Chapter 4
The Electronic Surveillance of Public Assemblies: Political Privacy & Public Anonymity in Greece

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ABSTRACT

The electronic surveillance of public assemblies has been an issue highly debated in the Greek public arena. The circumstances that brought this internationally contested topic in the public focus were the parliamentary introduction of Law 3625/2007 in Greece and the legislative enactment of an exemption from the data protection legislation for all police activities involving data processing during public assemblies. This paper will argue that the electronic surveillance of public assemblies affects both the privacy of political views (political privacy) and the activism (public anonymity) of a citizen. Along this line, the paper offers a combined analysis of the right to data protection [Art. 9A] and the right to free assembly [Art. 11] as acknowledged in the Greek Constitution (1975/86/01/08). As underlined, both rights constitute the basis for the protection of political privacy and public anonymity and preclude any legislatively posed limitations to their enjoyment. In the end, three key cases of the European Court of Human Rights shed light to the legitimacy of such a ‘panoptic’ surveillance of public assemblies.

I. INTRODUCTION: THE ELECTRONIC SURVEILLANCE OF PUBLIC ASSEMBLIES

The electronic surveillance of public assemblies has been a controversial topic in the Greek public arena, particularly during the parliamentary discussion of Law 3625/2007. This Law exempted all police activities involving data processing during public assemblies from their obligation to protect the fundamental principles deriving from the rights to privacy and data protection (Art. 8). This paper argues that such a form of surveillance of the citizens’ political activism affects the values protected under the Greek Constitution, particularly the right to data protection and the freedom of assembly. In order to examine this issue in depth, we pursue a three-level analysis: a) we analyze the content...
of both the right to data protection [Art. 9A of the Greek Constitution] and freedom of assembly [Art. 11 of the Greek Constitution], separately and combined, and discuss the concepts of political privacy and public anonymity, and the way they guarantee the protection of public assemblies, b) we examine how the legislative exemption affects such constitutional values and guarantees and c) we use three key cases of the European Court of Human Rights to further examine the legitimacy of the electronic surveillance of Greek public assemblies.


a. The Right to Data Protection and the Concept of ‘Political Privacy’

One of the most perceptive choices of the Constitutional Revision of 2001 was the acknowledgment of the right to data protection, as an enhanced version of the right to privacy (Art. 9(1), section b of the Greek Constitution) in the new Art. 9A of the Greek Constitution. It is exactly this new right that enables us nowadays to ground a solid argumentation against the constitutionality of Art. 8 of the above mentioned Law 3625/2007. Thus, it was rightly supported in the Greek constitutional theory (Venizelos, 2001) that the scholarly underestimation against the constitutionality of Art. 8 of the above mentioned Law 3625/2007. Thus, it was rightly supported in the Greek constitutional theory (Venizelos, 2001) that the scholarly underestimation of novel constitutional provisions, such as the right to data protection, that ultimately strengthened the constitutional protection of fundamental rights, gestated the ‘danger of interpretational misunderstandings’ (ibid, p. 476-477). The introduction of new fundamental rights in the constitutional text has received positive (Anthopoulos, 2001; Contiades, 2002) and negative reactions. As far as the latter are concerned, it is characteristically noted (Manitakis, 2007) that ‘it is wrong (…) to suggest that a fundamental right does not possess constitutional power or weight, when not established explicitly in the constitutional text’ (ibid, p. 19). Indeed, fundamental rights do exist even if not specifically integrated in the constitutional text (Anthopoulos, 1992), but at any rate their specific constitutional acknowledgment renders their interpretation a much more firm and secure enterprise. Otherwise, if the legitimised by the popular sovereignty constitutional legislator does not guide their interpretation, the judiciary will on a case-by-case basis.

The right to data protection as acknowledged in Art. 9A of the Greek Constitution is identified as an individual’s ‘informational self-determination’ (Anthopoulos, 2004, pp. 520-521). This concept, which was initially introduced by the German Federal Constitutional Court (Skouris, 1996, p. 117; Gerontas, 2002, p. 69) is clearly reflected in the text of Art. 9A of the Greek Constitution: ‘Everyone has the right to protection from the collection, processing and use, especially with technical means, of his personal data, as provided by law’ (Mitrou, 2001, p. 83; Sotiropoulos, 2006, p. 118). A very substantial element of this right is the enhanced protection of ‘sensitive data,’ meaning data referring to ‘racial or ethnic origin, political views, religious or philosophical views, association with syndical unions, health, social welfare and erotic life, as well as association with any groups related to the above’ (Article 2 section b, of the Law 2472/1997 concerning the “Protection against the process of Personal Data”). Therefore, any legislative modification that would weaken the acquired level of the protection of sensitive data would be subjected to the highest level of scrutiny according to Art. 25(1) of the Greek Constitution, since it interferes with the very core of the right to data protection (Sotiropoulos, 2006, p. 119).

The enhanced legislative and constitutional protection provided to data related to political views and association with syndical unions, which are deemed as ‘sensitive,’ may at first seem awkward, since in a democratic state there