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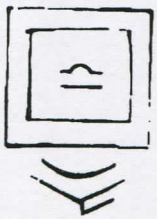

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Contents

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RIGHT TO PRIVACY AND INFORMATION TECHNOLOGY

Abstract: This paper addresses issues related to the concept of privacy and its protection in conditions where information technology is applied in reaching legal decisions, especially when it comes to managing official records by administrative bodies. The paper also considers issues related to the right to privacy as a fundamental human right.

Key words: right to privacy, information technology, law

I.

In legal systems where legislatures adapt to developments of information technology, one can notice characteristic dynamics between new law institutions and the interpretation of the rule of law. However, despite warnings of experts, the breakthrough of technology, especially in law, was not readily received in many countries. Numerous and complex technical, legal, and political issues that appear, indicate that the transition to the "information age" is often not thought through, but rather unwinds in an uncontrolled drift. The progress of technology is so dynamic and complex that it is often said of a technological innovation how "as soon as it becomes clear what it is, it's a sure sign that it is already outdated."

The rise in computer use constantly poses and increases numerous issues. In the field of law hardships are even greater. The cause of this is inadequacy of traditional legal institutions and their application in high technology conditions on the one hand, and absence of appropriate legal regulation, especially statutory and other prescriptions and relevant judicial and management decisions, and worthy professional papers in this field, on the other. Nevertheless, development connected to the application of information technology, especially for computers in law, was in the past twenty years marked

by an exceptionally dynamic genesis. The field called "legal informatics" [1], was at first oriented mostly toward technical and organizational aspects of introducing and applying information technologies and computers in the work of lawyers, and on issues of computer education of lawyers [2]. Today however, this field is taking shape as a distinct legal branch of "computer law" [3], with specialized sub-branches such as "cyberspace law" [4], "Internet law" [5], "netlaw" [6], and "privacy cyber rights" [7].

II.

Just as previously administrative law [8] presented a complex and dynamic conglomerate of new legal institutions, today it is computer law. And as administrative law has its traditional specific fields (public service, state administration, administrative procedure, and administrative suit), it could be said that computer law "traditionally" encompasses some specific fields that on various bases converge around the "law and computer technology" complex. This complex is composed of fields such as: legal informatics [9], computer crime [10], software and copyright protection [11], expert systems in law [12], cyberlaw [13], netlaw [14], and others.

III.

However, in the overall context of computer law, a special place is taken by legal aspects of the individuals' protection of the private sphere and the person. The legal field related to computer and information technology's breakthrough into the individuals' private domain is usually called the right to privacy [15]. Related to this, especially because of the imense development of technology, is a question of how to describe more precisely this field and human rights (in a legal sense). As stated, "...from all the internationally recognized human rights [16], it is probably hardest to designate the framework of, and define privacy" [17]. After all, it seems that the right to privacy is: "...a lot easier to recognize then to define, for privacy represents different things to different people and influences other established rights" [18].

From the many issues that arise with the coming of information technology, the leading ones stem from the so-called "assault on privacy" [19], and protection and safety of data in computerized information systems. Complexity of personal data protection is directly supported by the controversy related to debate of the (legal) nature of "privacy", i.e. of the basis and ways of establishing efficient legal abuse safeguards of citizens' personal data and other subjects. The question of personal data protection is both complex and contradictory – not only because of difficulties that relate to constructing a precise legal definition of privacy, but also from the great complexity of the legal systems' contradictions in contemporary conditions as well. Introducing computer technology into law has two sides to it. As noted: "...The sad truth is that many aspects of information technology's application present potential or actual abuse of privacy" [20].

IV.

Right to privacy and protection of personal data are theoretically and practically becoming the focus of lawyers' attention in the fields of legislature, administration [21], and justice. In this context, legal aspects of data protection represent the essence of the right to privacy. Despite the term "privacy" being in legal use for about a hundred years, specially in the Common Law systems (USA, Great Britain), the issue exploded with the development of information technology and the creation of computerized information systems [22]. Despite numerous attempts to establish a unified definition related to the right to privacy, the concept itself remained relatively undetermined.

One of the earliest definitions of the right to privacy was formulated by American jurisprudence late last century as the "right to be left alone". This traditional concept of privacy was expressed at that time in the work "The Right to Privacy" by American judges Samuel Warren and Louis Brandais [23]. It is held that the contemporary concept of the right to privacy appeared as a result of the first massive use of information technology devices like telephones and the telegraph. Against such a "negative definition" of

the right to privacy, however, numerous and serious criticisms have recently been expressed. Thus, "...despite the incurable impreciseness of this formulation, there is something attractive in the attempt to equate privacy with "not disturbing", i.e. with the idea of being left alone – that which philosophers call a negative freedom. Equating these concepts is wrong and can cause confusion." [24]

Contemporary alternatives of privacy conceptual determination emphasize "information control" in the sense of "who is the owner of the information" [25]. Such definitions are considered to suit contemporary society's positive social and individual interactions because one cannot disconnect from reality of "communicational" surroundings. Because of these reasons, contemporary legal theory views privacy from an "active" standpoint. As emphasized, advantages of a legal definition of privacy from concepts of information "control" are in its allowing for a clear definition of "legal interests" in these circumstances. Legally viewed, the interest appearing in the law of privacy represents the interest of self-determining personal communications with others and reflects individual and group desires to communicate information of self as they see fit and to whom they choose. [26] In this sense, laws of developed countries consider the concept of privacy to be "...the right of an individual, group, or institution to determine for themselves when, how, and in what measure will their information be communicated to others." [27]

V.

In the context of international law, the right to privacy is "...clearly and unambiguously determined as a fundamental human right with the benefit of legal protection." [28] Thus, already in 1948, Article 12 of the Universal Declaration on Human Rights established that: "...nobody shall be subjected to involuntary disturbance of his privacy, home, family, and correspondence, or attacks on dignity and reputation." [29] Independently of differences in views of the actual defining of privacy however, dilemmas appeared as to the place that privacy has in the general system of human rights. In this sense

privacy is usually defined as a civil or political right, mostly because that is how it is classified in the United Nations Charter. Still, not including rights directly related to the person, it could be said that the right to privacy includes issues related to certain economic, cultural, and social rights. [30] As emphasized: "...The 1972 Study of the International Committee of Lawyers cited the stand of professor Alan Westin ("Privacy and Freedom", 1967), which had great importance in development of this field in that it placed privacy in the center of freedom itself in contemporary states." [31]

In the field of legal protection of privacy, the Nordic legal systems are known for solutions that relay on the combination of institutions of public character and specific legal regulation. [32] It is interesting to point out that already in 1967 at a Conference of Nordic Countries held in Stockholm and organized by the International Committee of Lawyers [33], a declaration was accepted that in a practical sense determined the meaning of the right to privacy. In their view, the right to privacy encompasses protection from: interference with private, family, and home life; interference with physical and psychological integrity, moral, and intellectual life; attacks on honor and dignity; presentment in false light; publication of unimportant facts from private life that expose to shame; unauthorized use of name, identity, or image; espionage, stalking, observation, and disturbance; interference with correspondence; publishing data given or received in the course of endeavors with professional confidence; misuse of private communications, written or oral. [34]

VI.

In conditions of highly developed information technology, legal protection of privacy manifests itself first of all as a question of data protection in computerized information systems.[35] Issues that problems of data protection pose, however, especially in the field of state officials' and authorized non-state subjects' management of records, are very divers.

First of all, the problem of data protection within computerized information systems can be directed toward issues of a functional

character, such as: a) limiting availability of certain sorts of data (for example health records or capability evaluations), b) obligation of releasing information on non-governmental subjects (for example banks or hospitals), state organs and organizations (for example ministry of finance or public health agency), and c) notifying citizens about data that is compiled about them and the purposes for this.

On the other hand, the problem of data protection within computerized information systems can be directed toward issues of an organizational character, such as: a) composition and authorizations of special organs (for example the ombudsman or other national commissions, agents, or registers of data protection), b) technical standard of managing computer centers, and c) qualifications of persons processing the data.

VII.

Legally speaking, beside data protection, also of importance are issues related to data protection and the computer systems' integrity in a physical security sense. [38] It is characteristic, and understandable, for the legal doctrine to occupy itself with the legal regulation of privacy and data protection, while focusing less on the systems' security. However, the realization of system security means, *inter alia*, legal regulation and standardization of mandatory standards and norms of technical operators (e.g. information agencies and computer centers). Measures whose purpose is securing computerized information systems can themselves be various and they encompass: a) security measures for safety and integrity of technical components of computer systems (hardware), i.e. equipment, terminals, consoles, etc., b) security measures for safety and integrity of systems' program components (software), i.e. programs, data files, data banks, etc., c) measures of physical security of offices, buildings, vehicles (from accidental and deliberate damage), etc., d) measures that contribute to the maintenance and increased standards of personnels' professional education, e) measures of maintenance and advancement of standards for "regular operative procedure", etc. [39] As noted: "...Security of computer systems represents an umbrella that protects the

organizations' hardware and software elements, and the data and the information that are computer processed from being misused, against fraud, embezzlement, sabotage, deliberate or accidental damage and natural disasters as well." [40]

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