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Personal Data Processing News

In March 2019, the most important event in personal data protection was undoubtedly the adoption of the GDPR Adaptation Act and the relevant accompanying act. In doing so, the Czech Republic remedied one of its legislative shortcomings as it was one of the last EU states lacking the Adaptation Act. Following France, another EU state that has fined a higher fine for violating the GDPR is Poland.

The Czech Parliament has Adopted the GDPR Adaptation Act

On 12 March 2019, the Chamber of Deputies approved two drafts of what are referred to as “GDPR Adaptation Acts”, which the Senate had previously returned with comments primarily directed against the extension of the competencies of the Office for Personal Data Protection (the “OPDP”) in respect of the right to information and against the mere decrease in fines for some public entities.

The Personal Data Processing Act (the “PDPA”), which will replace the existing Act No. 101/2000 Coll., on Personal Data Protection, had been adopted in the Senate’s version. In contrast, in the Accompanying Act amending certain acts in relation to the adoption of the Personal Data Processing Act (the “Accompanying Act”), the Deputies upheld their original proposal. On 10 April 2019, the new rules governing personal data protection were signed by the President.

Besides the enactment of exceptions admitted by the GDPR and the specification of certain GDPR definitions, the objective of the PDPA and the Accompanying Act is also the implementation of two criminal-law directives.

The adoption of the act will affect, for example, the following:

- The Internet age of consent (finally stipulated at 15 years);
- The term ‘legitimate interest’ under the GDPR and relating exceptions;
- The exception from assessing the impact on personal data protection;
- The obligation of certain public authorities to appoint a Data Protection Officer;
- The impossibility of fining certain public entities;
- The accreditation of the GDPR certification authorities;
- Personal data processing for journalistic purposes; and
- The amendment to almost 40 acts, which will be primarily reflected in criminal law.

As a result of the adaptation package, Act No. 106/1999 Coll., on Free Access to Information, will newly include a provision introducing the institutes of what is referred to as an ‘information order’, based on which the liable entity will be obliged to provide the applicant with the requested information under the above-stated legislation. The new provisions of the Information Act will apply with effect from 1 January 2020.

No Fines for Selected Public Entities

The final wording of the PDPA fully abolishes the possibility of imposing administrative sanctions for the misuse of personal data on some public entities (municipalities not having extended powers in the scope of the municipal authority of a municipality with extended powers, and educational facilities established by municipalities) as requested by the Senate, which had argued that this would merely result in the transfer of funds as part of public budgets. According to the original proposal, only the maximum limit to fines should have been decreased.

For the consolidated wording of the Adaptation Act, follow [this link](#).

The First Fines for Violating the GDPR Abroad

The Polish Personal Data Protection Office released information that it had imposed a sanction of PLN 943,000 (approximately EUR 220,000). The fine was imposed for a failure to comply with the reporting duty. According to the Office’s information, up to six million data subjects were unaware of processing and thereby were unable to exercise their rights as stipulated by the GDPR. The company, on which the fine was imposed, collected the data from a publicly accessible register similar to the Czech Trade and Commercial Registers. In the case, it argued by saying that it would be extremely costly to comply with the reporting duty in relation to the persons in respect of whom it did not have e-mail addresses. Given that the company had the telephone numbers and postal addresses of the subjects, the Office did not accept the argument.

In Denmark, the relevant office seeks to impose a fine on a taxi service operator for storing personal data for an excessive amount of time, specifically for storing telephone numbers for five years without sufficient justification. The proposed sanction corresponds to EUR 160,000; however, it has yet to be approved by Danish courts.

For the Polish Office’s information about the imposed fine follow [this link](#).

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Marriage? Marriage!

On 26 March 2019, the Chamber of Deputies continued the discussion in the first reading of the draft of the so-called Equal Marriage Act, i.e. An act that changes individual provisions of, among others, the Civil Code (No. 89/2012 Coll.), Pension Insurance Act (No. 155/1995 Coll.), Act on Specific Healthcare Services (No. 373/2011 Coll.), and revokes Act No. 115/2006 Coll., on Registered Partnership. The draft bill remained in the first reading and it looks like it will stay that way for a while. Nevertheless, let us have a look at what led us to this act and what it will bring. Or take away?

Same-sex couples have had the possibility of entering into registered partnerships in the Czech Republic since 1 July 2006. Act No. 115/2006 Coll., on Registered Partnership and on changes in certain related acts, as amended, is the result of a relatively short legislative process (the draft bill was sent to the deputies on 2 May 2005 and the Chamber of Deputies approved it at their meeting of 16 December 2005) despite the fact that at the time it aroused contradictory reactions from its supporters and opponents alike.

What did the act bring then?

- Concluding an institutionalised union of two persons of the same sex (becoming partners).
- Right and obligation of the partners to make common decisions on matters related to their life together (and if they fail to reach an agreement, the possibility to seek a decision in court).
- Representing the other partner in ordinary matters (receiving ordinary supplies).
- Automatic origination of rights and obligations of both partners as a result of the acts of one of them (in ordinary matters).
- Mutual maintenance obligation, even after the dissolution of the registered partnership.

Is it too little? Certainly not. Additionally, the Czech Republic was very progressive 13 years ago (the first country of the former Eastern Bloc) in officially acknowledging unions of same-sex couples. Aside from that, the current Civil Code grants a partner the same rights and obligations as a spouse in all provisions, with the exception of rights and obligations of Part Two (family law, i.e. for example the origination of kinship, affinity, guardianship and foster care remain a separate category where there was no place for registered partnership in the opinion of the proposers and lawmakers at the time).

What same sex-couples are asking for?

So what is missing? the driving force and motto of the entire campaign is the effort to grant equal rights to the unions of same-sex and opposite-sex couples, that is, the end of differences and end of the disparity between marriage and registered partnership. The probably most pressing matters

include the possibility to take care of a child together (whether in the form of adoption or fostering), the entitlement to various social allowances (widow's/widower's pension) or the origination of community property (at present, registered partners are only co-owners holding separate shares). However, it is also worth mentioning the practical matters, such as the possibility to take paid and unpaid time off to conclude the partnership (there is no legal entitlement), the presence of witnesses during the ceremony (the conclusion takes place without witnesses), the option to choose the same last name, and last but not least the fact that registered partnerships may be concluded only at 14 designated registry offices in the Czech Republic (13 for the regions and one for the Capital City of Prague). And the approaches of the registry offices also differ very much, from "we will certainly not go anywhere because of you, let alone on the weekend" to "certainly, no problem, even on the weekend, wherever you wish". From a purely practical standpoint, people wishing to enter into a registered partnership first have to carefully select the right region that will be willing to accommodate them with respect to the time and place and only then choose the venue.

Marriage as a union of a man and a woman, or equal marriage?

Thanks to the initiative of two groups of deputies, the Chamber of Deputies now faces a decision on two completely different draft bills related to marriage. The first, from my perspective a rather backwards one, is an amendment to the Charter of Fundamental Rights and Freedoms (ruling no. 2/1993 Coll.) consisting in the addition of the words "and **marriage as a union between a man and a woman**" in Article 32. This slight change has two consequences: only marriage (not registered partnership) is under the protection of the law (moreover anchored at the constitutional level), and that is only marriage concluded between a man and a woman. In the event of acceptance of this amendment to the constitutional law, which requires the approval of a three-fifths majority of all deputies and three-fifths majority of senators in attendance, the possibility of marriage for persons of the same sex will be lost until another change to this article is made, since any legal provision allowing this possibility would be contrary to the constitutional order of the Czech Republic.

The second proposal is an amendment to the Civil Code (and other related acts), which is somewhat poetically but fittingly called "**marriage equality**" and which consists in replacing the words "a man and a woman" in Section 655 by the words "two people". As a result, any two people, of the opposite or same sex, could marry, and the content of marriage as a set of rights and obligations arising from it would remain unchanged. Marriage would bring in particular the following



new additions for same sex couples: (i) origination of kinship and affinity, which in fact exists between one partner and the relatives of the other partner, since in most cases a partner usually interacts with the family of the other partner and they consider each other to be relatives; (ii) origination of community property, which simplifies the handling of property, including subsequent inheritance; (iii) adoption of the other partner's child, joint adoption of a child (from an institution), joint fostering, regulation of relationships to children in the event of a divorce; and last but not least, (iv) the actual method of entering into matrimony – with two witnesses, in a ceremonial way and at almost any registry office.

Will the Czech Republic join the ranks of progressive countries?

Regardless of the sociological understanding of marriage and any kind of populism, it certainly should be mentioned that with the second option above the legislature does not interfere in any way with the current model of marriage of a man and a woman (it merely opens it to the model of man-man or woman-woman) and it most definitely does not open the option of concluding polygamous marriages or marriages with a child, animal or thing, as has been alleged by certain opponents.

As is often the case with delicate topics, it now depends on which lobby (or reason?) will win. Whether the fear that same-sex couples would ruin "traditional" family will prevail, or whether the Czech Republic will join the ranks of rather progressive western democracies such as the Netherlands, Belgium, Norway, Sweden, Portugal, Iceland, Denmark, France, the United Kingdom, Spain, Luxemburg, Ireland, Finland, Germany, Malta, the United States of America, Canada, New Zealand and Australia, but also Argentina, Brazil, Columbia, Uruguay or South Africa, and allow same-sex couples to marry. And thus have marriage equality.

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