

1998. évi VI. törvény

az egyének védelméről a személyes adatok gépi feldolgozása során, Strasbourgban, 1981. január 28. napján kelt Egyezmény kihirdetéséről

(A Magyar Köztársaság megerősítéséről szóló okiratának letétbe helyezése az Európa Tanács főtáskájánál 1997. október 8-án megtörtént.)

1. § Az Országgyűlés az egyének védelméről a személyes adatok gépi feldolgozása során, Strasbourgban, 1981. január 28. napján kelt Egyezményt e törvénnyel kihirdeti.
2. § Az Egyezmény eredeti angol nyelvű szövege és hivatalos magyar fordítása a következő:

**„CONVENTION
FOR THE PROTECTION OF INDIVIDUALS
WITH REGARD TO AUTOMATIC PROCESSING
OF PERSONAL DATA**

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the increasing flow across frontiers of personal data undergoing automatic processing;

Reaffirming at the same time their commitment to freedom of information regardless of frontiers;

Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples,

Have agreed as follows:

CHAPTER I - GENERAL PROVISIONS

Article 1

Object and purpose

The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him („data protection”).

Article 2

Definitions

For the purposes of this convention:

- a) „personal data” means any information relating to an identified or identifiable individual („data subject”);
- b) „automated data file” means any set of data undergoing automatic processing;
- c) „automatic processing” includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination;
- d) „controller of the file” means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.

Article 3

Scope

1. The Parties undertake to apply this convention to automated personal data files and automatic processing of personal data in the public and private sectors.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:
 - a) that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;
 - b) that it will also apply this convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;
 - c) that it will also apply this convention to personal data files which are not processed automatically.
3. Any State which has extended the scope of this convention by any of the declarations provided for in sub-paragraph 2. b) or c) above may give notice in the said declaration that such extensions shall apply only to certain categories of personal data files, a list of which will be deposited.
4. Any Party which has excluded certain categories of automated personal data files by a declaration provided for in sub-paragraph 2. a) above may not claim the application of this convention to such categories by a Party which has not excluded them.
5. Likewise, a Party which has not made one or other of the extensions provided for in sub-paragraphs 2. b) and c) above may not claim the application of this convention on these points with respect to a Party which has made such extensions.
6. The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of

Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.

CHAPTER II - BASIC PRINCIPLES FOR DATA PROTECTION

Article 4

Duties of the Parties

1. Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.
2. These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.

Article 5

Quality of data

Personal data undergoing automatic processing shall be:

- a) obtained and processed fairly and lawfully,
- b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
- d) accurate and, where necessary, kept up to date;
- e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

Article 6

Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

Article 7

Data security

Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

Article 8

Additional safeguards for the data subject

Any person shall be enabled:

- a) to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;
- b) to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;
- c) to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this convention;
- d) to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.

Article 9

Exceptions and restrictions

1. No exception to the provisions of Articles 5, 6 and 8 of this convention shall be allowed except within the limits defined in this article.
2. Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

- a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;
- b) protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs b), c) and d), may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.

Article 10

Sanctions and remedies

Each Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection set out in this chapter.

Article 11

Extended protection

None of the provisions of this chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this convention.

CHAPTER III - TRANSBORDER DATA FLOWS

Article 12

Transborder flows of personal data and domestic law

1. The following provisions shall apply to the transfer across national borders, by whatever medium, of personal data undergoing automatic processing or collected with a view to their being automatically processed.
2. A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.
3. Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:
 - a) insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;
 - b) when the transfer is made from its territory to the territory of a non-Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.

CHAPTER IV - MUTUAL ASSISTANCE

Article 13

Co-operation between Parties

1. The Parties agree to render each other mutual assistance in order to implement this convention.
2. For that purpose:
 - a) each Party shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;
 - b) each Party which has designated more than one authority shall specify in its communication referred to in the previous sub-paragraph the competence of each authority.
3. An authority designated by a Party shall at the request of an authority designated by another Party:
 - a) furnish information on its law and administrative practice in the field of data protection;
 - b) take, in conformity with its domestic law and for the sole purpose of protection of privacy, all appropriate measures for furnishing factual information relating to specific automatic processing carried out in its territory, with the exception however of the personal data being processed.

Article 14

Assistance to data subjects resident abroad

1. Each Party shall assist any person resident abroad to exercise the rights conferred by its domestic law giving effect to the principles set out in Article 8 of this convention.
2. When such a person resides in the territory of another Party he shall be given the option of submitting his request through the intermediary of the authority designated by that Party.
3. The request for assistance shall contain all the necessary particulars, relating inter alia to:
 - a) the name, address and any other relevant particulars identifying the person making the request;
 - b) the automated personal data file to which the request pertains, or its controller;
 - c) the purpose of the request.

Article 15

Safeguards concerning assistance rendered by designated authorities

1. An authority designated by a Party which has received information from an authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.
2. Each Party shall see to it that the persons belonging to or acting on behalf of the designated authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information.
3. In no case may a designated authority be allowed to make under Article 14, paragraph 2, a request for assistance on behalf of a data subject resident abroad, of its own accord and without the express consent of the person concerned.

Article 16

Refusal of requests for assistance

A designated authority to which a request for assistance is addressed under Articles 13 or 14 of this convention may not refuse to comply with it unless:

- a) the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;
- b) the request does not comply with the provisions of this convention;
- c) compliance with the request would be incompatible with the sovereignty, security or public policy (*ordre public*) of the Party by which it was designated, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.

Article 17

Costs and procedures of assistance

1. Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects abroad under Article 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party which has designated the authority making the request for

assistance.

2. The data subject may not be charged costs or fees in connection with the steps taken on his behalf in the territory of another Party other than those lawfully payable by residents of that Party.