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DIGITAL AGE AND DIGITAL PRIVACY

Currently law is challenging of regulation protection of the main currency – information [1]. Vast amount of significant as well as sensitive information is being collected cheaply and efficiently stored and analysed. Law has to comply with technological changes and human rights. It becomes more and more difficult for law-makers to follow technology changes and ensure that law is effective in securing the right to privacy, to protect personal data and the freedom of expression.

Today's era of social transformation also includes living in a digital age, which relates in particular to the use of computer technology [2]. According to the Internet World Stats Data, in 1995 there were 16 million Internet users, 0.4% of World's Population, in 2017 51.7% of the world's population were internet users and in October 2020 there were 4,929 billion Internet users, 63.2% of World's Population [3]. The numbers have expanded in a short time and the internet continues to grow day by day. Internet users openly create profiles, provides sensitive personal information, i.e. marital status, sexual orientation, and reveal their locations. They pay for seemingly free services with their data and trade privacy for services.

Privacy is the state or condition of being free from being observed or disturbed by other people [4]. The right to privacy is established in Article 17 of International Covenant on Civil and Political Rights [5]. Privacy was already known in the 19th century: "The right to be left alone" [6] – as defined by Brandeis and Warren is "the person's right to lead his life the way he wants without any interference" [7]. According to Alan Westin: "Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others" [8]. As scholar Robert C. Post explains: „[p]rivacy is a value so complex, so entangled

in competing and contradictory dimensions, so engorged with various and distinct meanings, that I sometimes despair whether it can be usefully addressed at all” [9]. Thus, the idea of Privacy has been modified, taking into account all kinds of changes in a society – social, economic, politics. More recently, a new institution was established – digital privacy. Eventually, living in the digital age means losing control of personal data. There are two key questions to be asked: is this loss voluntary? is the user even aware of this loss? Users must be protected. This protection has to be provided by the law, in particular by human rights law.

Article 8 of the European Convention on Human Rights (hereafter: ECHR) claims that “Everyone has the right to respect for his private and family life, his home and his correspondence” [10]. States have the positive obligations, which include a duty to take appropriate steps to ensure protection of the rights in question [11]. This is more than merely respecting human rights by not interfering in them. Rather, Article 1 ECHR requires that the states which have ratified the ECHR “secure” [12] the rights contained therein to every person under their jurisdiction. The European Convention on Human Rights applies in 47 states [13]. These 47 states find different answers to the question of how best to fulfil their obligations under the ECHR. This is also recognized by the European Court of Human rights [14].

The issue of privacy has also been addressed on the global level. For example, the United Nations General Assembly adopted a resolution entitled “The right to privacy in the digital age” [15]. It affirms that the same rights which apply offline have to be respected online, therefore the right to privacy online has to be respected, including in the context of digital communication.

Such human rights considerations have also been translated into more specific legal norms. Within the European Union (EU), data protection has gained a lot of attention in the last years and the EU has greatly contributed to public awareness of data rights in Europe:

Regulation 2016/679, the General Data Protection Regulation (hereafter: GDPR), provides further clarification and specification of the requirements for obtaining and demonstrating valid consent, as the concept of consent as used in the Data Protection Directive and in the e-Privacy Directive to date, has evolved [16]. Article 4(11) of the GDPR defines consent as: “any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.” Article 4(11) of the GDPR stipulates that consent of the data subject means any: freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

This highlights that there can not be any legal gaps in regulating protection of individuals. Data collected and combined creates a serious danger to users’

privacy. Law, both human rights law and more specific norms, serves to protect the right to privacy and contributes to knowledge of users about their rights.

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