**Answers by the Hungarian Government**

**to the questions of the Office of the High Commissioner for Human Rights**

**regarding the protection and promotion of the right to privacy**

**in the context of the UN General Assembly Resolution 68/167**

**„The right to privacy in the digital age”**

***1.) What measures have been taken at national level to ensure respect for and protection of the right to privacy, including in the context of digital communication?***

a.) According to the Fundamental Law of Hungary, entered into force in 2012, and the argumentation of the Hungarian Constitutional Court[[1]](#footnote-1) the right to human dignity is a general and a subsidiary human right to which one can always refer in order to claim for the protection of autonomy of an individual and from which all the other human rights stem, notably the right to respect for private and family life, home, communications and reputation. **That quite broad constitutional protection can be found in a more limited scope in terms of civil law in the Act V of 2013 on Civil Code, entered into force on the 15th of March 2014, because the protection of rights related to privacy ensured not only through means of private law, but also through public legal instruments.**

The dispositions of the new Civil Code were drafted with regards to the expanding circulation of goods and information in the framework of modern globalized business, however, the protection of individuals was also taken into consideration as having a core importance. Due to that dual attempt, **a right to privacy was codified in a more transparent and logical structure in the fields of the rights related to the personality,** in book two, part three.

The new regulation declares in section 2:42 that *„everyone is entitled to freely practice his personality rights within the framework of the law and within the rights of others, and to not be impeded in exercising such right by others, and human dignity and the related personality rights must be respected by all. Personality rights are protected under this Act.”* **This general clause establishes the general scope of protection of each human rights,** even the not specified ones, emphasizing the active side of protection contrary to the previous regulation which primarily focused on the passive side. As compared with the previous civil code, the position of this general clause was enforced and the level of abstraction was elevated in the legislation.

**Besides the general clause, the Civil Code also declares provisions relating to some specific personality rights in section 2:43,** creating with this technique the next level of protection of these rights. Accordingly, *“the following, in particular, shall be construed as violation of personality rights; any violation of personal liberty or privacy, including trespassing, and also any violation of the right to protection of privacy and personal data.”* By virtue of this specific provision**, the protection of privacy is ensured by civil sanctions in any civil relations governed by the Civil Code as a background norm,** so that in case of personal data protection of which the minor and more detailed rules, including the context of digital communication, are detailed in the **Act CXII of 2011 on the right of informational self-determination and on freedom of information**.

b.) In the context of digital communication it is important to underline that respecting the privacy rights are ensured also when using *e-government services*. Act No. LXXXI. of 2013 amended the Act No. CXL. of 2004 on the General Rules of Administrative Proceedings and Services so that now it is declared in its Section 160. that *“(6) In connection with the services provided, regulated providers of electronic administration services shall ensure access to public information and information of public interest, as well as the protection of personal data and privileged information.”*

Another important solution to protect privacy rights during the use of e-government services will be the so called Registry of Data Associations that is being developed at the moment. This registry will ensure a greater protection of personal data, because it will not be possible to assign a citizen with a unique identification number, and thus to link personal information needed during administrative procedures to such an identification number. Instead the Registry of Data Associations will store data connection codes generated and encrypted by the different registries that will ensure proper data connection between records and an adequate protection of personal data.

This new practice will be in line with the Privacy Act as well (Act CXII. of 2011 on Informational Self-Determination and Freedom of Information).

**2.) *What measures have been taken to prevent violations of the right to privacy, including by ensuring that relevant national legislation complies with the obligations of Member States under international human rights law?***

**The Civil Code declares the respect for and protection of the right to privacy as a new provision concerning the rights related to personality, so that it abides by the international obligations** set out in article 17 of the International Covenant on Civil and Political Rights (ICCPR) and in the article 8 of the European Convention on Human Rights (ECHR). Accordingly, in Hungarian civil law no one shall be subjected neither to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Interference with privacy shall violate personality rights in case that such a conduct is arbitrary, unjustified and needless.

In order to prevent individuals from such violations, the Civil Code threatens those committed these violations with **a wide variety of civil sanctions enumerated in sections 2:51-2:53 as follows; 1) sanctions independent of attributability, 2) restitution, 3) liability for damages.**

This new system of sanctions is the result of a supervision lately carried out.

**The first category of sanctions is objective** as it is only based on the infringement and out of which the person whose personality rights have been violated shall have the right to choose depending of the sort of violation of the right of privacy. Hence, as appropriate by reference to the circumstances of the case, there is a right to demand a) a court ruling establishing that there has been an infringement of rights; b) to have the infringement discontinued and the perpetrator restrained from further infringement; c) that the perpetrator make appropriate restitution and that the perpetrator make an appropriate public disclosure for restitution at his own expense; d) the termination of the injurious situation and the restoration of the previous state, and to have the effects of the infringement nullified or deprived of their unlawful nature; e) that the perpetrator or his successor surrender the financial advantage acquired by the infringement according to the principle of unjust enrichment.

**Secondly, restitution is a new instrument introduced as a civil sanction exclusively for any non-material, personality right violations.** It has a double function; compensating and punishing (without being punitive damages), it is also inflicted on an objective basis and the rules on liability for damages shall apply. The court shall determine the amount of restitution in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of responsibility, the impact of the infringement upon the aggrieved party and his environment.

**Thirdly, any person who suffers any damage from the violation of his personality rights shall have the right to demand compensation from the infringer in accordance with the provisions on liability for damages,** sections 6:518-534, resulting from unlawful actions. It is evident that liability for damages is a subjective sanction applicable upon attributability and in case that a person whose personality rights were violated suffered a tort as a result of an unlawful conduct of the tortfeasor.

Moreover, it is important to mention that according to section 2:42 **personality rights shall not be considered violated by any conduct if the person affected has given prior consent thereto** so that even forbidden conducts may be lawful in case of the related person’s consent. Another important provision is noteworthy **in terms of legal enforcement as set out in section 2:54 according to which personality rights must be enforced in person.** This section also contains rules on enforcement of persons of limited and partially limited capacity, absent persons and it entitles the public prosecutor to bring action upon the victim’s consent and to invoke the sanctions independent of attributability. Besides, a new rule was introduced as a private sanction against hate speech so that any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community’s reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.

Consequently, the international obligation that *“everyone has the right to the protection of the law against such interference or attacks”* is assured in the Hungarian civil law.

**3.) What specific measures have been taken to ensure that procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, are coherent with obligations on Member States under international human rights law?**

The relevant legal rules on privacy of the Fundamental Law, the Privacy Act and the new Civil Code all comply with the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights as well as the United Nations’ GA Resolution 68/167.

**4.) What measures have been taken to establish and maintain independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and collection of personal data?**

According to the Fundamental Law and the Privacy Act the National Authority for Data Protection and Freedom of Information is responsible for supervising and defending the right to the protection of personal data and to freedom of information in Hungary. Regarding privacy, compared to the former system, the new regulations confer the Authority with broader competency to pursue violations of both informational rights. Anyone is entitled to request an investigation from the Authority on the grounds of infringement of data protection law.

The Authority is entitled to launch an official data protection procedure if it is presumed that the illegal processing of personal data concerns a wide scope of persons; concerns special data, or significantly harms interests or results in the risk of damages.

The Authority may decide to:

a)  Order the correction of inauthentic personal data;
b)  order the blocking, deletion or destruction of illegally controlled personal data;
c)  prohibit the illegal control or processing of the personal data;
d)  prohibit the transfer of the personal data to other countries;
e)  order notification of the data subject, should the controller have unlawfully refused to do so;
f)   impose a fine ranging from 100,000 HUF to 10,000,000 HUF;
g)  order the disclosure of their decision in the interest of data protection or to protect the rights of a greater number of data subjects.

The Authority registers data processing undertaken in respect to personal data in a data protection file or registry in order to facilitate access to information for the data subject.

Annual reports are also published by the Authority on its work. These are made available every year at the Authority’s website in Hungarian and English languages.

Budapest, March 2014

1. 8/1990 AB határozat (decision of the Constitutional Court) [↑](#footnote-ref-1)