

---

## REVIEWS AND ANNOTATIONS

**Kučerová, A., Nováková, L., Foldová, V., Nonnemann, F., Pospíšil, D.**  
**Zákon o ochraně osobních údajů: Komentář. Praha: C. H. Beck, 2012, 536 s.**  
**[Personal Data Protection Act. Commentary. Prague: C. H. Beck, 2012, 536 pp.]**

The personal data protection law represents a specific legal area which has undergone a completely essential transformation in the last two decades. This has not been merely a transformation of a quantitative nature, but, in particular, qualitative<sup>1</sup>, when not only the concept of this legislation, but, in particular, its normative basis, which is, unfortunately, oftentimes hidden in the vague content of the concept which is essentially significant for this legislation – privacy – have been transformed. This concept is highly contextual and changes as fast as the environment, technology, or social values around it, as well as the understanding of them<sup>2</sup>. Furthermore, these changes are made not only on the basis of normative or another legal intervention, but, in particular, as a consequence of the phenomena brought in by life itself, regardless of whether the initiator is commercial interest or new possibilities of data protection or misuse. Thus, it concerns changes substantially independent of the state or its bodies which, in many respects, are rather looking for a reasonable and fixed legislation without simply placing emphasis on enforcing it through sanctions. Today, interest in the issues of this type is growing incredibly fast in direct proportion to what a “Cinderella” this legislation was in the previous period, and, therefore, many publications of various levels of expertise are appearing. The highest category includes the extensive commentary on the Personal Data Protection Act, which was created by a group of authors under the supervision of JUDr. Alena Kučerová and to which this review is devoted.

This publication is the only one in the Czech Republic to comment on the current (new) legislation on personal data protection and, at the same time, to contain more than just a sufficient overview of excerpts from related laws (also in commented form). Moreover, the publication deals not only with the legal aspects but also, in detail, with related technical administrative aspects, the commentary on which reflects, at first sight, practical experience and perfect knowledge of the application practice, as well as the interest in this issue on the part of the group of authors. It must be pointed out, in particular, that the publication is topical at a time when information about us and our way of living is a valuable commodity and its misuse may result in a very serious encroachment on the affected person’s fundamental personality rights, and, for this reason, the protection of personal data is definitely justified. The risks to which the privacy of any of us is exposed are even increased by the ongoing globalization of the modern information society and the possibilities associated with new technologies and applications. On the other hand, it can be stated that the possibility of processing personal data, including the data necessary for the relatively reliable identification of every individual, is necessary for today’s society to function and is, hence, an integral part of many human activities. Then, the need for the existence of rules setting out clear conditions for handling this information to avoid its misuse and damage of the affected individuals’ rights logically arises from the necessity of collecting and processing personal data. The basic goal of such legislation should be to emphasize the precautionary effect; that is, a state when the misuse of data and the related encroachment upon rights are avoided, since the consequences of intervention in privacy, once implemented, can usually be remedied only with major difficulties.

---

<sup>1</sup> The changes in this sense are not only the speed and extent of related legislative changes, but, in particular, the fact that by the influence of the globalization and available technology, the number of interventions in privacy has been rising during the last decade. The effectiveness of these interventions is also growing dramatically, at least to the same extent. All this is, unfortunately, without the possibility of an efficient restitution or a clear possibility of rectification.

<sup>2</sup> Thus, it is possible to agree with the thesis that the traditional model of privacy is being redefined; for more information see, for example, EDWARDS, L. Privacy and Data Protection Online: The Laws Don’t Work?. *Law and the Internet*, Oxford, 2009, pp. 443–488.

The head of the five-member group of authors is JUDr. Alena Kučerová, Deputy Chairman of the Office for Personal Data Protection and an external professor at the College of Law of the Charles University in Prague. She is the author of many expert publications, monographs, and other papers. The other authors are significant head workers of the Office for Personal Data Protection - JUDr. Ludmila Nováková (legal support division), Mgr. Vanda Foldová (administrative activities division), Mgr. František Nonnemann (deputy's and Schengen cooperation office), and Mgr. Daniel Pospíšil (legal support division). Thus, the whole group of authors has rich experience in applying the commented Act, which is reflected, in particular, in the terminological area where the authors manage to express selected problems in a manner so that they are not only understandable to the readers, but also “justiciable”; that is, they are expressed in a manner that clarifies the essence of the issue briefly and much better than complicated and complex interpretations.

The endeavor of the group of authors to achieve maximum clarity and possible reader awareness is obvious in the overall arrangement of the content and the system of this publication. In this respect, the only drawback of the text may be the fact that an overview of foreign literature is missing although the publication contains a satisfactory overview of domestic publications (pp. 505–510). Conversely, the list of the abbreviations used and the factual index (pp. 511–516), which significantly facilitates and accelerates the practical navigation in the text, can be considered a suitable part of a publication of this type.

The publication is divided into two main parts, being the core of the publication in the form of a commentary on the Personal Data Protection Act (pp. 1–423) and a commentary on eight additional related laws (pp. 425–504). Thus, the first part contains a detailed interpretation of all crucial provisions of the Personal Data Protection Act. With regard to the practical focus of the publication, it must be appreciated, in particular, that the authors follow a practical and descriptive method and not solely one that is theoretical or doctrinary. However, in the future, it would certainly be suitable to supplement any further issues of the publication with a comparative view or new observations of domestic and foreign judicatures<sup>3</sup> although those existing (both domestic and European) are reflected relatively sufficiently by the publication. The commented text is prepared intelligibly, based on the knowledge of the given issue, and, in particular, practically, which in no way hinders the intelligibility of the interpretation. Moreover, it brings much new knowledge and often attracts attention by prolific and thorough argumentation. Overall, it must be appreciated that the preparation of this topic has reached the phase when all crucial areas of the legislation are commented separately. Of course, there still are some issues that would deserve more attention on the part of the group of authors.

Although the endeavor of the group of authors to provide a thorough and complete interpretation arises from the publication, dissatisfaction with its higher economy can be expressed rather exceptionally. Hence, even in this respect, I can raise what is obviously the easiest of the reviewer reservations; that is, the request that a certain topic is discussed even in more detail. On the general level, I would expect a somewhat deeper insight into the area of the informational self-determination right I personally perceive as one of the essential concepts<sup>4</sup> necessary to deal with most current issues associated with this legal domain. On a specific level, a similar reservation may be raised with respect

---

<sup>3</sup> In this respect, the authors' apparent endeavor was to provide, where possible, information on the interpretation presented with respect to some issues of personal data protection by both Czech and European courts. However, it must be stated in this connection that there is not much relevant judicature of the Czech administrative courts in this domain; in particular, with regard to the fact that the decisions of the Municipal Court in Prague, which is competent to decide on actions filed against Office's decisions, are not usually available publicly.

<sup>4</sup> This right can be defined, among other things, as the individual's right to decide what information about himself/herself will be provided to others and under what circumstances this can happen. Moreover, this concept is nothing new (see, for example, the papers of WESTIN, A. *Privacy and Freedom*. New York: Atheneum, 1967); however, it was repeatedly analyzed later on both by expert literature (see, for example, SOLOVE, D., J. *The Digital Person: Technology and Privacy in the Information Age*. NYU Press, New York 2004, available on <http://docs.law.gwu.edu/facweb/dsolove/Digital-Person/text.htm>) and judicature (see, for example, the decision of the Federal Constitutional Court of the Federal Republic of Germany of 15 December 1983 in the Volkszahlungs case, where the Court expressed an opinion on the storage and collection of data for the purpose of the census).

to the part commenting on Section 6 of the Personal Data Protection Act regulating the duty to conclude a personal data processing contract between the administrator and the processor; in particular, the comments on the requirement for the processor's guarantees of the technical and organizational provision of personal data protection where, as far as I am concerned, I would make the interpretation much more detailed, considering the fact that this requirement is only rarely fulfilled to the fullest extent in practice. However, these are only inessential details with regard to an otherwise comprehensive and, especially, unprecedentedly compactly prepared content. Furthermore, an initial issue of the commentary can hardly be expected to remove all problems brought about by legislation or life.

However, in particular, the second part of the publication (pp. 425–504) containing a detailed comment on selected excerpts from eight more laws closely related to the issue of personal data protection, can be considered no less significant, although it is more contextually efficient. That section comments on the Civil Registration Act (p. 427), the Criminal Procedure Code (p. 435), the Act on Certain Information Society Services (p. 437), the Act on Conflict of Interests (p. 460), the Electronic Communications Act (p. 472), the Basic Registers Act (p. 482), the Act on Free Access to Information (p. 491), and the State Control Act (pp. 496–504). The chosen commented regulations confirm a systematic and thorough attitude to the given issue on the part of the group of authors. Therefore, the publication does not follow the method of commenting upon the legal text lazily and quickly, but represents an extensive, well-organized and comprehensive set of all substantial knowledge predicated on the considerations, work and study, lasting several years or even decades. It must be appreciated, in particular, that the authors often comment even on what would not be expected from them, at first sight.<sup>5</sup>

All in all, I consider the said publication very well prepared, contributive and highly compact. Furthermore, it is unique in many respects on the Czech market because no publication of such an extent has been released previously in Czech expert literature. What's more, the commentary is written in a manner that is intelligible to the wider legal public and for application practice. The authors have chosen brief, to-the-point statements that usually clarify the essence of the issue much better than complicated and difficult interpretations. Hence, the commentary should not be left unnoticed among lawyers and can be recommended to anyone who longs for quality legal literature.<sup>6</sup>

Ján Matejka\*

**Kuklík, Jan, Němeček, Jan, Šebek, Jaroslav. Dlouhé stíny Mnichova: Mnichovská dohoda očima signatářů a její dopady na Československo. Praha: Auditorium, 2011, 390 s. [Long Shadows of Munich: The Munich Agreement through the eyes of the signatories and its impact on Czechoslovakia. Prague: Auditorium, 2011, 390 pp.]**

Before discussing the reviewed book, Long Shadows of Munich - The Munich Agreement through the eyes of the signatories and its impact on Czechoslovakia, let us consider a few questions. What preceded the Munich Agreement from September 1938? What followed? What was the standpoint of allies towards the agreement during the World War II and later? These questions have been addressed in many Czech and foreign works. So a question seems to offer itself here: Why did the authors of this monograph again turned their attention to the Munich Agreement?

We will try to answer this last question in this review. But before we do so let us look closer at the structure of the book. It is divided into five main chapters that comprise subchapters. There is the introduction, resume and name index, extensive bibliography and references.

<sup>5</sup> It must also be stated that the publication also considered the interpretation opinions submitted by the working group of the European Commission established under Directive 94/46/EC.

\* JUDr. Ján Matejka, Ph.D., Institute of State and Law of the Academy of Sciences of the Czech Republic, Prague. The work was created under subsidies for long-term conceptual development of the Institute of State and Law of the Academy of Sciences of the Czech Republic, v. v. i. (RVO:68378122).

In the first chapter *The path to Munich* the authors present the development of the Czech-German relations within Czechoslovakia, especially between 1933 and 1938. In the second chapter titled *Munich conference and its consequences* the authors analyze the conference in Munich and its consequences in the following period. The third chapter, *The path to nullification of Munich during World War II* brings us to the turmoil of the World War II and the authors follow the progress towards nullification of the Munich Agreement. In the fourth chapter, *Post-war return to the Munich question*, the reader will find the subchapter *Munich's reflection*, where the authors deem important to point out that the "...peace agreement with Hungary was to be used in the formulation of Czechoslovakia's standpoint towards the nullification of the Munich Agreement..." (224). A relevant piece of a new testimony can be found in the fifth chapter titled *With the Iron Curtain*; it summarizes the post-war fate of the Munich Agreement. The authors here also present the standpoints of individual countries in subchapters titled by the names of these countries: Munich Agreement and the Federal Republic of Germany and, last but not least, the standpoint of Great Britain towards the Munich Agreement in the sixties. The choice the authors made was very apt because, as far as I know, in the 1970s (the authors in this context describe the situation since 1950s, note by AL), when our country and the Federal Republic of Germany were initiating diplomatic relations negotiations were held regarding the compensation that was rejected by the FRG, reasoning that they would bring up their requirements on the post-war damage reparations. However, the main point of the agenda were negotiations on the nullification of the Munich Agreement *ex tunc* (e.g. memorandum from 1966 – compare with authors' p. 271). The authors in this chapter also discuss the negotiations preceding the agreement from 1973.

Great Britain lead in 1968 negotiations (authors again describe the situation prior to 1968) that were to result in an assessment of the Munich Agreement. Unfortunately, Britain's standpoint was not favorable. The authors are correct to remind the reader at this point of a work published by a Polish professor of the international law, Krystyna Marek, under the title *The Identity and Continuity of States in Public International Law*, published in early 1968. Here, the author looks at the invalidity of the Munich Agreement from the perspective of the public international law and continuity of the Czechoslovak state. Also this book presented the British standpoint on the Munich Agreement as being negative.

The authors here present the standpoints of British high government officials, e.g. N. Chamberlain, whose position was based on questioning whether, at the time of the Munich Agreement, there already existed an obligatory customary rule within the international law that would make the Munich Agreement absolutely invalid (309). Although it may seem that the period of the Munich Agreement was visited in many works, Czech and foreign, and that it has been thoroughly analyzed from various points of view, the book *Long Shadows of Munich* in this case manages to present a new interpretation of the circumstances surrounding this agreement of 1938 and proves that new links can still be found.

Unlike many others the reviewed book does not focus on the agreement itself, this needs to be emphasized yet again, but rather on what happened with the agreement subsequently and its influence during the war and after the war. The authors also mention that even after the Czech-German Declaration of 1997 was signed and "after the 70<sup>th</sup> anniversary of the Munich Agreement there was still no change in the German position on the question of its invalidity" (358) and they point out the fact that this declaration is still based on a standpoint that was formulated in an agreement from 1973.

The book is very interesting because it presents contemporary and post-war standpoints of the Munich Agreement signatories and states that participated in the Munich betrayal. Among other things the book contains also new, unpublished information and documents from archives in London and the USA.

In the end we must admit that the authors undoubtedly achieved their goal stated in the introduction. They have created a very good piece of work with excellent understanding of the issues they address. The rich contents will provide answers to the questions asked by a very diverse audience; academics, legislators, lawyers, historians, students of law and related fields, but also the general public.

Antonín Lojek\*

---

\* JUDr. Antonín Lojek, Ph.D., Institute of State and Law of the Academy of Sciences of the Czech Republic, Prague  
The work was created under subsidies for long term conceptual development of the Institute of state and Law of the Academy of Sciences of the Czech Republic, v.v.i. (RVO: 68378122).