Civil law measures for the protection of personal data

(scientific discipline: legal sciences)

The title of the doctoral dissertation is **"Civil law measures for the protection of personal data"**. The dissertation consists of the introduction, 7 chapters and the conclusion.

In the introduction, I present the subject-matter of my doctoral dissertation and the reasons for which I undertook to write it. I set forth the research issues and indicate what topics I will deal with in the subsequent chapters. I present the achievements of Polish and foreign literature concerning this matter, which is the starting point for my dissertation.

In the **first chapter**, I discuss the development of personal data protection law. I also take a look at the emergence and evolution of the right to privacy, which gave rise to the concept of personal data protection. I analyse the most important legal acts that were or are still regulating the right to privacy and the protection of personal data. These acts include the first European laws dealing with this matter (e.g. the Hessian, Swedish and French Acts), Convention No. 108 of the Council of Europe, Treaty on the Functioning of the European Union, EU Charter of Fundamental Rights, EU Directive 95/46/EC, the General Data Protection Regulation (GDPR), as well as the Police Directive. I also draw attention to the evolution of the Polish system regulating the protection of personal data, starting with the Constitution of the Republic of Poland, I discuss the Act of August 29, 1997 on the Protection of Personal Data, and then I describe the current regulations resulting from the recent reform of personal data protection (including the Act of May 10, 2018 as a supplement to a number of provisions of the GDPR). In this chapter, I also take a look at to the provisions on civil law protection that existed in individual legal acts regulating the protection of personal data.

The **second chapter** focuses on the characteristics of personal data as a subject of protection. I present the evolution of the concept of personal data protection, quoting the legal definitions that were included in the existing legal acts concerning this matter. Then, I analyse the various requirements that the information should fulfil in order for it to be considered personal data. I also draw attention to the division of personal data into ordinary data and special categories of data, and then I discuss the consequences of such a distinction (including the legal basis for processing such data). Later in this chapter, I discuss the issues concerning the economic aspect of data protection, in particular the issue of personal data as a kind of "payment

method" for the services provided, economic trading in databases, as well as the personal data ownership that is more and more often raised in the Western doctrine.

The **third chapter** is devoted to analysing the relationship between personal data and personal rights. At the beginning, it was necessary to characterise the personal rights which are protected in Polish law mainly by the regulations of the Civil Code. Then, I analyse – both from the Polish and foreign perspective – the right to privacy, which is the value closest to the protection of personal data. After that, I discuss the issue of the right to intimacy and its relationship with the protection of special categories of data. Nonetheless, the most important part of this chapter is answering the question whether personal data constitute an independent personal right. The solution to this problem is of significant importance from the perspective of pursuing property and non-property claims by authorised persons due to an infringement of, e.g. the provisions of the GDPR and sectoral legal acts covering this matter. Very often, when the provisions on the protection of personal data are being infringed, the personal rights of the data subject are interfered with, which further translates into a catalogue of civil law measures that the entitled person will be able to use against the infringer.

In turn, in **chapter four** I focus on the characteristics of the controller and the processor. These entities are obliged under Art. 82 of the GDPR to redress the damage caused by an infringement of the provisions on the protection of personal data. I analyse the evolution of legal definitions of the controller and the processor. I indicate what obligations are imposed on the entities involved in data processing, as well as how the relationship between them is shaped (e.g. under a data processing agreement pursuant to Article 28 of the GDPR). This will later translate into their scopes of liability in a situation where damage occurs due to an infringement of the provisions on the protection of personal data. Multiple entities are most often involved in the data processing process, playing in it so varying roles that the problem of determining whether in a given case we are dealing with a controller or a processor arises.

The subject-matter of **chapter five** is the analysis of the civil liability of the controller and the processor in relation to the damage caused by infringing the data protection regulations. Firstly, I draw attention to the set of provisions being currently in force in the Polish legal system regarding the liability of the above-mentioned entities in this matter. Then I describe the evolution of this liability, primarily from the perspective of Directive 95/46/EC (which was repealed by the GDPR) and the no longer applicable Act on the protection of personal data of August 29, 1997. The most important part of this chapter is the analysis of Art. 82 of

the GDPR (as well as the EU legislative works related to this provision), which – on the basis of this regulation – establishes an obligation to redress damage by the controller and the processor. The application of this provision raises a number of doubts, as is the case with, e.g. the principle of liability of infringers, multi-faceted issues of damage, joint liability of infringers and the recourse claims between them. The situation is further complicated by the incorrect translation of Art. 82 item 3 of the GDPR, as a result of which the Polish doctrine went in the wrong direction when establishing the principle of liability, in my opinion. In this chapter, I analyse the legal regulations of other Member States of the European Union in the field of civil law protection of personal data, as well as various views of foreign doctrines on this matter. Moreover, I draw attention to the recent questions on the discussed subject-matter referred for a preliminary ruling to the Court of Justice of the European Union.

In **chapter six**, on the other hand, I focus on the civil liability of the controller and the processor within the scope of Directive 2000/31/EC, i.e. the Electronic Commerce Directive, which in this matter was implemented into the Polish legal system by the Act of July 18, 2002 on the provision of services by electronic means. The matter discussed in this chapter, although strongly related to the topics discussed in chapter five of this dissertation, needed to be examined separately. In this part of the dissertation, I explain the relationship between the indicated directive and the GDPR. I analyse the issues of mere conduit, caching, hosting and the lack of an obligation to monitor the content by the service provider, where – if specific conditions are met – the controller and the processor could avoid liability for damage caused by an infringement of the provisions on the protection of personal data. What makes it even more important is the fact that, to a large extent, data protection infringements are caused by the activities of entities providing services by electronic means.

Chapter seven deals with the analysis of the application of civil law measures in order to protect personal data. The starting point is drawing the attention to Art. 79 of the GDPR, which requires Member States to implement national regulations that would provide data subjects with an effective remedy before a court. Then, I describe the relationship between civil law measures for the protection of personal data and their counterparts concerning personal rights. This is of particular importance because, as I mention in this chapter, civil law protection in the discussed subject-matter is most effective when the infringer's behaviour leads to both, an infringement of the provisions on the protection of personal data, as well as personal rights. The most important in this part of the dissertation is the characterisation of the civil law remedies themselves. I adopt their basic division into the material or non-material

ones, in accordance with Art. 82 item 1 of the GDPR, which distinguishes material or non-material damage. I devote the most attention to the issues of the claims such as compensation and redress, which are most often raised in the course of disputes against controllers and processors. I also support the analysis of individual legal remedies with the jurisprudence of international and EU courts, as well as individual member states. It results in a number of doubts that have arisen in connection with the application of individual protection measures. These discrepancies oftentimes may significantly limit the effective application of the provisions of the GDPR.

In the **conclusion**, I summarise all the most important theses that I raised over the course of the entire doctoral dissertation. I indicate what are the biggest problems with the application of civil law measures to protect personal data. I put forward a number of *de lege ferenda* postulates, including remarks on the direction which the Polish legislator should follow regarding this matter.

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Wojciech Lamik