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Experiences of the preparation of the project of Act on the judicial data treating and information giving

In 2013, the president of the National office for the Judiciary ordered the Communicational Work Group – made up of judges – to organise the preparations of the project of Act on the judicial data treating and information giving.

The most important questions of the preparational work are the followings:

- the publicity of the judicial and non-judicial ac tivities of the court
- regulation of data treating of the authorities taking part of the justice and courts
- communication between courts and media

The scope of the future Act will have to extend on

- the publicity of public hearings
- the publicity of judicial decisions
- special regulations (for example child protection)
- other regulation that must be protected (private secret, letter secret, bank secret, medical secret etc.)
- definition of judicial data, judicial data treating, transfer of data

The reviewed material of the debate will be presented publicly by the Communicational Work Group on regional conferences – according to the competence of the regional courts of appeal – and it will be put for a debate for the members of the judiciary, public prosecutors, solicitors, universities, the press and the police.

On the first conference Mrs. Tünde Handó, president of the National Office for the Judiciary said that first of all, the new act will have to describe those data that can be treated by the courts during their judicial or administrative work, and, these data how can be published.

Many solutions have been found by the different countries' judicial systems, how can these data be treated among the present technical solutions and challanges.

The aspects must be found commonly how to fulfil the tasks regarding data protection. Or the requirements of transparency, publicity and integrity and to provide that courts could fulfil their fundamental constitutional task during the judicial activity.

On the first conference it has been also told that the first Act on data protection, accepted in 1992, was a regulation created on and for the public administration strucure. It has not been changed neither in 2011, during its review.

According to recent Hungarian regulations, public datas must be published on Internet according to publication lists. These are lists in the annex of the Act that are not harmonious with the procedure.

The civil law correlations are not created in front of publicity, although legal affairs origining from them must be treated publicly. Addicionally, the Hungarian Civil Code contains regulations regarding the protection of portrait, while the Act on the Right of Informational Selfcommand protects the entire phisical appearence.

Practice showed that using the rules of closed hearings cannot solve this problem as there are plenty of secrets of private life in a court room (for example sanitary data, telecommunicational data, banking data etc.).

A solution should be considered, precisely, before a public hearing is held, participants could tell if they wanted the protection of certain datas that belong to them. Nevertheless, other questions would emerge in this case, regarding the publicity of the file, the publicity of the copies of the file or the documents created during the hearing, just like verbals or decisions.

The two big procedural codes – civil and penal – cannot think paralelly with each other. During a penal procedure, if a private party wants to probate a civil law claim – a damage compensation – and he or she has a legal representative, the use of the Civil Procedure Code could be asked regarding the procedural rights that is completly different even from the point of view of the basic principles.

According to the material of the debate – that already contains the opinion of judges – it is a fundamental right to have the judicial data protected or to make possible to let it know to the adequate persons. The question is who are the adequate persons. Effectively, if we should provide social publicity until the end of the procedure or we should not.

Certain questions have to get out of the Act on the Organisation and Administration of Courts, just like the anonimisation of decisions, or the regulations on the publicity of hearings should get out of the procedure codes.

This way it does not seem a utopian thought that the functionning of the judicial system should belong to an outer control, even in a form of a body of judges.

Very important to define the concept of the judicial data. The fate of a data created on a public court hearing is completly different because as they are created they are available for everybody because anonimisation in itself does not protect datas of natural persons to be published.

The personal scope’s most important qestion is: for whom is it valid? Only for the courts, or in given cases for everyone who is relied to the judicial case. If it is valid only for the courts, the Act would be a classical one that has sense, but would not clear up definetely the fate of dates and information that get out of the court.

The factual scope means: for which cases are valid the regulation. Only for the cases that are in process at the court, or for every single case that are precedents of the court procedure.

On the conference in Szeged the under-secretary who represents the attitude of the Ministry of Justice, defined a partially different standpoint from the initiatives of judges. He considered the reorganisation of the data treating regulations in the judical system would be really useful.

The identification of the recent problems can lead to the complex solution of the regulational disfunctions. Even if the solution of the given problem needs a law interpretation or a law creation task.

The Act on Creation of Acts orders that during the creation of new law texts the coherence of the law system must be provided.

It is necessary to determine the circle of those personal datas for which the new Act on Judicial Data Treating would give authorization. In order to provide the coherence among the different sources of law, it is very important that the new regulations of judicial data treating fit organicly in the operative law texts and they would also supplement them, at the same time.

The conception signals that the Constitution – for the moment – does not declare among the principles of justice the protection of judicial data, neither the way of giving information on them.

It would be necessary to check and identify the procedure codes and determine which are those data – during the judicial procedure – that need to be limited, according to the Act on Informational Selfcommand.

That it is inevitable to harmonise the regulations somewhere diverging, somewhere excluding one another and to terminate the loopholes.

If all this come true, not only in Hungary, but in Europe a new and useful initiative – started by practicing lawyers – would reach good results.

Thank You !