

Doctoral dissertation abstract
“Automatic collection of data about Internet users.
Cookie files in government administration”

Automatic collection of data about Internet users is becoming more and more common and intense, and its importance for social and economic relations is ever growing. It is the subject of complex legal regulations, but at the same time a good illustration of difficulties law has with keeping up with technical and technological changes, including those involving the use of cookies.

Automatic processing and the related threats to privacy and personal data protection have already been the subject of many legal publications. With respect to the public sector, attention has been focused on the model of legal regulation of data processing in the area of monitoring, detection and prevention of crime, while outside this scope the use of cookies has not been the subject of a comprehensive analysis. Filling this cognitive gap should be regarded as particularly necessary in relation to the government administration and its supporting agencies due to the role of government administration in the information infrastructure of the state. Such a scope of the dissertation, determining the degree of detailed findings, may also ensure its practical usefulness in the processes of creating, interpreting and applying law.

Therefore, the paper begins with the analysis of multi-level legal regulations governing access to an Internet user’s device through the use of cookies, which are referred to as “ciasteczka” in Polish academic writings.

The following acts of EU law are of utmost importance in this regard: Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) OJ L 201, 31.7.2002, p. 37-47, referred to as the Telecommunications Sector Directive, and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with

regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) Official Journal of the EU L 119 of 2016, p. 1, as amended. The main acts of Polish law examined for the purposes of this research are the Act of 16 July 2004 - Telecommunication Law (i.e. Journal of Laws of 2019, item 2460 as amended) and the Act of 18 July 2002 on the provision of services by electronic means (i.e. Journal of Laws of 2020, item 344). Directive 2002/58/EC has been implemented in the provisions of both these Acts.

The analysis also covered the ongoing works on the proposal for a regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC.

The study of the extensive problem of automatic data processing focused on the verification whether the existing legal provisions concerning the automatic collection of Internet users' data in relation to activities of governmental agencies are sufficient for the protection of public interest and individual interests, clear and properly applied.

In order to confirm or falsify the general thesis on the need for amendments to the legal regulations and their application in the field of automatic collection of Internet users' data in the activities of government administration bodies, as well as to formulate *de lege lata* remarks and, possibly, *de lege ferenda* postulates, six precise research hypotheses were adopted, which were then verified in particular chapters of the paper.

The first chapter presents the genesis of the concept of a cookie file and the analysis of this concept in legal and juridical terms, including a quantitative analysis carried out with the use of analytical tools of legal information systems. It also discusses the issue of cookies as personal data, presents the systematics of cookie files and indicates types of threats connected with their use, especially in the context of unauthorised tracking of an Internet user.

The second chapter describes the evolution of regulations related to the automatic collection of Internet users' data in the international and European law. It draws attention to the need to reconcile the relationship between the privacy protection and personal data protection.

The third chapter includes a comprehensive analysis of the currently binding provisions of European and Polish law concerning cookies, in particular Directive 2002/58/EC and the provisions on personal data protection.

The purpose of the fourth chapter is to present legislative problems related to the proposal for a regulation on e-privacy and the proposed amendments concerning cookie files. The chapter also presents the status of legislative works on the bill of Electronic Communications Law, which is intended to repeal the Telecommunications Law currently binding in Poland and implement the European Electronic Communications Code (EECC).

The fifth chapter contains a comparative analysis of Polish regulations and those in force in Germany and France. It also discusses several important CJEU rulings, relevant for cookie files, concerning user consent and the concept of data controller.

The sixth chapter presents the results and the summary of research related to the analysis of privacy and cookie policies published on the websites of government administration agencies, types of cookies used in the public sector, with a particular focus on the guidelines of the European Data Protection Supervisor regarding cookie files used by EU institutions.

The dissertation ends with a summary and conclusions arising from theoretical findings and comparative legal analyses and empirical research, including *de lege lata* and *de lege ferenda* remarks. In particular, *de lege lata* remarks concern the following issues: implementation of Directive 2002/58/EC to the Polish legal system in two legal acts, consent to the installation of cookie files through browser settings, lack of specification in legal regulations of the cookies storage period and sanctions for violation of Article 173 of the Telecommunication Law. *De lege ferenda* remarks concern issues such as the introduction of efficient mechanisms of law enforcement, considering consents for cookies in the design phase (*privacy by design*) or the adoption of uniform guidelines on privacy policies of public administration bodies related to the use of cookie files.

In this paper legal research methods have been applied, in particular the dogmatic approach, supplemented with the historical and comparative methods. The analysis of the application of law was based on the empirical research, which was carried out by means of a request for access to public information addressed to 20 government administration bodies, including those responsible for the largest e-services platforms for Polish citizens.