



MEĐUNARODNO KRIMINALISTIČKO UDRUŽENJE  
INTERNATIONAL CRIMINALISTIC ASSOCIATION

## 7. MEĐUNARODNA NAUČNO – STRUČNA KONFERENCIJA

„KRIMINALISTIKA IZMEĐU  
REKONSTRUKCIJE I  
PROGNOSTIKE KRIMINALITETA  
I SIGURNOSNO RELEVANTNIH  
DOGAĐAJA“

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# Exploring the right to be forgotten in a digital world

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# The right to be forgotten

- The right to erasure of the data or so called "the right to be forgotten" can be defined as the right which enables the data subject to have his or her personal data erased if they do not want further processing of his/her personal data.





# The right to be forgotten

- If the controller of the data within a company or organization no longer has legitimate reasons for further processing that data.
- The right under the General Regulation on Data Protection (GDPR) - Regulation (EU) 2016/679 issued in 2018 meant that members of the public can make a request verbally or in writing.
- The regulation also sets out erasure statutory obligations under the EU law



# The right to be forgotten in a digital world

- The right to be forgotten has been at the center of a debate about balancing privacy and free speech in the internet age.
- In Europe, both principles are written into the European Union Constitution.





# The right to be forgotten in a digital world

- In order to invoke the right to erasure of personal data at least one of the following conditions must be met:
  - Personal data is no longer necessary to the fulfilment of the purpose of their initial collection.
  - Withdrawal of the consent which the data subject submitted previously to the controller regarding the processing of his data.



# The right to be forgotten and its legal framework within the Regulation (EU) 2016/679



- Processing of the personal data can be based on the consent or any other legal ground.
- When the processing is based on consent, the data processing controller must prove the existence of the data subject's consent.
- The text of the consent must be written in a simple and clear language so that the data subject, even if he or she is a child, can fully understand what personal data is being collected, as well as the purpose and the consequences of the collection



# The right to be forgotten and its legal framework within the Regulation (EU) 2016/679



- The data subject can withdraw his/her consent at any moment, which then dictates the reason to cease the data processing.
- The data subject can also demand the erasure of his/her data on the basis of the withdrawal of the consent.
- The data subject must be informed about the right to withdraw his/her consent any time before issuing their consent, the withdrawal procedure should be as simple as



# Challenges in applying the Regulation

- Children enjoy a special category with a special kind of protection because the provisions of the child's consent are additionally restrictive.
- The minimum age of a child who can give his/her consent varies from one EU member state to another (from thirteen to sixteen years).
- If the child is younger, the consent can be given by the holder of the parental responsibility.





# Challenges in applying the Regulation

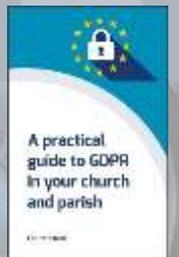
- Because of the fact that the child can be unaware of the consequences of giving consent, the data subject can withdraw consent they gave as children even after the requisite age, and so exercise the right to the data erasure.
- Although they are not mentioned as a separate vulnerable group for consent purposes they are seen as a vulnerable group along with the elderly and those with mental health issues





# Challenges in applying the Regulation

- The Slovenian Administrative Court held that the right of erasure did not entitle an individual to have their personal data erased from the Baptismal Register.
- A parish of the Roman Catholic Church was processing the application of an individual on the right of erasure.
- The individual requested their personal data to be erased from the Baptismal Register, because they were no longer a member of the church.
- [https://gdprhub.eu/index.php?title=Upravno\\_sodi%C5%A1%C4%8De\\_-\\_TBD&mtc=today](https://gdprhub.eu/index.php?title=Upravno_sodi%C5%A1%C4%8De_-_TBD&mtc=today)





# Challenges in applying the Regulation

- When it concerns a personal data procedure in scientific, historical or statistical purposes, the right to object is restricted.
- Instead of ceasing with the data processing, the data subject's demands can be met by the alternative methods of the data protection, such as minimisation or pseudonymisation of the data.
- The DPA decided that the Baptismal Register is an archive document according to the national act and that the individual cannot claim the right of erasure when the processing is needed for archiving purposes in the public interest.



# Challenges in applying the Regulation

- The main problem considering the implementation of the right to erasure represents the erasure of data which has previously been published publicly, especially in the sphere of the Internet.
- Therefore, the implementation of measures considers the accessible technology and the related costs during the procedure of deletion of all links, copies or reconstruction of the disputed personal data, which means that it is not possible to put unrealistic demands on the controller.



# The relation between the right to erasure of the data and the right to access the information



- Agencija za zaštitu osobnih podataka (Croatian Personal Data Protection Agency).
- Croatian supervisory authority responsible for monitoring the application of the GDPR.
- The right to access the information in Republic of Croatia is defined as the fundamental human right by the provision of the Constitution which confirms the right to access the information which is held in the dominion of the public administrative bodies



# The relation between the right to erasure of the data and the right to access the information



- Apart from the Constitution, the right to access the information is determined by the European Convention on the Human Rights, Convention on Access to Official Documents and the Law on the Right to Access the Information.
- The right to access the information cannot be applied to the court, administrative and other procedures, the information from the scope of the national intelligence system because of their secrecy and the classified data from the scope institutions



# The relation between the right to erasure of the data and the right to access the information

- In the case of a conflict between the right to information and the right to the erasure of the data, it is necessary to formally consider proportionality.
- A proportionality test underpins decisions surrounding access or erasure of the data.
- The situation is not always black and white, therefore it is sometimes difficult to define the predominance of one of these rights and this is why it ends up in court procedures.



# CONCLUSION

- The Internet and social networks changed the lifestyle of the modern man and made personal data easily accessible to a huge spectrum of people.
- Organizations are very interested in certain data to use for their own purposes.
- Consequently, citizens have to have enhanced protection, which can (in certain cases) mean erasure.



# CONCLUSION

- The right to erasure of data must be balanced with the right to access the information.
- The absolute application of the right to erasure would potentially result in destruction of vital data protect citizens from undesirable and unlawful procedures.
- Therefore, in the near future we should continue with exploring the balance between these competing rights and needs of democratic societies and government institutions.