

HUNGARY'S CONSTITUTIONAL COURT RULES AGAINST ARBITRARY USE OF PINS

The Constitutional Court has taken a lead in banning arbitrary use of Personal Identification Numbers in the public and private sectors, as Hungary's Civil Code's broad data protection provisions have not yet been implemented in statute law. This decision was taken after a careful review of PIN policy and use in several western countries, and the Council of Europe's December 1989 Report on the Introduction and Use of Personal Identification Numbers. Hungary was the first Eastern European formerly communist country to become a member of the Council of Europe.

The decision is the most vigorous defence of data protection principles to have been made in Eastern Europe since the transition to liberal democracy. Dr. László Majtényi, Counsellor to the Constitutional Court, explains the background to the decision and its uncertain consequences.

Until 1989, the most important data protection rule was in Hungary's Code of Civil Law. Statute law alone has protected the rights associated with personal data handled by computers, together with protection of other rights. Unfortunately, this regulation did not have Constitutional status and was only a declaration without details. Until 1989, Hungary's constitution had no mention of data protection.

Perhaps one of the most important events in the peaceful transition of Hungary from a communist to a liberal democratic state was the amendment of the Constitution in the watershed year of 1989. In the chapter *Basic Rights, Freedoms and Duties* (Article 59) we find:

1. In the Republic of Hungary, everyone shall be entitled to a good reputation, the inviolability of one's home, as well as to the protection of private secrets and personal data.

2. To pass a law on the protection of personal data, the vote of two-thirds of the National Assembly representatives present shall be required.

In terms of a constitutional mechanism, including the protection of reputation, home, private, sensitive and personal data in the same section may not be the best solution. But it is a huge step towards achieving effective data protection. From then on, this individual freedom has been based directly on the constitution giving it importance as a fundamental right of the Hungarian citizen, within the competence of the constitutional court.

The Draft Data Protection Bill

To fulfill a promise in the constitution, there was a need to amplify these provisions in a statute law. An excellent draft bill on both personal data and access to public data was prepared three years ago by Professor László Sólyom, who is now President of the Constitutional Court.

Main Aims of the Bill

1) Promote protection of personal data and openness of public data. This is defined as all information relating to an identifiable, natural or legal person as well as the way the data is managed.

2) Allow sensitive data to be handled only with the data subject's written consent. This refers to all data related to racial origin, nationality, political attitude or party membership, religious or other kind of belief, criminal record, health, and sexual life.

3) Allow free access to public data, which is all data in the possession of or accessible by public bodies which is not personal data, or protected under secrecy protection statutes.

Data Protection Commissioner's Role

The Draft Bill contains a chapter on the Data Protection Commissioner. He will be elected by Parliament to "enforce this Act and protect the rights of the persons concerned."

Parliament has so far been reluctant to pass this Data Protection Act.

Personal Identification Numbers

As a result, a Constitutional Court decision of April 9th 1991 on Personal Identification Numbers (PINs), based on Article 59 of the constitution, has had a huge impact:

"The Constitutional Court rules that the collection and processing of personal data in the absence of a definite purpose and for arbitrary future use are unconstitutional. The general and unified PIN available for unlimited use is unconstitutional."

The court therefore ruled any further state population register orders on these lines to be unconstitutional.

Individual Rights Upheld

As the reasoning of the decision makes clear, the Court does not interpret the right to the protection of personal data as a traditional protective right, but as an active informational self-determination right. This means that everyone is free to make his own decision about disclosure and use of personal data, and that everyone has the right to know who, when, where and for what purpose his data will be used.

This informational self-determination is therefore a fundamental right. Any Parliamentary restrictions are limited in accordance with Article 8 of the Constitution which states:

"In the Republic of Hungary, an Act shall determine the rules on fundamental rights and obligations; however it shall not limit the essential contents of fundamental rights."

It follows that collecting and storing data without a specific goal "for the purpose of stock," for an undefined future use, is unconstitutional. The PINs, therefore, by their very nature, pose a particular danger to the

rights of an individual and go against informational self-determination rights. The Constitutional Court's decision stated:

"From the time of publication of this decision, no-one has the right to require the revealing of a PIN, or to make the exercise of any right or the provision of a service dependent on the revealing of such a number."

Reaction to the Court's Decision

The government was not too happy about the Court decision. They argued that this decision did not have any social necessity, and it was too expensive for a poor country. On the other hand, some liberal political thinkers wrote enthusiastic articles about the decision. One title gives the flavour - "Long live the glorious Constitutional Court".

The Game is not yet over

The government required the Minister of the Interior to prepare a new bill on population registration. The government's concept is that personal registration should be based on a personal identification number in a unified system. This would include the government's four basic national personal registers - births, marriages and deaths; national population; address; and identity cards.

This concept of a personal identification number based on these four purposes is not in conformity with the decision of the Constitutional Court.

This is an edited version of the paper delivered by Dr László Majtényi, Counselor, the Constitutional Court, Republic of Hungary at the Annual Data Protection Commissioner's Conference in Strasbourg in October.

The full text of the Constitutional Court's decision in English is available from the *Privacy Laws & Business* office.