, than the theoretical and practical lawyers went on form the new practice adjusting both of new acts and law tradition of this area of law. The area of data protection and private policy has approximately twenty-four-year old (law) tradition³ and the legislator and the lawyers want to follow – better to say – to develop this tradition, but changing fundamentally not. This is indicated by the fact that the new act on right to informational self-determination and freedom of information inured January 1 2012 and the old Civil Code enforced and new entered into force March 15, 2013. This fact shows that, the overlapping between the enforcing of Civil Codes and informational act has not caused problems of system of area of data protection and private policy. All of acts were able to operate parallel with each others.

I would like to analyse develop of data protection and private policy, so at first I show the rules of private policy of old Civil Code, secondary the new. Then the describing of new right to informational self-determination and freedom of information follows. Finally, I review the principles of European Union shortly.

2. THE DATA PROTECTION AND PRIVATE POLICY PRINCIPLES OF THE OLD CIVIL CODE ⁴

This act had not contained the detailed rules of private policy and data protection. The general rules enabled the vindication of compensation in the case of injury of data protection and private policy.

There was on mode of this vindication of compensation by the old Civil Code of Hungary. This was the non-pecuniary damages. If the privacy of person was violated, he could require non-pecuniary damages from the contravener. The problem of this system was following; the insulted had to argue the damage and the extent of it. The fact of injury of private policy was not enough to validation of non-pecuniary damages. It meant, that the data protection and private policy were not affirmed as a value per se. Furthermore, the injury of private policy and personal data had not meant damage and eventuated compensation per se.

3. THE DATA PROTECTION AND PRIVATE POLICY PRINCIPLES OF THE NEW CODE CIVIL

At first, we have to say about the main basic of private policy, the rules of Fundamental law of Hungary.⁵ By this act, the right of personal data protection

³ The time of regime change of Hungary is 1990, when the democratic system created and the private policy had been recognized by state.

⁴ Act IV of 1959 on Civil Code.

⁵ It is the new Constitution of Hungary, entered into force January, 1 2012.

and right of cognition of data of public interest are authenticated⁶ and the emergence of law of personal data protection and cognition of data of public are saved by Hungarian National Authority for Data Protection and Freedom of Information.⁷ Secondary, other rules about the private policy had entered into force, so the system of data protection of new Civil Code had built step by step on the basis of main acts of this area. The new Civil Code contains the principles about private policy partly, the sources of this rules are in these acts cumulatively.

The new Civil Code regulates the protection of individual right two levels. One of them is the enumeration of the individual rights, but it is not complete, only illustrative.⁸ One form of injury of individual right is a violation of right to privacy and protection of personal data. Other of them is the exact rules of consequence of injury of these.

The consequences of the injury of individual rights in Civil Code show the importance of this area by the legislator. On the other hand new legal instrument is instituted by the Civil Code. This is the injury paid.⁹ Instead of the rules of old Civil Code of Hungary, According to the injury paid, the damnification of personal rights means damage per se, and the contravener have to pay only because the action. "The injury paid an indirect consideration of damnification of personal rights by property in satisfaction and private legal punishment at the same time."¹⁰

The new system of data protection and private policy is very interesting, because it builds on the basic of old system partly. The legal continuity guaranteed, because in the case of damnification of private policy, the harmed can require injury paid, and then if he has damage to property by the damnification of private policy, the harmed can demand non-pecuniary damages.

The possibilities of harmed are contained by the new Civil Code of Hungary and the Act CXII of 2011 on right to informational self-determination and freedom of information. The main elements of system of data protection and private policy are determined by these acts.

The possibilities of harmed by the act on right to informational self-determination and freedom of information;¹¹ protest to personal data management, turn right to court to ask stopping infringement, to restore the original, turn right to Hungarian National Authority for Data Protection and Freedom of Information to ask the data protection authority procedures. Anybody can initiate the procedure of the Authority for free, by reason of the injuria (or imminent danger of injuria) of personal data, or right to knowledge of public interest items. The Authority has right to inspect documents, enter room, anyone to request information orally and in writing, and conduct assay invite in the procedure.¹² The Authority depends on

⁶ Fundamental law of Hungary Art. VI. para. (2).

⁷ Fundamental law of Hungary Art. VI. para. (3).

⁸ New Civil Code of Hungary Art. 2:42. para. (2).

⁹ New Civil Code Art. 2:52.

¹⁰ Commentary of new Civil Code.

¹¹ Art. 22. and Art. 52-60.

¹² Act CXII of 2011 on right to informational self-determination and freedom of

the result of procedure can do the follows: calls to remedy grievance or eliminate, make recommendations to the supervisor of offending organ, to action official data protection procedure.¹³ At the end, the Authority is able to bring an action to follow the procedure of writ of Authority.¹⁴

The main possibilities of harmed by the new Civil Code of Hungary are the injury paid and non-pecuniary damages. As for me, a special rule of procedure of prosecutor is very important new element of private policy. In the case of injury of individual laws, which contrary to public interest, the prosecutor is able to enter an action with victim's consent.¹⁵

Parallel with rules of Civil Code, the Criminal Code of Hungary¹⁶ contains many elements of personal data protection. For example, specifies the misuse of personal and public data.¹⁷

Summary, we can talk about a related well-structured system of data protection and private policy of Hungary, in which the different acts are able to complete each others.

4. THE PRACTICE OF THE HUNGARY AND EUROPAIN UNION

I would like to write about the legal practice of Curia of Hungary and Constitutional Court of Hungary and European Court of Human Rights in this chapter. At first, we can conclude that the development of legal practice these courts are equivalent in the recent times. There is not significance differences judgement of these courts.

Both of decision of European Court of Human Rights¹⁸ and Constitution Court of Hungary¹⁹ declare the liability of the operator of the website for comments.

The decision²⁰ of Constitutional Court of Hungary destroyed the rules of legitimate public interest of new Civil Code, because basic lawlessness. By this decision the legitimate public interest is an indefinable concept, so it must not use in the area of data protection and private policy.

information Art. 54. para (1).

¹³ Act CXII of 2011 on right to informational self-determination and freedom of information Art. 55.

¹⁴ Act CXII of 2011 on right to informational self-determination and freedom of information Art. 64.

¹⁵ New Civil Code Art. 2:54. para. (4).

¹⁶ Act C of 2012 on Criminal Code.

¹⁷ Act C of 2012 on Criminal Code Art. 219-220.

¹⁸ Case of Delfi v. Estonia.

¹⁹ Decision 19/2014. (V. 30.) on the procedure of the Constitutional Court.

²⁰ Decision 7/2014. (III. 7.) on the procedure of the Constitutional Court.

5. SUMMARY

We can say that the system of data protection and private policy of Hungary has developed along with practice of European Union. Many new acts have come into effect recently, and these are able to control properly the area of data protection in Hungary. This is evidenced that the Hungarian and EU courts make the same decisions.

LIST OF REFERENCES

Legal sources

- [1] Act V of 2013 on Civil Code.
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- [5] Commentary of new Civil Code.
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- [8] Decision 7/2014. (III. 7.) on the procedure of the Constitutional Court.