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Zoran D. Radović, PhD¹

BOOK REVIEW

FACEBOOK, DATA PROTECTION AND COURT PRACTICE

Authors: Andrej Diligenski, PhD and Dragan Prlja, PhD

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In the introduction of the book, the authors acquaint us with the role of the Facebook social network that has more than two billion users worldwide. This social network gathers incredible quantities of all kinds of data. From the user profile, it downloads the information such as name, e-mail address, list of friends, etc. Biometric data is gathered without any prior consent of the network user, increasing the possibility of data misuse.

The authors of the book highlight that the “digital illiteracy” is a problem not only in Serbia, but globally. A big number of world citizens take Facebook too lightly, surrendering to the social network too much information about themselves without considering the possible consequences. Moreover, the terms of using Facebook are clear: whatever we post on the network becomes property of the network. However, most users do not pay attention to this. Photographs, videos and texts we post on Facebook can legally be used by those who control the network in any way that suits them.

Facebook has almost all the attributes and prerogatives of a government - the territory, population, rules and mechanisms of control, as well as disposing of personal data of its citizens. It is capable of providing for a legal assistance and appoints itself as an arbiter in evaluation of global morality and good practices, but also as a judge to decide whether a particular content will be published, deleted or blocked.

Facebook users are not entitled to “digital forgetting” or “data deletion”. If a user deactivates his account, Facebook will still keep his data. This way of keeping data is contrary to modern data protection regulations. However, the adoption of the General Regulation on Data Protection at the European Union level (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the

¹ Author of the review is a science adviser at the Institute of Comparative Law in Belgrade, retired

E-mail: zoran-radovic@hotmail.com

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protection of natural persons with regard to the processing of personal data and on the free movement of such data) is encouraging. This document aims at stricter measures of personal data management, which is certainly in favour of data protection as a basic human right, but not in favour of companies that perceive this Law as an intrusion into their business. The authors point out that such mechanism of protection is better than American, but there is certainly room for further progress.

Further in the book, the authors dwell on the case law, which tends to protect data and consumers. They present a large number of court verdicts.

In 2016, the Supreme Court in Frankfurt ruled that the owner of a Facebook account shall be deemed liable for unlawful content posted by an unauthorized person if the account owner did not pay due attention to protecting his access data. Because of the lack of due care, the High Court held the account owner liable for the unlawful acts of a third party and was sentenced to a fine of 3,000 Euros.

In another case, a Facebook user posted a copyrighted photo of a prominent citizen. The operator of the page on whose profile the controversial photo could have been seen was familiar with the fact that the photo was protected by a copyright. Since Facebook operators did not react, the copyright holder sent a warning. As the operators still failed to react, the author filed a lawsuit for omission to act. The court ruled that Facebook operator must refrain from presenting the disputed photo. By this judgment, the court upheld the previous case law in similar cases.

Today, few people communicate through letters or faxes, but mostly via e-mails and social networks. The 2013 Decision of the Hamburg Court answers the question whether the publication of private messages on Facebook violates personal rights of the author. The correspondence between the author (the plaintiff) and the publisher (the defendant) first started on a portal. The author made an announcement to which the publisher responded and addressed a private message to the author. The author replied to the publisher by a private message on Facebook. In this message, the author stated the reasons to claim his right not to have his title and origin mentioned. Due to the publication of this message, the court qualified the procedure as a breach of law and concluded that a personal right was violated.

In modern communication via the Internet, observing from the past, there has been a drastic transition from total ignorance to being comprehensively informed. It is very popular to spy through social networks like Facebook, etc. There is no global solution to ensure security to citizens and their right to privacy. In all likelihood, the authors point out, the law is far behind technology.

The book titled "Facebook, data protection and case law" published this year by the Institute for Comparative Law from Belgrade is of an exceptional scientific and social significance.