

## Second Study Commission

### HOW DATA PROTECTION RULES ARE IMPACTING ON CIVIL LITIGATION

#### 1. Do you store digital data in your jurisdiction?

The Law on Personal Data Protection (*the Official Gazette of the Republic of Serbia*, nos. 97/2008 and 104/2009-13) regulates personal data handling, the rights of data subjects, as well as ways for protecting these rights, all aimed towards the exercise of the right to privacy. The said Law relates to the processing of personal data, which is performed electronically, and non-electronic processing of data included in a database, or intended to be included in a database, which is, in practical application in court proceedings, related to the electronic register. This type of register was introduced in 2010, and it is used by all courts in Serbia, through special electronic case management software. The storage of data began in 2010 and it's since been ongoing.

#### 2. How is it stored and for how long?

Digital data is stored on several hard drives, some data are stored in safes, as well, in order to remain permanently kept. There is no legislation regulating the method of storage or any special storage deadlines. The data is stored based of the Instructions adopted by the Ministry of Justice, which are internal acts. Issues related to data deletion, data keeping, etc. are out of reach of courts' proceedings, but are important for the work of courts' administration services.

#### 3. Who has access to the digital data in your jurisdiction?

The Law on Personal Data Protection prescribes the rights of data subjects, and ways of exercising these rights. The court, as the data handler, is obliged to take appropriate measures to provide the data subject with all the information it is obliged to provide by law, that is, information related to the exercise of the legal right to a concise, transparent, understandable and easily accessible way, using clear and simple words, especially if the information is intended for a minor. The information shall be provided in written or other form, including in electronic form if appropriate. If the data subject requests information, it may be provided orally, provided that the identity of the person has been unequivocally determined (Article 21 of the LPDP). The court provides certain information on the processing of subjects' data to the participants in a civil procedure, in writing, as a rule (such as the minutes of witness interrogation). The scope of information is defined in Articles 23 (if the data are acquired directly from the data subject) and 24 (if the data are not acquired from the data subject). If the latter is the case (for instance, if the data are

submitted following a request of the court), an exception envisioned by Article 24 Paragraph 5 Point 4 shall be applied, stipulating that the handler is not obliged to provide the data subject with the information from Paragraphs 1-4 if the confidentiality of personal data must be kept in accordance with the obligation to maintain professional secrecy prescribed by law. This implies to the relevance of Article 23 of the Law on Civil Servants and Article 57 of the Courts Rules of Procedure, prescribing the obligation of maintaining secrecy for judges and court staff, which means that the court is not obliged to provide information to parties in that situation.

#### **4. Are there digital data protection rules in place in your jurisdiction?**

The said Law on Personal Data Protection protects digital data obtained in the course of court proceedings in order to comply with the principle of "legality, fairness and transparency of processing", as well as the principle of "restriction in relation to the purpose of processing", stipulated by Article 5 of LPDP. In the course of proceedings, the court may gain knowledge on particularly sensitive data, as listed in Article 17 of LPDP: racial or ethnic origin, political opinion, religious or philosophical belief or membership in a syndicate, as well as genetic data, biometric data for the purpose of unique identification of a person, data on health status or data on sex life or sexual orientation of a natural person. For the processing of these data, the law uses a negative definition, with the basic rule being that the processing of this data is prohibited, at the same time prescribing a list of exceptions to the rule. Therefore, in civil proceedings in which the court acts within its jurisdiction, the processing of these data is also explicitly allowed, with the application of all processing principles that apply to any processing of personal data.

#### **5. Who covers the costs relating to the storage and protection of the digital data in your jurisdiction?**

The costs of storage are covered by the court, however, given that courts do not have their own budgets, funds for this are granted by the Ministry of Justice.