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**TRANSPARENCY IN DEFENCE ADMINISTRATION
(PhD. Thesis)**

1. INTRODUCTION

The democratic transition of the 1990's opened a new chapter in Hungary's history. Comprehensive changes were introduced in society, politics and the country's economy, which had a significant impact on the institutional system's characteristics¹.

Public administration, in a system based on the rule of law and the separation of powers, is part of the executive branch, which operates as an independent power. Its specific tasks extend over all sectors of social and economic life. From an organisational point of view, it is composed by all state institutions exercising public authority².

The definition what is meant by "Defence administration" is contained in Government Regulation 290/2011 (XII. 22). In this introduction, it appears necessary to note that among the tasks listed in this definition, I focus on the examination of disaster management institutions. In the literature, police forces are also included in the larger definition of safety defence administrations, therefore, the term "defence administration" can also be used to designate them.

Defence administration, as part of the overall public administration, follow the principles of the social division of labour. From a functional point of view, they serve the various branches of public administration, while at the same time representing their own administrative tool and public management technique³. Though I chose to study the implementation of transparency in defence organisations, this task must also take data protection aspects into close account. The dual sides of information rights cannot be separated but can only be approached in relation to one another. Data protection and transparency are both deduced from the academic study of the fundamental human rights system.

The disclosure of data of public interest (freedom of information) has been a constitutional freedom, in, since 1989. Its function is to guarantee the right to control of the state power for citizens. "Information is vital. An adequate level of information is a condition for citizens' freedom, which it also improves"⁴.

In the course of the present dissertation, in order to reach the set goal, this interdependence has been treated with emphasis, so that this work's conclusions could always be attached to the implementation or the violation of human rights.

In a way, this thesis is an attempt of evaluating the level of transparency and data protection that has been achieved by defence administration organisations. I undertook to reach this goal by going through the following steps:

- Describing the main developments under defence administration organisations following the democratic transition, and their connection and place in the processing of public administration tasks;
- Analysing and shedding light on the legal situation of the development of data protection, data safety and transparency, while pointing out the specificities of defence administration;
- Based on the Fundamental Law and other legal provisions, analysing police and disaster management authorities' achievements in the field of information rights, including both potential negative and positive aspects, formulating proposals in the interest of ending putative negative practices;
- Analysing both the contents and functioning of the notion of safety, security policy, and information rights to find out common elements and relations that influence the practice of transparency, either in a reinforcing or in a weakening way;
- Analysing and demonstrating the system of administrative qualification and practice at different institutional levels, the transparency of their data processing operations, and the practical implementation of access to information of public interest;
- Investigating contradictions constituting obstacles to the implementation of the transparency principle;
- Devising proposals that can support the complex implementation of data protection, data safety and transparency in public safety organisation.

2. HYPOTHESIS, METHODOLOGY AND LIMITATIONS OF THE PRESENT STUDY

According to Section VI, paragraph 2 of 's Fundamental Law: "Every person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest." According to the National Avowal contained in the Fundamental Law: "[...] democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse"

Based on the above, constitutional law requires of the general and overall functioning of a democratic state serving its citizens that it puts into practice, in the frame of its public tasks and duties, the principles of transparency and of integrity in public life. Public procedures and decision-making processes should take place in an unbiased and impartial way.

The fundamental right to access and dissemination of data of public interest, take place besides setting the conditions for the exercise of freedom of speech, actually also helps ensure the enforcement of the above. Based on the quotes from the Fundamental Law, and on the division of labour among public administrations, defence administration is in charge of public services. In the frame of these activities, data of public interest is being processed. The Fundamental Law, and other related legal norms, prescribe the public availability of such data.

Part of the data processed by institutions providing public services can be classified, either as a consequence of legal provisions, such as rules on national defence, national security and criminal investigations, or by authorized civil servants. Such a classification restricts access to data of public interest. The Law does not provide for discretionary classification. Yet, in my work as a public authority, I have come across some cases where data controllers attempted to oppose the disclosure of data of public interest, and neglect their public relations duties. Safety defence administration can easily find arguments that are accepted by a large share of the population to support such kind of behaviour: they argue that their goal is the protection of society, the repression of crimes the management of disasters. Yet even if these arguments can be found acceptable by the people, they are contrary to the duty of transparency, and can be an obstacle towards its implementation.

The above clearly shows the contradiction between information rights duties (both data protection and freedom of information), and the way transparency has been implemented by the organization of defence administration.

The following hypothesis was formulated in order to help achieve the goal set by this study:

According to my hypothesis, defence administrations fulfill peculiar duties among the public administration.

Many of their activities contain elements that have an impact on public interests from a social point of view, and generate data of public interest.

The responsibility to implement transparency lies on the head of the given organisation, who has general (commanding) powers over his subordinates' work.

At the same time, I formulate the opinion that there exists a danger for transparency to become its own goal, thereby creating obstacles towards legitimate requests for information of public interest. In the frame of this study, I will confirm or debunk presumptions that on the one hand deny the spread of transparency and data protection onto safety defence administrations, or on the other hand believe that those principles can only be implemented in a restricted manner. I also presume that transparency as a value has suffered from the spirit of legal developments following the 9/11 terrorist attacks, which strongly emphasized national and international political will towards stronger security over other priorities. There may thus be data protection and classification requirements obstacles towards the constitutional interest of transparency.

Through the study of the historical evolution of data protection, data security, and transparency, I debunk the opinions that deny the possibility to implement transparency requirements in the field of public safety, or assert that such an implementation can only be of limited scope.

Depending on conscious efforts by police and disaster management authorities to establish a balance between data protection and transparency, the thesis demonstrates that the possibility for these various authorities to follow legal requirements and allow wide-spread disclosure of information of public interest can be achieved in various shapes and depths, on a case by case basis.

Based on observations from the field of safety defence administration, the thesis shall attempt to prove the statement according to which it is possible to balance the right to classify specific documents with the principle of transparency, in a way that guarantees the enforcement of constitutional freedoms.

Assuming that sectorial, national, territorial and local authorities strive for maintaining of the unified legal requirements of data protection and transparency, the thesis analyses the characteristics of various institutions' work in this direction. Based on the conclusions of this analysis, the possibility will be demonstrated to put the contradiction between data protection and transparency into perspective.

In order to fulfill the goals set out for this study, the thesis strives to apply the methodology principles of scientific research, which can be summarized by the following list:

- General comparative chronological investigation;
- Situation analysis and commenting based on analysis and synthesis, together with the determination of conclusions and proposals;
- Study of relevant national and international scientific literature and legal norms;
- Use of partial research results for scientific publications and conferences;
- Next to using document analysis methods, I have strived systematically to underpin my research with scientific consultations and the use of interviews.

Rethinking the methodological aspects of this work proved to be necessary over the course of the research. This was due to the fact that background literature on defence administration, data protection and data transparency are not unified. However, references on data protection and freedom of information in defence administrations are incredibly limited. As a consequence, I have had to increase the importance of looking for and analysing practical experiences on the field, notably through interviews and relevant consultations.

Over the course of this course, I have come to the realisation that it is not desirable to extend the analysis over all public safety institutions. Indeed, the activities and documents of both civil and military defence organisations are, for the great majority of them, classified. This fact would have greatly reduced the diffusion of this dissertation, as its contents would have been available only to a restricted group.

3. THE PLACE, ROLE AND TASKS OF DEFENCE ADMINISTRATIONS

Public administrations form a subpart of the independent executive power. Its duties extend over all sectors of state, social and economic life. Such duties include the management of legally prescribed state activities, the publication of orders, the implementation, steering and supervision of public policies. All of these are done by public officials who benefit from a special legal status. Under the umbrella term of administrative tasks, one includes the preparation and drafting of legal norms, law enforcement, steering and supervision of public policies, as well as offering services to the public. Administrations, on the one hand, have regulatory duties regarding data protection and transparency, and on the other hand, they are bound by these same rules. This makes it clear that administrations, and public authorities, have duties to serve the public.

Defence administration, as part of the overall public administration, are also characterized by the elements listed above. They execute their missions directly under State supervision. Their mandate supersedes those of regular public administrations: they have special powers to ensure their ability to achieve their social goal. In the interest of the rule of law, their activities are coordinated by special laws that supports the optimal social mission. This means that defence administration is accountable to the citizens for their professional activities, and must allow them to exercise supervision. Their work is to maintain order and security for the benefit of society. For individual citizens, this can create a subjective feeling of stability. While defence administrations is part of the general public administration system, their duties are divergent and particular, as the social division of labour entrusts them with the maintenance of a subjective feeling of safety across the population.

Defence administration operates under supervision. They represent a branch of the overall public administration, in charge of enforcing public order, protecting populations and risk prevention. These administrations work in close multilateral cooperation. The general activities of defence administrations (that is to say legislation, law enforcement and the realisation of projects of social interest) coincides with the main characteristics of the overall public administration. The divergences are induced by the special nature of these administrations' duties.

The role and place of police and disaster management institutions has changed in the years following democratic transition. The legislator has modified fundamental rights' contents and proclaimed new tasks in phase with the rule of law's requirements. In order to fulfill their duties in a more efficient way, both institutions have undergone profound changes. For instance, merging the Border Guards with the National Police increased available headcount, and created a new institutional with a bigger organisational background.

Disaster management used to be performed by various independent institutions that are now operating as one united organisation, thereby providing a higher level of efficiency in their security protection duties.

Both organisations remain structured around the principle of regional deconcentration. There are three levels: national, county-level and local. Between them exists a formalised cooperation agreement for the purposes of disaster prevention, damage reparation, and protection of people's lives and properties. These duties remain the same whether in times of peace or under states of emergency.

According to the Law, and especially to the 2011 Privacy Act⁵, data protection and freedom of information rules are applicable to the subjects of this study. There are also special directives addressed to both institutions that specify the way in which data protection and freedom of information are to be implemented⁶.

From a managerial point of view, data protection was integrated into the organisational chart by the appointment of internal data protection officers. Their efforts can be felt in the conformity to the law of data processing operations. Transparency also applies, and is materialised mainly by formal-informal information exchanges and structural public relations. Transparency is shown in various levels across the country, depending on the local and organisational context.

4. DATA PROTECTION, DATA SECURITY, FREEDOM OF INFORMATION AND TRANSPARENCY IN OUR DAYS

The analysis of the relation between both sides of information rights (data protection and freedom of information) lies at the core of a continuous debate among the theme's specialists. As the debate's main substantial element, we can easily unearth that the actual underlying question is on „which one is the most important“. At the same time, this dissertation reflects on how far personal data protection should reach, on whether it is possible to put limits on the right to access information, on what is the aim of openness, and on what the relations are between classification and transparency. Among the dilemmas: how to define personal data, data of public interest, data public on grounds of public interest and transparency, are ever present questions. Considering this dissertation's topic, I would like to present my opinion on the relational system binding data protection, openness and transparency together.

András Jóri precisely expressed one of data protection's main issues: according to him, data protection and data openness are two sides of the same scientific and practical link⁷. He further develops the fact that both concepts express the interests of citizens, and that in optimal cases, they balance one another. Yet this relation is far from obvious for most public authority agents. In the frame of their official duties, data protection usually serves as a limiting factor for transparency.

This remains true to this day. Incorrect practices still represent an obstacle for transparency.

László Majtényi widely analyses the different data types, their relation to one another, and their use in the field of data protection. One of his important conclusions is that the protection of privacy is what matters for data protection, as it provides citizens with protection in the context of a democratic information society⁸. The aim is to provide comprehensive protection of citizens' data. But the right to protection must not impede, or be an obstacle, to the legitimate interests of transparency.

Both statements bring attention to the fact that data protection cannot be without limits. Its excessive implementation would indeed go against the principle of transparency.

"From the point of view of constitutional law, transparency is inferred by the constitutional principles of democracy and popular sovereignty. Its implementation allows the existence of two other fundamental rights: freedom of opinion and information freedom"⁹. Openness and its corollary, transparency, represent checks and balances in favour of democracy, but also a challenge. The realisation of democracy requires State institutions to perform administrative duties, which leads to the production of data of public interest and data public on grounds of public interest. Their publication and accessibility guarantee the rule of law. Retention of information of public interest imposes restrictions on people's constitutional rights. Therefore, it constitutes an infringement to the Fundamental Law. State administrations, local governments, and safety defence administrations all perform public duties, so information on their basic activities is of public interest and must be made available. In a nutshell, data protection is about the protection of citizens; and freedom of information, being about the State's transparency, includes the right to legally access data of public interest.

Transparency also means, therefore, that each person has the right to be informed about what personal data that he is the subject of are being held by State organs or other institutions. This legal requirement represents a guarantee from the citizen's point of view.

Freedom of information, on the other hand, is set to safeguard public authorities' transparency. From this point of view, transparency requires that controllers of data of public interest and data public on grounds of public interest must open up to wider society. This is the basic requirement for State and public administration accountability. Access to knowledge promotes critical thinking and creativity and the formulation of opinions. Openness and transparency can be observed in the State's supervision. The legality of the State's functioning can be thus controlled through a data protection approach, but transparency allows citizens to access information of public interest without having to prove individual concern. This creates the conditions for general supervision by citizens.

The European Union has been tackling data protection and freedom of information issues with ever increasing intensity. The European Parliament and the Council approved a Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data. This Directive's rules have been transposed into national laws, including Hungarian law, through the mechanism of legal harmonization.

Globalisation's challenges, together with divergences in national legislations, make it necessary to improve harmonization, unify enforcement strategies, and shape common rules on sanctions. Yet the data protection reform package's fate appears uncertain. And there is a complete lack of European Union-level harmonization in the fields of transparency and freedom of information. Applicable Hungarian rules take the European requirements into account. The Privacy Act goes even beyond what was required by European Union provisions, and also constitutes an improvement on its predecessor, the Data Protection Act.

Council of Europe legislation also had an impact on the genesis of both data protection and transparency. As a European Union Member State, Hungary's main source of inspiration for data protection was the Data Protection Directive, but the Council of Europe's conventions played an important role in the field of freedom of information. These have significantly influenced Member States' legislation and law enforcement practices towards unified interpretations, though full harmonization on data protection has yet to be achieved.

The first Hungarian legislation on data protection and freedom of information preceded EU codification by three years, so later implementation of European norms had to be done through amendments. The constitutional amendment adopted at the time of the democratic transition elevated personal data protection to fundamental right status. The Constitutional Court formed a legal opinion on data protection that is still in force as of today. It proclaimed the existence of informational self-determination, emphasized the importance of purpose limitation, and sketched the shape of widening access to data of public interest.

With the creation of the Data Protection Commissioner's Office, data protection and freedom of information were granted institutional safeguards. At the time, the concentration of both informational rights competences in the hands of one public authority was a unique situation in the world.

The new Privacy Act entered into force at the same time as the Fundamental Law. This Act takes over the relevant provisions from the former Data Protection Act, including those on the access to information of public interest. It creates safeguards against the possibility for privacy protection becoming its own goal and thereby proving a hindrance to transparency's legitimate interests. This Act also created the National Authority for Data Protection and Freedom of Information (NAIH in Hungarian), which took the place of the Data Protection Commissioner as an independent, autonomous administrative authority. The NAIH's attributions significantly exceed the former institution's ones. For instance, it was granted real administrative competences along with the possibility to impose financial penalties. With its extended procedural competences, it can directly influence national data protection practices, which goes hand in hand with freedom of information.

The new system of rules and data protection authority have been declared conform to the European law by control authorities and workgroups. International trends tend towards the combination of data protection with free-

dom of information, supervised by one single authority. This guarantees an optimal relation between both rights in their implementation in economic, social and State life. Transparency's success is guaranteed by freedom of information and openness. They allow people to gain knowledge on the State and administrative activities. By getting this relevant information, they can take part in the political process.

Over the course of this dissertation, many interviews were made, mostly on the local level of safety defence administrations. They shed light on the fact that transparency's desired success was still short of what is expected to ensure an adequately high level of control by citizens over the State's administrative activities.

THE CORRELATION BETWEEN SECURITY, PUBLIC SECURITY, DATA PROTECTION AND TRANSPARENCY TODAY

Security means lack of threat and fear or rather the ability of protection against these menaces. Its impact comes into effect on different levels, such as individual, collective, national and international level. Different areas of security have an impact on each other, too. Security influences the effectivity of human rights protection and of liberties, including the citizens' right to control the functioning of the state and to the transparency.

9/11 led to significant changes in many countries' security policies. This statement also states for the European Union. The changes focus on wider range of information exchange, on free access to information sources by the member states and on finding the dangerous persons. These changes effect liberty rights negatively, however this could be moderated through finding the optimal balance between security-liberty and data protection-transparency.

THE CONDITIONS AND FULFILLMENT OF DATA PROTECTION, PUBLICITY OF DATA AND TRANSPARENCY AT THE ORGANS OF THE DEFENSE ORGANIZATION

During my researches of the relevant topic I have examined the experiences of recent danger – and disaster situations. From the perspective of data protection and freedom of information the thesis asserts and proves that transparency or lack of transparency fundamentally effects the outcome of potential dangers. It positively or negatively influences the life of people and the natural and material environment, too. Without the knowledge of the relevant information the defence forces are not able to perform their basic tasks which is also the guarantee for the transparency of their functioning.

Through examining the transparency of the police and disaster management forces the thesis also asserts and proves that the regulation – from the national to the local levels – comply with the provisions of the Privacy Act (Infotörvény).

Both forces have special features which need special regulation. The different levelled regulations constitute coherent unity. In the case of the police and disaster management data protection and freedom of information (transparency) have an enormous importance. External and internal transparency shall be distincted.

Upon the experiences gathered on different levels my conclusion is that providing information could be organised as a planned activity. The essential content of the information could be defined in advance so transparency as a requirement could be maintained at the end.

In the „time of peace” to serve transparency the internal regulations are to be followed. The organs of the disaster management use different methods using the press and using personal relationships to feed the society's needs for reliable information.

During the interviews made on different levels I was facing several problems which seem to exceed the competency of the relevant head of the police or of the disaster management forces. The remedy to some of these problems might be the modification of the sectoral regulation. But some problems need to be solved through changes of the legal provisions. Upon my opinion summarising of the tension indicating tasks under the competency of the high level decision-makers is more than necessary. The harmonized proposals of the relevant organs of the security management should be brought to the decision makers, to those who are responsible for the drafting of legislation.

CONCLUSION

The analyses of the nature of conflict between data protection and freedom of information is one of the main aim of this present thesis, emphasised in every, and each period of the examination. It has been proved from many aspects that the conflict indicated is of a real nature by the defence forces. Its effect can be followed during the fulfilment of the tasks and by the relationship with the citizens.

The thesis shows the characteristics of the defence management in comparison with other sectors of the public administration. It asserts that the dichotomy formulated in the main objective cannot be interpreted mechanically. The actors of the defence management often tend to favour data protection to the guarantees of transparency. Searching the roots of casualty it seems that the main reason is the special role and activity of the actors within the system of public administration. The tasks are mostly closely related to the persons and are occasionally accompanied with special data processing's.

My experience during the researches was that in the reality it is often hard to define which data is of public interest. The qualification of the documents – following the rules in force concerning the qualified data processing – makes the situation even more difficult. The consequence is that that informing of the public or prevailing transparency fall behind. This rather objective factor – with a legal background with easy reference – can be found at both forces. Moreover, some organs' staff members make a one-sided preference of data protection to the obligation of informing the public. The experiences of the on-the-spot interviews prove that heads of the organs on different

levels consciously make efforts to inform the local and national public and also to create and maintain the institutional conditions of transparency.

The legal framework and the determined requirements and traditions of the senior staff guarantee the reassuring solution of the conflict between data protection and transparency.

The thesis proves (see Framework of the research, Chapter II/3.) the reason to concentrate on the organs of the police and of the disaster management. It also proves that the relationship between public administration and defence administration is not a subordinated one due to the principle of the division of tasks within the society. Each organisation has special powers and neither is replaceable.

The thesis also proves that the organisations fulfill their tasks in compliance with the provisions of the Basic Law as well as of other Acts. Public duties generate data of public interest which are processed by the appropriate administrative staff and assisted by data protection officers. The personal staff is regularly trained and well prepared to process data of public interest.

On the other hand I met with practical difficulties concerning the interpretation of data of public interest.

In the period of research I orientated myself at the central, territorial and local organs of disaster administration. I was confirmed that they are occupied with the interpretation of data protection and transparency but with different results according to the different levels and different powers. My experience was that the members of the professional staff (including the governmental officials) fully fulfill their obligations as defined in the regulations but providing information in single cases – which should be a vital part of transparency – meets numerous obstacles. These originate mostly in the interpretation problems of data protection-freedom of information and in the exaggeration of decision competencies. The problems are less typical on higher levels, transparency is well founded at national organs.

The thesis proves through concrete examinations that defence administration is based upon public interest thus produces and processes public data. The qualification of the data storage management is regulated, carried out by the administration and assisted by a DPO. Processing of personal-public and data-public-on grounds of public interest are subject of internal regulations at each organs.

The thesis proves my original presumption that the danger of primacy of data protection versus transparency and publicity may appear.

The thesis only partly proves my original presumption that the conflict of data protection-transparency derives from conceptional concerns which really exist but serve only as one reason for the subordination of transparency to data protection interests.

The thesis has confirmed the opinion of László Majtényi stating that efforts made for the sake of protection of data might cause subordination of publicity of data. The reasons are the following: overregulation, certain circumstances of data qualification at the defence administration and the negative effect of emphasising secrecy's protection. However, the examinations have proved that the constitutional interests have been prevailed in relation to transparency and publicity.

The thesis asserts that the different methods serving this purpose have been developed on different levels of defence administration and function well in the daily practice. Some of these derive from formal, legally fixed obligations, some of these are built on local relations and traditions.

Summary: based upon the pre-examinations and on the explored facts the thesis asserts that the conflict of transparency-data protection at the defence administration is real. The conflict's effect differs vertically and also appears in different dimensions in relation to the police and to the disaster management.

The factors working against transparency and publicity refer to real problems but there is a conscious effort to comply with the requirements of transparency.

These features jointly prove that the concrete results of my research work reflects the real situation. The examined organs' leadership and members, the information found in documents, the content of the legal regulations and the interviews unambiguously prove the prevailing of transparency.

1. The research concentrates on the topic of transparency as well as on the correlation between data protection and freedom of information in relation to the organisation of the disaster management and of the police within the defence administration system. The relevant scientific literature convinced me that although the new Privacy Act has been already analysed from several aspects in the form of scientific studies, essays etc. my thesis offers a new perspective of the given correlation.

Speaking of the system of defence administration my analyses is the first in the line which focuses on the points of conflict in relation to institutional conditions of data protection-transparency. The thesis discovers the positive and negative procedures generally. One of the most important problem is the interpretation of personal data-data of public interest- data made public on grounds of public interest. A harmonised legal practice and the elimination or minimisation of the subjective element would be essential in order to guarantee the citizens' rights of free opinion and of public control.

2. In the early stage of the research my perspective focused on external views – societal groups, local communities, single citizens. Later – in particular as a result of the analyses and consultations on disaster or near-disaster situations – I was confirmed that transparency within the defence administration is as important as transparency requirements directed towards the defence administration. The distinction of an „external” and „internal” transparency for data protection and transparency experts is still an open question.

3. Data of public interest processed during defence administration activities shall be made public according to the law. Administrative qualification of these data is strictly regulated. Although the publicity of these data is an

interest of the society, it could be in conflict with individual interests. The solution of this conflict might be problematic in the practice. The single discretion power shall be limited and it is highly recommended to set up a unified legal practice with the cooperation of the National Authority for Data Protection and Freedom of Information.

4. The research work used modern scientific methodologies but the examination of the correlations needed complex methods. It means that the analyses of the institutional and activity problems had to draw on theoretical and practical comparisons. Thus the thesis can prove that data protection, data security on the one side and freedom of information, transparency on the other side often have a counter effect on each other. Maximisation of security negatively effects transparency, as well.

5. The system of regulation in relation to defence administration, data protection and freedom of information is partly independent, partly corresponding. It comprises a whole spectrum from the Basic Law to Acts, governmental and ministerial decrees to strategic and specific „internal” rules. Examining some of these rules I concluded that we cannot speak about a coherent system as it can be described as fragmented, professions- and sectoral- or national competency based.

The complex defence administration, data protection and transparency function as legally based systems. The differences do not have an essential effect on the functioning. However, the deficiencies in relation to the regulation shall be solved through the legal interpretation or through the modification of the legal provisions.

6. The examination of the chosen topic led me to the recognition that the terminology of data protection, data security, publicity and transparency has become too difficult, too sophisticated.

The publications and statements are clear for the experts but remain unclear for those who are expected to fulfill the requirements. Although the basic principle is easy to understand: personal and qualified data shall be protected, data of public interest shall be disseminated. It is most recommended to interpret data protection and freedom of information issues in the most simple and clear way.

7. The research confirmed me that the institutional system is operable so it is not necessary to carry out a complete supervision or to set up a new system. The effectivity of the present system could be optimised by introducing a unified legal interpretation and by the minimisation of the role of the subjective elements.

8. The publicity of the public information and transparency are serving the interests of the society. The problem is that the responsible decision makers processing public information often find themselves under the pressure of necessity – just as explained in the thesis. The solution of this conflict falls out of the competency of the defence forces. It is highly advisable to pass in a proposal of modification of the relevant Act to the Parliament with reference to the annual report of the Hungarian DPA.

9. To increase the transparency of the defence forces it is important to use the direct possibility of consultation with the experts of the Hungarian DPA during the investigation or at the DPO’s annual conference.

Proposals for the use of the new scientific results

The content of the thesis could be used:

- by the experts of the police and the disaster management forces. It could be interpreted as an analysis of the present situation;
- in the NAIH’s procedures as a complex evaluation of the methods of the investigation;
- by publications, studies;
- in the curriculum of the National University of Public Service (in particular the analysed examples and consequences of the thesis).

¹ *András Torma*. Információ jelentősége a (köz)igazgatásban. Page 5 of the bevezetés, Virtuóz Kiadó, 2002, Budapest.

² *Albert Takács*. A Hatalommegosztás elve az alkotmányos érkek rendszerében, A tanulmány a Budapesti Corvinus Egyetem.

³ *Hadtudományi Lexikon II.* volume, page 1108. Magyar Hadtudományi Társaság, 1995. Budapest.

⁴ *László Súlyom*. Adatvédelem és személyiségi jog. Másodközlés: Tízéves az Adatvédelmi Biztos Irodája kiadványa, p. 13.

⁵ Act CXII of 2011 on Informational Self-Determination and Freedom of Information ("Privacy Act").

⁶ In the case of disaster management organisations: Ministry of Interior Order nr. 109/2011 on Data Protection and Data Safety Rules In the case of the police: National Police Order nr. 23/2013 (V. 17.) on Internal Data Protection and Data Safety Rules.

⁷ *András Jóri*. A nyilvánosság határai: a személyes adat, a közérdekű adat és a közérdekből nyilvános adat fogalma az Adatvédelmi biztos és az alkotmánybíróság gyakorlatában, Tízéves az Adatvédelmi Biztos Irodája, published by the Data Protection Commissioner's Office, p. 109-110, 2006, Budapest.

⁸ *László Majtényi*. Közérdekű adat – személyes adat – nyilvános adat – titok, Tízéves az Adatvédelmi Biztos Irodája, published by the Data Protection Commissioner's Office, p. 163 to 166, 2006, Budapest.

⁹ *Gyöngyi Balogh*. Nyilvánosság, tájékoztatás, jogérvényesülés, Az információk jogok kihívásai a XXI. században, published by the Data Protection Commissioner's Office, p. 163–166, 2006, Budapest.

Резюме

Амтіла Петерфалві. Прозорість в оборонній адміністрації.

У статті розглядаються питання забезпечення прозорості та свободи інформації в оборонній адміністрації, що часто спричинює певні конфлікти з вимогами захисту даних протягом виконання завдань та спілкування з громадянами. Автор розглядає проблеми превалювання інтересів захисту даних в поліції та відомствах з надзвичайних ситуацій, що діють в рамках системи оборонної адміністрації, покращення діяльності Національного департаменту з захисту даних та свободи інформації

в забезпеченні уніфікованої юридичної практики, розробки необхідних законодавчих актів та директив Європарламенту та Ради Європи для уніфікації стратегій забезпечення правопорядку, гармонізації законодавства країн-членів ЄС в цій сфері та розробки відповідних рекомендацій провідним спеціалістам.

Ключові слова: Національний департамент з захисту даних та свободи інформації, відомства з надзвичайних ситуацій, забезпечення правопорядку, дані, що становлять інтерес для суспільства, оприлюднення даних, розробка законодавчих актів, зобов'язання прозорості, громадський нагляд, захист приватного життя особи, законодавчі рамки.

Резюме

Аттіла Петерфалві. Прозрачность в оборонной администрации.

В статье рассматриваются вопросы обеспечения прозрачности и свободы информации в оборонной администрации, что часто вызывает определенные конфликты с требованиями защиты данных в течение выполнения задач и общения с гражданами. Автор рассматривает проблемы превалирования интересов защиты данных в полиции и ведомствах по чрезвычайным ситуациям, которые действуют в рамках системы военной администрации, улучшения деятельности Национального департамента по защите данных и свободы информации в обеспечении унифицированной юридической практики, разработки необходимых законодательных актов и директив Европарламента и Совета Европы для унификации стратегий обеспечения правопорядка, гармонизации законодательства стран-членов ЕС в этой сфере и разработки соответствующих рекомендаций ведущим специалистам.

Ключевые слова: Национальный департамент по защите данных и свободы информации; ведомства по чрезвычайным ситуациям; обеспечение правопорядка; данные, представляющие интерес для общества; обнародование данных; разработка законодательных актов; обязательства прозрачности; общественный надзор; защита частной жизни лица, законодательные рамки.

Summary

Attila Péterfalvi. Transparency in defence administration (PhD. Thesis)

The article presents the topic on ensuring transparency and freedom of information in defence administration what often causes some conflicts with the requirements of data protection during fulfilment of the tasks and by relationship with the citizens. The author considers the problems of prevailing interests for data protection in police and disaster management authorities within the defence administration system, improving the activity of National authority for data protection and freedom of information in providing unified legal practice, drafting necessary legislative acts and directives of European Parliament and the Council for unifying law enforcement strategies, harmonizing legislation of EU member countries in this field and elaborating proper requirements to the senior staff.

Key words: National authority for data protection and freedom of information, disaster management authorities, law enforcement, data of public interest, disclosure of data, drafting legislative acts, duty of transparency, public supervision, protection of privacy, legal framework

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ГРОМАДЯНСЬКЕ СУСПІЛЬСТВО І ДЕРЖАВА: ВЗАЄМОЗВ'ЯЗОК ТА ВЗАЄМОДІЯ

Процес становлення України як сучасної демократичної і правової держави поєднує в собі фундаментальні зміни в житті українського суспільства, починаючи з процесу переосмислення основоположних цінностей і пріоритетів суспільних трансформацій, що лежать в основі її розвитку як самостійної і незалежної держави, що прагне посісти гідне місце у світі, і закінчуючи питаннями нормативного регулювання діяльності як інститутів державної влади, так й інститутів громадянського суспільства.

Категорія «громадянське суспільство» – одна з наймолодших у вітчизняному суспільствознавстві, в політології зокрема. І це, незважаючи на те, що світова суспільна думка давно і досить докладно досліджувала цю проблему. У політичних вченнях, що належали Аристотелю, Цицерону, Монтеск'є, Макіавеллі, Локку, Гоббсу, Канту, Гегелю, Марксу, Бакуніну, В. Соловйову, дана категорія або детально аналізувалася, або згадувалася, головним чином, у співвідношенні «громадянське суспільство – держава». Наукові погляди вчених щодо розуміння громадянського суспільства зводились до думки, що воно є категорією самостійною, є тим, що знаходиться поза полем залежності від держави.

Виходячи з того, що громадянське суспільство є, насамперед, однією з форм об'єднання людей, необхідно звернутися до історії становлення людських спільнот. На зорі людства виникали прості, нечисленні, малостійкі об'єднання людей для спільного добування їжі, будівництва житла, захисту від ворогів, тварин і негоди¹.

Вагомий внесок у дослідження різних аспектів розуміння громадянського суспільства зробили такі відомі вчені, як: Ю. Хабермас, М. Кундера, Н. Дзельський, Я. Куронь, Л. Колаковський, М. Вайда, Т. Шацький, К. Кальтенбруннер, С. Клюксен, Р. Шельскі. Дослідженням стану формування громадянського суспільства займалися такі вчені-теоретики, як: А. Карась, А. Колодій, Н. Новиков, А. Олійник, В. Прімуш, А. Скрипнюк, Р. Щедрова, А. Тарань, С. Полохало, С. Рябов, В. Сидоренко, В. Ткаченко, М. Томенко тощо.

У політичному механізмі модернізації важливу роль відіграє співвідношення держави та інститутів громадянського суспільства. Ці питання активно досліджуються українськими вченими. Значний інтерес, зокрема, становлять монографії та колективні наукові розвідки В. Баркова, С. Бобровик, О. Богинича, В. Горбатенка, Т. Довгунь, А. Колодія, Н. Оніщенко, М. Патеї-Братасюк, Ф. Рудича, М. Рябчука та М. Денисюка.

Метою даної статті є аналіз різних аспектів взаємодії права, держави і громадянського суспільства, адже громадянське суспільство – це певний механізм неформального соціального партнерства, який забезпечує підтримання балансу існуючих інтересів у суспільстві та їх реалізацію.

Проблеми становлення та функціонування правової держави і громадянського суспільства визнані в сучасних умовах фундаментальними та значимими. Зародження й подальший розвиток правової держави відбувається в умовах розвитку громадянського суспільства. Взаємовідносини правової держави і громадянського суспільства є визначальним чинником успішного розвитку держави і суспільства, неодмінною умовою забезпечення основоположних прав та свобод людини і громадянина.

У сучасній правовій науці сформувалися три підходи до співвідношення громадянського суспільства та держави:

1. Держава і громадянське суспільство – схожі (конвергентні) соціальні системи.
2. Держава і громадянське суспільство – соціальні системи, що розрізняються (дивергентні), первинною та провідною є держава, яка контролює громадянське суспільство.
3. Держава і громадянське суспільство – системи, що розрізняються, однак провідним є громадянське суспільство, а держава щодо нього виконує службову (підпорядковану) роль.