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**Third-party liability
of an entrepreneur in relation to the processing of personal data**

(Problematyka odpowiedzialności cywilnej
przedsiębiorcy w związku z przetwarzaniem danych osobowych)

SUMMARY

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The title of the Ph.D. dissertation was formulated as “Third-party liability of an entrepreneur in relation to the processing of personal data”. The dissertation consists of an introduction, six chapters, as discussed below, and a summary. The introduction presents the issues discussed in the dissertation and outlines research problems, elaborated on in subsequent chapters of the dissertation.

Chapter I presents an outline of the right to privacy and protection of personal data in international regulations, and their impact on national regulations. Basic definitions are discussed, such as personal data, privacy or information autonomy, and their meaning contained in legal acts that governed the right to privacy and protection of personal data before the entry into force of the GDPR. Based on the national case law, the body of literature, rulings of the Constitutional Tribunal and regulations stemming from other legal systems (including those in force in the EU, the United States and Asian countries), an attempt has been made in this section of the dissertation to determine the relationship between privacy and personal data when evaluating the right to protection of personal data. Subsequently, national and European regulations have been discussed that formulated the right to protection of personal data before the GDPR. In the next part, the concept of personal data and its qualification criteria have been analysed. Different qualification of specific information as personal data has been illustrated by the opinions found in the European and national case laws regarding e.g. numerical information (IP, registration number). An analysis of the concept of an entrepreneur from the perspective of national laws and regulations and the GDPR has been presented in the last section of the chapter. Against the background of this issue, the rules governing the processing of personal data of persons running business activities and protection provided by the GDPR to legal persons and organizational unit have been discussed in more detail.

Chapter II presents the concept of third-party liability in the context of the right to protection of personal data. The starting point for discussions in this regard has been the analysis of legal regulations on liability under Directive 95/46/EC, from which it has been concluded that the specification of the said Directive made by way of national implementation was of key importance for the standard of protection of the right to privacy and protection of personal data applicable in the Member States. In view of the foregoing, it has been emphasized that the Polish Personal Data Protection Act of 1997 did not provide for any special regulations when implementing the above-mentioned Directive into our legal system. This situation gave rise to

views in the literature that the general rules of liability applied to the issue of compensation for damages, and this led in practice to the crossover of the protection of personal data with personal interests and the protection of privacy. The above proposition had to be supplemented with an analysis of the concept of personal interests and privacy, and assessment of the complementarity of the concepts of privacy and personal data. Thus, it was necessary to determine their relationship. In the following sections of this chapter, the rules governing the protection of personal data under the GDPR and the legal basis for compensation for damages and the way they are formulated in the national and European legal system have been presented, with the reference to the proper application of the Civil Code contained in the Personal Data Protection Act of 2018.

Chapter III discusses some general issues related to liability for damages of an entrepreneur, as one of the forms of third-party liability. Such concepts as a legal relationship, an obligation relationship and compensation for damages have been explained. Key issues related to the obligation to compensate for damages in accordance with the rules for liability in contract and tort have been discussed and differences between both regimes of liability have been presented. In the following sections of this chapter, the grounds for liability for damages have been analysed from the perspective of their understanding in terms of national regulations and the GDPR, and the selected body of literature. The issues discussed have been illustrated by examples of events that are associated under the GDPR with the obligation to compensate for damages, based on the analysis of available case law. The issue of the sources of damages has also been examined in the context of how it was defined in the case law and decisions of the regulatory authority. In the following sections of this chapter, questions referred for a preliminary ruling concerning the application of Article 82 of the GDPR, submitted currently to the CJEU, have been presented.

Having regard to some previous deliberations in chapter IV, a description of obligations imposed under the GDPR on the key entity in the personal data protection system, such as the data controller, has been presented. An analysis of the nature of performance under the legal relationship in which the data controller may be involved has been preceded by an analysis of the concept of data controller and joint controller and their meaning for the rule of accountability which is fundamental from the perspective of obligations. In the following sections, the rules related to demonstrating the fulfilment of obligations in the field of data security, obligations stemming from the rule of legality, reliability and transparency of personal

data processing as well as obligations regarding the documentation of these rules have been presented. After that, the implementation of the rule of transparency, fulfilment of information obligations in relation to data subjects and obligations stemming from other rules, e.g. privacy by design rule, have been discussed. A separate category of obligations, such as the handling of infringements, has been analysed in terms of the concept of infringement, defined in the case law and decisions of the regulatory authority. The last section of the chapter presents specific issues related to the data controller's or joint controllers' liability in contract or tort, and issues which arise out of the relations with the data subject. The above-mentioned arguments have been supplemented with examples from the case law and decisions of the regulatory authority.

Chapter V is dedicated to the liability of the data processor. The analysis begins with a study on the definition of the data processor and their relationship with the data controller, including the obligation to implement appropriate organizational and technical measures, in accordance with the standards based on decisions of the President of the Personal Data Protection Office and court rulings. The following section of the dissertation involves issues such as the nature of the data processor contract and obligations imposed thereunder. Another section of the dissertation is related to the requirements for the contents of the contract and standard contractual clauses. After that, the data processor's liability in tort and contract has been discussed, taking into account contractual modifications. The last section of the chapter presents an analysis of the case law related to the implementation of the data processor's obligations and situations where sub-processors are involved in the processing of data, including the rules of liability in such cases.

Chapter VI contains deliberations related to the entrepreneur's liability for the processing of personal data with the use of artificial intelligence systems. The discussion on the legal consequences of such actions has been preceded by an analysis of the concept of artificial intelligence and legal assumptions to regulate the use of such systems. In this context, it has been important to present the concept of the legal status of artificial intelligence in draft EU documents and discuss positions in the doctrine presenting different views on the need to give it a legal status. The following sections of the dissertation present a proposition that liability for artificial intelligence should not differ in any way from liability on general terms. It has been supported by the argumentation presented in the body of literature published to date. The above-mentioned position has also been compared to the analysis of legal regulations planned on the European level which has led to the conclusions that the problematic issues involving liability

included in the first place the scope of such liability and the answer to the question on how to establish the border between the systems that are able to operate within a specific scope and those unable to do so. Other areas of concern include the understanding of the concept of damages and, on the grounds of joint application of the regulations of the GDPR, ensuring the legality of data processing and exercising the right to be bound by a decision made in a non-automated manner. In the following sections of the dissertation, the author has made an attempt at analysing which obligations to inform about an automated decision-making process and to explain decisions made in a completely automated manner stem from the regulations of the GDPR, and how these obligations may be applied to artificial intelligence systems.

The summary includes comments on the key specific issues related to the subject of the dissertation, such as the use of civil law remedies for the protection of personal data and the rules of liability. This section of the dissertation names the most important practical issues related to the above-mentioned arguments, including insights into the relevant body of literature.

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