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Professional paper

ELECTRONIFICATION OF INSOLVENCY PROCEEDINGS IN THE LIGHT OF THE PROTECTION OF CREDITORS' FUNDAMENTAL RIGHTS

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ABSTRACT

The aim of our paper is to focus on the electronicisation of insolvency proceedings through the newly introduced insolvency register, which is supposed to represent a single centralised system for insolvency and liquidation proceedings with an emphasis on the protection of creditors' personal data. The European Union is also currently commenting on several issues in the area of business entities and the transparency of business activities. In the individual sections, we have focused on the approach to the computerisation of insolvency proceedings, the definition of personal data provided in insolvency proceedings by the creditors themselves, the principles of personal data protection, also outlining the case law of the Court of Justice of the European Union dealing with this area. We have also focused on the problems that have arisen in application practice in relation to the disclosure of personal data of individuals. We conclude that the legislator should focus more specifically on the protection of creditors' personal data and tighten up the possibilities of accessing it, but also consider whether its public availability is necessary.

Keywords*: computerisation of insolvency proceedings, Protection of creditors' personal data, insolvency register*

1. THE TREND TOWARDS ELECTRONICISATION DOES NOT BYPASS INSOLVENCY PROCEEDINGS EITHER

Insolvency proceedings are a specific type of court proceeding, the purpose of which is to resolve the unfavourable economic situation[1] of a business entity that

[1] To remain viable and successful on the market, a trading company should be able to properly assess the risks of insolvency in a timely manner. See Didenko, K.; Meziels, J.; Voronova, I. *Assesment of enterpris-*

has fallen into a state of insolvency, taking into account the circumstances of the particular case, such as the person of the debtor, the nature of its liabilities, the number and positions of creditors, the assets subject to the insolvency proceedings and other factors.[2]

Unlike restructuring proceedings, it is characterised by its liquidation character - the company is directed towards the termination of its business activity and its dissolution.[3] Creditors who have entered into various legal relationships with the debtor in good faith, ideally having fulfilled the obligations to which they committed themselves but have not received the agreed consideration from the debtor, have an important position. Not to mention the fact that the claims of the creditors registered in the insolvency proceedings are usually satisfied only in some proportion[4] (if at all).[5]

The year 2023 brought centralization and computerization of preinsolvency, insolvency and liquidation proceedings into the Slovak legal order.[6] This happened with the entry into force of Act No. 309/2023 Coll. on Transformations of Commercial Companies and Cooperatives and on Amendments and Additions to Certain Acts, because of which Act No. 7/2005 Coll. was also amended. on Bankruptcy and Restructuring and on Amendments and Additions to Certain

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es insolvency: Challenges and oportunities. In: Economics and management. Vol. 17, No. 1, 2012, p. 69, [https://www.ecoman.ktu.lt/index.php/Ekv/article/view/2253], Accessed 8 June 2024.

2 Winterová, A. *et al. Civilní právo procesní. Díl druhý : řízení vykonávací, řízení insolvenční.* 3rd updated edition. Prague: Leges, 2022, pp. 208-209.

3 Ďurica, M., Sprievodca konkurzným právom, pp. 5, 45, [http://bvsp.open.sk/7.semester/Konkurzne_pravo/Sprievodca%20Konkurznym%20Pravom.pdf], Accessed 29 March 2024.

4 Fieden, M.; Wielenberg, S. *Insolvency administrator's incentives and the tradeoff between creditor satisfaction and efficiency in bankruptcy procedures*. In: *Business Research*, No. 4, 2017, p. 160, [https://link.springer.com/article/10.1007/s40685-017-0047-x], Accessed 4 June 2024: "*The objective of a bankruptcy law concerns two primary aspects: first, it should ensure optimal creditor satisfaction by exploiting the remaining assets of a bankrupt firm, and second, it should separate viable from unviable bankrupt firms.*"

5 Resolution of the Supreme Court of the Slovak Republic of 30 November 2011, Case No.: 3 Obo 51/2011: "The object and purpose of the bankruptcy proceedings is to arrange the bankrupt's assets and the proportional satisfaction of creditors. One of the basic effects of declaring bankruptcy on the assets that enable the purpose of bankruptcy to be fulfilled is the extinction of the possibility of individual satisfaction of creditors' claims."

6 The digitalisation of insolvency proceedings also affected other countries, e.g. Croatia, already in 2015. Amendments to the Bankruptcy Act changed the way in which information related to insolvency proceedings is published, in such a way that the publication of such data through the Official Gazette of the Republic of Croatia was replaced by the introduction of the E-Bulletion board which is available on: [https://mpudt.gov.hr/e-services/25459], Accessed 9 June 2024; See Gavric, C., Lončar, P. M., *Digitalisation of insolvency proceedings,* in: Schrönherr, 2023, [https://www.schoenherr.eu/content/digitalisation-in-insolvency-proceedings/], Accessed 9 June 2024.

Acts (hereinafter referred to as the "Insolvency Act"). The newly introduced information system - the insolvency register - is to replace the current register of bankrupts, which until the introduction of the insolvency register was the primary source of information regarding insolvency proceedings. The explanatory memorandum[7] states that the purpose of the insolvency register is to establish a single centralised system for insolvency proceedings, including small insolvency proceedings, (public preventive) restructuring proceedings, insolvency proceedings of natural persons, and liquidation proceedings (including supplementary proceedings), which is interconnected with the Commercial Gazette.

The paper deals with the analysis of the new insolvency register, which is (not only) an information source for insolvency proceedings, and the data published in it. There is a thin and blurred line between the right to (i) privacy and data protection and (ii) transparency of insolvency proceedings ensured through the insolvency register. The aim of this paper is to test the hypothesis: digitalization of insolvency proceedings interferes with the rights of creditors protected by the Charter of Fundamental Rights of the European Union beyond what is necessary. In the different sections of the paper we will focus on the insolvency register, the description of the data publicly available in it and the question of possible interference with creditors' rights in relation to their personal data publicly available in the insolvency register. The author has also considered the recent case law at European level dealing with this issue.

To verify the established hypothesis, we used several scientific methods, in particular the method of analysis, comparison, but also the method of analogy, induction or deduction.

2. THE INSOLVENCY REGISTER AS AN INFORMATION AND DELIVERY SYSTEM

The function of the insolvency register is primarily informative. The insolvency register will record the entire course of the insolvency proceedings. The intention is to record and publish the important facts that follow chronologically in the insolvency proceedings up to and including the end of the insolvency proceedings. This contributes to the transparency of the insolvency proceedings and the virtualisation of key documents related to the insolvency proceedings, such as the list of claims, the list of creditors, etc.[8]

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7 Explanatory memorandum to the government bill amending Act No 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended, and amending and supplementing certain Acts.

8 *Ibid.*

The primary objective of the insolvency register is to ensure a higher level of efficiency and speed of insolvency proceedings through the widest possible computerisation of insolvency proceedings. At the same time, it is to ensure service of process (which is currently linked to the Commercial Gazette), registration and publication of all necessary information, decisions, filings, etc.[9] Thus, a kind of "management" of insolvency proceedings will be created, about which all information will be processed in a single place, which will ultimately contribute to higher awareness not only of domestic, but also foreign entities about the vitality of potential business partners.

An important element of the insolvency register is, inter alia, the aforementioned service of process. In certain cases, the legislator has established the legal fiction of service of documents by means of their publication in the insolvency register. This is the case, for example, if the foreign creditor does not appoint a representative for service in the domestic territory in the application for the claim. He will only be served by publication in the insolvency register (Section 29(8) Insolvency Act). Thus, the insolvency claimant may not be aware of important facts relating to the insolvency proceedings unless he exercises due diligence.

3. PUBLICITY OF THE LODGED CLAIM AND ITS PARTICULARS

The right to satisfaction of a creditor's claim in insolvency proceedings from the proceeds of the realisation of assets[10] is a consequence of the proper filing of a claim.[11]

The creditor files the claim in the insolvency proceedings with the bankruptcy trustee using a designated electronic form. There is a basic deadline for filing claims - 45 days from the date of the declaration of bankruptcy. The legislator does not preclude the filing of a claim after this period (a creditor is entitled to file its claim in the insolvency proceedings in principle until the publication of the administrator's announcement of the intention to draw up a final schedule of the proceeds from the realisation of the estate), but sanctions non-compliance with

9 *Ibid.*

10 One of the basic phases of bankruptcy proceedings is the monetisation of the assets of the company (bankrupt). The proceeds obtained from the realisation of these assets (by converting assets into cash) are intended to satisfy the registered creditors. See e.g. Adamus, R. *Liquidation of the bankruptcy estate in Poland*, in: Bratislava Law Review, Vol. 4, No. 1, 2020, pp. 115-117, [https://blr.flaw.uniba.sk/index.php/BLR/article/view/156/155], Accessed 8 June 2024.

11 Sudzina, M. *Právna úprava konkurzného konania v Slovenskej republike po zmenách vykonaných zákonom č. 309/2023 Z. z.* In: Acta Iuridica Resoviensia, No. 4 (43), 2023, p. 135, [https://journals.ur.edu.pl/zeszyty-sp/article/view/8674/7615], Accessed 23 march 2024.

this period with the impossibility of exercising the voting rights that are otherwise attached to the claim.[12]

In the scope of personal data, the creditor is obliged to provide his/her identification data, which differ depending on whether he/she is a creditor:

- a natural person states his/her name and surname, place of residence;
- a natural person who is an entrepreneur shall indicate his/her business name (including his/her first and last name if different from his/her business name), business registration number or other identification data and place of business; and
- a legal person shall indicate its name, business registration number or other identification number and registered office.[13]

If the creditor's claim is secured by a security right, the creditor is obliged to duly indicate this in the application.[14] Otherwise, the security right shall not be considered, and the creditor's claim shall therefore be satisfied out of the proceeds from the realisation of the assets subject to bankruptcy together with the unsecured creditors, i.e. out of the proceeds from the realisation of the assets of the general estate. The security right shall not be considered even if it is exercised after the basic filing period for filing claims.[15]

The trustee is obliged to properly examine the claim application delivered to the bankruptcy trustee's electronic mailbox and determine its correctness, both formally and in terms of its content (i.e. whether the creditor's claim is justified). In examining the legitimacy of the claim, the trustee shall consider the documents attached by the creditor to the claim application and intended to prove the actual existence of the claim, as well as the bankrupt's accounting or other documentation at his disposal and the list of the debtor's liabilities.[16]

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12 Pospíšil, B. *et al.*, *Zákon o konkurze a reštrukturalizácii: komentár.* 2nd supplemented and revised edition. Bratislava: Wolters Kluwer, 2016, p. 179.

13 Ďurica, M. *Zákon o konkurze a reštrukturalizácii : komentár.* 4th edition. Prague: C. H. Beck, 2021, pp. 251-269.

14 Secured creditors are a special category of creditors. Their position is favoured in the sense that their claim will be satisfied in priority (or separately) from the proceeds obtained from the realisation of the secured asset. On the different types of creditors, see, e.g. Faber, D. *et al. Commencment of insolvency proceedings.* New York: Oxford University Press, 2012, p. 159.

15 *Ibid.*

16 Pospíšil, B. *Zákon o konkurze a reštrukturalizácii : komentár.* Bratislava: Iura Edition, 2012, pp. 138-139.

The trustee is obliged to enter all applications received in the list of claims[17] which will be publicly available in the insolvency register (for the time being still in the register of bankrupts[18]).

The list of claims is perceived as a digitalised list that is publicly available.[19] The insolvency register also records all facts relating to a creditor's claim. In principle, the publicly available information in the insolvency register relating to the registered claims of creditors is all the information that the creditor has indicated and is obliged to indicate in the application in accordance with the statutory requirements for the application to be duly filed with the insolvency administrator.

The insolvency register includes:[20]

(i) the identification of the creditor in the scope of the name, surname and residence, if it is a natural person, or in the scope of the name, registration number and registered office, if it is a legal person;
(ii) identification of the claim - the amount of the claim lodged and the amount of the amount established;
(iii) the legal basis for the claim;
(iv) the security for the claim, if the claim is subject to a security right;
(v) the ranking of the claim - declared and established; and
(vi) an indication of the filing of the claim within or after the basic filing period.

If a creditor in a claim application sent to the administrator's electronic mailbox also provides his or her date of birth or birth number (or other identification data), which are otherwise optional data (the Insolvency Act does not associate with the application the sanction of disregarding the filing in case of failure to

17 Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, § 31(1)

18 Decree of the Ministry of Justice of the Slovak Republic No. 665/2005 implementing certain provisions of Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, § 25a.

19 Explanatory memorandum to the government bill amending Act No 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended, and amending and supplementing certain Acts.

20 The insolvency register in the Czech Republic, which is publicly available at: [https://isir.justice.cz/isir/common/index.do], Accessed 8 June 2024 contains, in addition to detailed data on the specific insolvency proceedings, also scanned documents such as creditors' applications for claims. See Mrázová, I.; Zvirinský, P. *Czech Insolvency Proceedings Data: Social Network Analysis*. In: Procedia Computer Science, Vol. 61, 2015, [https://www.sciencedirect.com/science/article/pii/S1877050915029774], pp. 52-53, Accessed 8 June 2024.

provide such data), these data will automatically be publicly available in the insolvency register as well.

4. ELECTRONICISATION OF PROCEEDINGS WITH IMPACT ON THE FUNDAMENTAL RIGHTS OF CREDITORS

The trend towards digitalisation, the development of the Internet and information technology brings with it the storage of a large amount of data in virtual space, which can be accessed (often in a very simple way).[21] Data relating directly to natural or legal persons are also collected by the State itself, in publicly accessible registers such as the commercial register, the trade register, the register of public sector partners and also the register of bankrupts (which will gradually be replaced by the insolvency register). In response to the extensive publication of personal data, individual pieces of legislation are being adopted to regulate this area.[22] Alvar C.H. Freude and Trixty Freude take the view that privacy is an individual right that deserves protection across the board. The private sphere of individuals can only be interfered with in certain circumstances.[23]

Despite efforts not to interfere with the fundamental rights of individuals, there may indeed be a conflict between the legal regulation adopted by the European Union and the protection of privacy, or the protection of personal data guaranteed by the Charter of Fundamental Rights of the European Union itself. It is precisely because of the European Union's action that transnational regulations are being adopted, among other things, in the business environment, which have an impact on its transparency. Recently, for example, there has been an international interconnection of the various registers (including the insolvency register).[24]

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21 Proposals of the Attorney General of 25 June 2013 in Case C-131/12 Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costei González: "Nowadays, the protection of personal data and the privacy of natural persons is of increasing importance. Any content that includes personal data, whether in the form of texts or audiovisual material, can be made instantly and permanently accessible worldwide in digital format. The Internet has revolutionised our lives by removing technical and institutional barriers to the dissemination and reception of information and has created a platform for a variety of information society services..."

22 Zigo, D. *Limity publicity verejných registrov.* In: ResearchGate, 2023, p. 5., [https://www.researchgate.net/profile/Daniel-Zigo/publication/377435086_LIMITY_PUBLICITY_VEREJNYCH_REGISTROV_-_LIMITS_OF_PUBLIC_ACCESS_TO_STATE_REGISTERS/links/65a69db15582153a682ba9e7/LIMITY-PUBLICITY-VEREJNYCH-REGISTROV-LIMITS-OF-PUBLIC-ACCESS-TO-STATE-REGISTERS.pdf,], Accessed 23 March 2024.

23 Freude, A.; Freude, T. *Echoes of History: Understanding of German Data Protection,* in: Newpolitik, 2016, pp. 85-86, [https://www.astrid-online.it/static/upload/freu/freude_newpolitik_german_policy_translated_10_2016-9.pdf], Accessed 26 March 2024.

24 Zigo, D., *op. cit.,* note 15, p. 6.

Precisely because of the publication of sensitive data, based on which the public can identify the subject whose data have been published, it is necessary to draw attention to their, we would say, "immortalisation" in virtual space. Once the data has been published, it is relatively easy to disseminate, store and make it available to other entities. Therefore, the possibilities of interference with personal data and the impossibility of defending against such interference increase.

The European Union is also aware of the sensitivity of the disclosure of personal data. In response, it is adopting regulatory standards governing this area. Perhaps the most well-known piece of legislation in the area of disclosure, storage, dissemination or access to personal data is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons 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) (the "GDPR"). The Regulation in question is also referred to as the most controversial law in the history of the European Union, which is the result of many years of intensive negotiations.[25]

The GDPR regulation was adopted because of significant technological development, globalisation and a quantum of cross-border processes, but also because of the extensive publication of data by individuals on websites. It has achieved the unification of data protection rules at European Union level. It replaced the then Directive 95/46/EC, which was not so successful at Member State level - its different implementation by Member States did not achieve even a similar level of protection of personal data across Member States' legal systems.[26] Currently, the GDPR is seen by theorists as the "transnational gold standard of data protection".[27]

GDPR defines personal data as: "any information relating to an identified or identifiable natural person (hereinafter referred to as 'data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online

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25 Powle, J. *The G.D.P.R., Europe's New Privacy Law, and the Future of the Global Data Economy.* In: The New Yorker, 2018, [https://www.newyorker.com/tech/annals-of-technology/the-gdpr-europes-new-privacy-law-and-the-future-of-the-global-data-economy], Accessed 26 march 2024.

26 Mesarčík, M. *Potrebujeme nový zákon o ochrane osobných údajov? (1. časť).* In: Justičná revue. Vol. 73, No. 1, 2021, [https://www.legalis.sk/sk/casopis/justicna-revue/potrebujeme-novy-zakon-o-ochrane-osobnych-udajov-1-cast.m-2312.html], pp. 17-29, Accessed 2 April 2024.

27 Rustad, M.L., Koeing, T.H. *Towards a Global Data Privacy Standard.* In: Florida Law Review, Vol. 71, No. 2, 2019, p. 453. [https://scholarship.law.ufl.edu/flr/vol71/iss2/3/], Accessed 2 April 2024.

identifier, or by reference to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".[28]

With reference to the quoted definition, it is indisputable that the insolvency register contains data which are considered personal data within the meaning of the GDPR.

4.1. Reaction of the Court of Justice of the European Union

Perhaps one of the most famous decisions of the Court of Justice of the European Union in relation to the disclosure of individually identifiable information and the question of interference with fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union was the judgment of 22 November 2022 in the joined cases of WM (C-37/20) and Sovim SA (C-601/20) v Luxembourg Business Registers. The merits of the litigation were an assessment of the compatibility of access by the public to certain data published in the register of end-users of benefits with the Charter of Fundamental Rights of the European Union as well as with the GDPR Regulation. Put simply, where does the line between privacy and transparency lie?[29]

The protection of privacy and personal data is governed by the Charter of Fundamental Rights of the European Union in:

- Article 7 - "Respect for private and family life": "Everyone has the right to respect for his private and family life, home and communications"; and
- Article 8 - "Protection of personal data", point 1: "Everyone has the right to the protection of personal data concerning him or her."

In addition to the Charter of Fundamental Rights of the European Union, the protection of personal data and the protection of private life is contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, and the Convention understands (also from a systematic point of view) the protection of personal data as one part of the protection of private life and correspondence.[30]

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[28] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons 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), Art. 4(1).

[29] Mooij, A.M. *Reconciling transparency and privacy through the European Digital Identity.* In: Computer Law & Security Review, Vol. 48, No. 105796, 2023, p. 1, [https://www.sciencedirect.com/science/article/pii/S0267364923000079], Accessed 8 June 2024.

[30] Barancová, H. *Nová európska úprava ochrany osobných údajov ako súčasť práva na súkromný život a korešpondenciu.* In: Sborník příspěvků z mezinárodní konference pracovní právo 2017 na téma ochrana osobních údajů, služební zákon a sociální souvislosti zaměstnávání cizinců, [https://www.law.muni.cz/sborniky/pracpravo2017/files/003.html], Accessed 3 April 2024.

In the present dispute, the court dealt with the amendment of Directive (EU) 2015/849[31] on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, which required Member States to ensure that information on the ultimate beneficial owner is made publicly available in each case, to any member of the general public[32], at least to the following extent: name, month and year of birth, country of residence and nationality (data relating to the identity of the ultimate beneficial owner), nature and extent of the beneficial owner's shareholding (data relating to the beneficial owner's financial situation).

In paragraph 38 of the judgment under review, the Court of Justice held that, since the data provided within the meaning of that directive contain information on identified natural persons (the final beneficiaries), access to that data by any entity constitutes a disproportionate interference with the fundamental rights protected by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union:[33] *"Access by the general public to information on the end beneficiaries, as provided for in Article 30(5) of Directive 2015/849, as amended, therefore constitutes an interference with the rights guaranteed by Articles 7 and 8 of the Charter."*[34] It is irrelevant whether the information relating to private life is of a sensitive nature or whether, as a result of its disclosure, it has caused adverse consequences in relation to the identified natural person.

4.2. Principles of data protection according to the practice of the European Court of Human Rights

In the above-mentioned decision, the Court of Justice held that the publication of personal data on identifiable subjects (in this case, the end-users of the benefits)

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31 Directive (EU) 2015/849, as amended by Directive (EU) 2018/843.

32 See e.g. Kubinec, M.; Ušiaková, L.; Dzimko, J.; Krištiaková, K. *Vplyv rozhodnutia Súdneho dvora Európskej únie vo veci plošného odhaľovania informácií o konečných užívateľoch výhod na právny poriadok Slovenskej republiky,* in: Právny obzor. Vol. 106, No. 5, 2023, [https://www.legalis.sk/sk/casopis/pravny-obzor/vplyv-rozhodnutia-sudneho-dvora-europskej-unie-vo-veci-plosneho-odhalovania-informacii-o-konecnych-uzivateloch-vyhod-na-pravny-poriadok-slovenskej-republiky.m-3717.html], pp. 447-460, Accessed 3 April 2024.

33 See e.g. Brewczyńska, M. *Privacy and data protection vs public access to entrepreneurs' personal data. Score 2:0,* in: EUROPEAN LAW BLOG. No. 54, 2022, [https://europeanlawblog.eu/2022/12/15/privacy-and-data-protection-vs-public-access-to-entrepreneurs-personal-data-score-20/], Accessed 3 April 2024 or Ľuptáková, T.; Führich, P. *Pozastavil Súdny dvor Európskej únie cestu za transparentnosťou?* [https://www.skubla.sk/clanky/pozastavil-sudny-dvor-europskej-unie-cestu-za-transparentnostou], Accessed 3 April 2024.

34 The Court also referred to its judgment of 1 August 2022 in Case C-184/20 Vyriausioji tarnybinės etikos komisija, paragraph 105.

in public registers constitutes an interference with their personal data. Nor is the argument that the data is collected in the commercial sphere relevant.[35] However, it is now appropriate to examine whether the interference is justified.

In relation to the protection of personal data (undoubtedly of creditors) in public registers in general, the principles of protection of personal data in public registers have evolved from Article 5 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 49/2001 Coll.), which, according to the legal opinion of the European Court of Human Rights, includes:

(i) purpose limitation principle - the essence is a sufficiently defined purpose based on which personal data may be disclosed and its interpretation in a highly restrictive manner - the application of an expansive interpretation could result in an interference with the right to private life guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms; [36]

(ii) the principle of data minimisation - the right to private life is violated even when information is provided to the public beyond the defined purpose;

(iii) the principle of accuracy of data - disclosure of inaccurate or even false information may result in damage or harm to the reputation of the data subject, and it should therefore be possible to retrospectively modify (correct) the disclosed data; and

(iv) the principle of retention restriction - its essence is to prevent the public availability of such data in public registers whose publication for the purpose of their processing has expired.[37]

Any interference with personal data must be in accordance with the above principles. At the same time, there is the requirement, given by the Charter of Fundamental Rights of the European Union, that any interference with protected rights must be (i) legislatively based, proportionate, necessary, consistent with the objectives of general interest recognised by the European Union, or (ii) justified by the protection of the rights and freedoms of others.[38]

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35 Mooij, A.M. *op. cit.,* note 26, p. 5.

36 Convention for the Protection of Human Rights and Fundamental Freedoms "Everyone has the right to respect for his private and family life, home and correspondence.", Art. 8(1).

37 Svák, J. *Osobné údaje v pasci verejných registrov.* In: Justičná revue, Vol. 74, No. 5, 2023, [https://www.legalis.sk/sk/casopis/justicna-revue/osobne-udaje-v-pasci-verejnych-registrov.m-3489.html], Accessed 23 March 2024.

38 Charter of Fundamental Rights of the European Union, Article 52(1).

However, going back to the disclosure of creditors' personal data, we should define, in the light of the above principles, whether their disclosure in the insolvency register is consistent with the above-mentioned principles on the protection of personal data, which have evolved from the practice of the European Court of Human Rights.

First of all, it is necessary to determine the purpose of the introduction of the insolvency register and the purpose of the publication of creditors' data in it. The purpose of introducing the insolvency register can be seen from the explanatory memorandum - it is to computerise the entire insolvency procedure and to relieve the trustee, the court or other parties from excessive administrative burdens. The list of claims or the list of creditors, which was previously kept by the administrator in paper form, is now kept electronically, in the insolvency register, which is an automated system containing the data relating to the insolvency proceedings. In the same way, when assessing the purpose of the publication of creditor data in the insolvency register, we consider the need to electronicise the lists previously kept by the trustee or the court in paper form.[39] But is this purpose, as stated, sufficient? That is to say, is it a purpose which corresponds to the objectives of general interest recognised by the European Union?

The data minimisation principle is about disclosing as little data as possible or as much personal data as is necessary. The question is whether the insolvency register meets this condition. As we have mentioned, personal data of creditors are disclosed to the extent that such identification is required by the Insolvency Act - these are essential elements of the application which the creditor is obliged to disclose in the application under pain of disregarding the filing. If the creditor chooses to include optional information (such as the date of birth of the creditor - natural person), the insolvency register will automatically overlay and include this information from the application. We consider that the necessary disclosure is fulfilled if only the mandatory elements of the application are disclosed. There is no interference with the creditor's personal data by disclosing the optional particulars, since the creditor has chosen to disclose them voluntarily, thereby giving implied consent to their disclosure.

Another condition is the accuracy of the data. We consider that the guarantee of the accuracy of the data is given by the mere fact that the creditor himself (or his representative), who has an interest in the correctness of his personal data, declares his claim on the designated electronic form. Should there be an error in the ap-

[39] Explanatory memorandum to the government bill amending Act No 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended, and amending and supplementing certain Acts.

plication form, the deficiencies can be corrected by the insolvency administrator via the insolvency register.

The fulfilment of the last data protection principle, namely the retention limitation principle, may be questionable. Data published in the insolvency register are 'immortalised'. The insolvency register also keeps publicly available the data of insolvency proceedings that have already been closed. The legislator does not specifically address this issue.

In practice, we have encountered a case where creditors requested the removal of their personal data by the insolvency administrator, which had been published in the insolvency register. We consider that the trustee is entitled to remove the creditor's personal data published in the insolvency register at the creditor's request, but only to the extent corresponding to the optional data which the creditor has provided in the application for claim more than the requested scope. The administrator shall be obliged to keep the mandatory data provided in the application for a claim public. Otherwise, the list of claims and the list of creditors would not comply with the statutory requirements.

Another case is when a creditor seeks complete removal of his status as a creditor in the insolvency register and argues that his status as a party to the insolvency proceedings has ceased for the reason set out in section 27(1) of the Insolvency Register, citing section 27(2) of the Insolvency Act (namely the second sentence thereof) as the reason for the complete removal of his status as a creditor of the insolvent in the public register, pursuant to which: "A creditor is obliged to inform the trustee in writing without undue delay of any fact which may give rise to the termination of his participation. The administrator shall adjust the list of claims in the register of bankrupts in accordance with such fact." The obligation of the administrator to adjust the list of claims, if the creditor's status as a party to the insolvency proceedings has ceased, conflicts with the obligation of the administrator to keep a list of claims within the meaning of Section 31(1) of the Insolvency Act, in which the registered claims are to be entered on an ongoing basis. Thus, if the trustee, at the request of a creditor, were to delete its registered claim on the ground that the creditor's status as a party to the proceedings had ceased, it would then be difficult to prove compliance with the obligation to enter that claim in the list of claims. Based on the foregoing, we consider that the administrator will not delete such a claim to exercise caution and to avoid possible liability for failure to comply satisfactorily with the obligations imposed by law. At the same time, in our opinion, he is obliged to make a note in the insolvency register for the creditor in question that his status as a party to the proceedings has ceased.

5. (IN)LEGITIMACY OF INTERFERENCE WITH CREDITORS' PERSONAL DATA?

To conclude this paper, it is necessary to ask whether the interference with creditors' personal data or privacy is justified, proportionate and purposeful. In the previous section, we have defined the different privacy principles and discussed each principle and attempted to apply it to the interference with creditors' personal data in the context of the electronic maintenance of the list of claims and the list of creditors in the insolvency register. Apart from the question of a sufficiently defined purpose to justify the interference with an individual's personal data, which we have left open, we have not concluded that any of the principles should be infringed.

As we have mentioned, the purpose of the introduction of the insolvency register is to create a single automated system. It is also intended to contribute to the computerisation of insolvency proceedings. This stated purpose does not extend to the publication of the individual documents that are part of the processes referred to above. Already at present, resolutions of the competent bankruptcy court (on the opening of bankruptcy proceedings, on the declaration of bankruptcy, on the extension of the time limit for contesting claims, on the dismissal of the trustee, etc.), an inventory of assets subject to bankruptcy, notices relating to the monetisation of assets subject to bankruptcy, notices on the convening of a creditors' meeting, etc. are published in the register of insolvency. In the same way, a list of claims is published in the register of bankrupts, which will also be published in the insolvency register.

We believe that the legislator proceeded to the introduction of computerisation of insolvency proceedings also for the sake of greater transparency of their course and perhaps also for the sake of control by the disinterested public.

In the past, the list of claims, in which the personal data of creditors are published, was kept in paper form at the administrator's office or at the court. We assume that it was accessible only to the parties to the proceedings (the insolvency court, the trustee, the creditors of the registered claims). At the request of an entity which was not a party to the insolvency proceedings, the trustee was apparently under no obligation to make the list of claims available to it, precisely because of its external position. In that way, the protection of creditors' personal data was probably better ensured.

In another decision, *L.B. v Hungary*, 9 March 2023, no. 3635/16,[40] the Grand Chamber of the European Court of Human Rights addressed the balance between

[40] Ján Svák also referred to this decision in his publication. In relation to the disclosure of a tax debtor's residential address (as personal data) in public registers, he expressed the opinion that this data is indeed capable of causing a threat to the security of the subject. See Svák, J., *op. cit.,* note 28.

the public interest and the individual's interest in the protection of personal data. The Court reasoned that it is necessary to assess in each individual case the extent to which the disclosure of personal data is necessary to achieve the purpose of its collection. The above-mentioned decision implies a warning against the ill-considered (duly unjustified) publication of personal data in public registers. At the same time, consideration should be given to whether personal data should only be disclosed to selected individuals (as it has been in the past) - hence the requirement to tighten access to it, for example in terms of the need for a subject to register with a particular public register, properly identifying themselves and demonstrating a legitimate interest in having other subjects' personal data disclosed.

The key question to be answered is to whom are the personal data of creditors published in the insolvency register addressed? We consider that only to the trustee, the insolvency court or other parties to the insolvency proceedings. The personal data are necessary for the purpose of proper identification of the creditor of the bankrupt (e.g. for the purpose of being able to deny his claim by another creditor). However, is it appropriate that this data should be made available to the general public? Clearly not. The new insolvency register should therefore serve truly as an information portal, but only to a limited extent providing information to the uninterested public. The solution, in our view, is to create a system that would require proper identification (e.g. login in the form of a name and password) of the subject to provide personal data - this would legitimise the subject in question. At the same time, we consider that such access should be granted exclusively to the parties to the insolvency proceedings in question - i.e. the court, the insolvency administrator and the registered creditors.

We consider that the stated hypothesis, i.e. that the trend towards digitisation of insolvency proceedings interferes with the rights of creditors protected by the Charter of Fundamental Rights of the European Union beyond what is necessary, has been confirmed by the above-mentioned analysis. The public availability of data to an unlimited number of subjects is not necessary and may have more negative consequences than positive ones. *De lege ferenda*, we would suggest limiting the accessibility of the data published in the insolvency register to the circle of subjects involved in the insolvency proceedings. This will prevent possible unwarranted interference in the private sphere of creditors. The transparency of the insolvency proceedings will be affected, but only as to the identification of the creditors of a particular debtor. In our opinion, this will have no impact on the availability of information whose disclosure is necessary.

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