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Keynote:

The User Perspective – Democracy and the Citizen: Criteria for Security Technologies

Do we want to live in democratic societies?

Are there typical elements of a democratic society?

If so, are we able to measure democracy?

Are we able to measure security technology with the standards of democracy?

Is the idea of democracy important in proportion to the citizen rights?

Is the idea of democracy important in proportion to the rights of one person?

For example: for my fundamental rights?

Is a free society a requirement of vital democracy?

Is freedom of each person an essential requirement of democracy?

Concerning democracy: Are there any differences in rank between fundamental rights?

If so, are there fundamental rights, which are to be protected *in any case*?

If so, are they to be protected, even if the potential majority would deny fundamental rights for certain persons?

For terrorists, for example?

Are there fundamental rights, which are needed for the democratic process?

If so, do we have to take necessary steps concerning security technology?

In my point of view, there is only one answer to all these questions: Yes.

This answer is easily found. Unfortunately it is not easy *to give reasons* to this answer. Nevertheless I will try to present some theses.

We can make out some typical elements of a vital democratic society. The Treaty of Lisbon emphasizes the “universal values of inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of Law.”¹ According to the Treaty of Lisbon Article 1a of the Treaty of the European Union shall provide: “The Union is founded on the values of *respect for human dignity*, freedom, democracy, equality, the rule of law and *respect for human rights*, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which *pluralism*, non-discrimination, *tolerance*, *justice*, solidarity and equality between women und men prevail.” Next to this, Article 2 Par. 2 of the Treaty aims “an area of *freedom*, *security* and *justice* without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”

Comparable to the Treaty of Lisbon, there are typical elements of a democratic society, for example the principle of the equality of all citizens (Art. 8), and the *principle of open, transparent and regular dialogue* between institutions and stake holders and civil society (Art. 8 B, Par. 2).

Furthermore the quoted Articles 1a and 2 show a close relationship between respect for human rights and democracy. That is why Article 61 provides: “The Union shall constitute an area of freedom, security and justice *with respect for fundamental rights* and the different legal systems and traditions of the Member States.”² In a democratic society the link between security and the respect for human rights is inalienable. According to this relationship the Treaty of Lisbon preserves existing rights while introducing new ones. In particular, it guarantees the freedoms and principles set out in the *Charter of Fundamental Rights*. Its provisions, which concern civil, political, economic and social rights, are given a binding legal force.

When implementing EU-law into national law the Member States have to find a *fair balance* between all values, rights and aims provided in the Treaty of European Union.³

Please note in this context, that Article 1a of the Treaty of Lisbon makes a *difference* between the *value of human dignity* and the *respect for human rights*. Let us have a closer look at it:

¹ Amendments to the treaty of the European Union and to the Treaty Establishing the European Community, Art. 1 (Preamble), Official Journal of the European Union, C 306/10.

² Official Journal of the European Union, C 306/57-58.

³ E.g. see Court of Justice of the European Communities, Judgement in Case C-275/06 (Productores de Música de Espana (Promusicae) v Telefónica de Espana SAU).

In some Member States⁴ the respect for human dignity is also explicitly mentioned as one of the supreme constitutional values. Furthermore human dignity is mentioned as a supreme value in several European and international conventions. For example: As a violation of human dignity, torture is forbidden by several conventions, e.g. Article 3 ECHR and United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵ The respect for human dignity *without any exception* is an intrinsic feature of a free, democratic society. E.g. the German Constitutional Court (Bundesverfassungsgericht) often has stressed, that human dignity is to be *absolutely* respected.⁶

Apart from this, a vivid democracy depends on the guarantee of several human rights. In other words,

democracy can not work

without freedom of information (“right to know”),

without freedom of speech,

without freedom of assembly, -

and without respect for privacy.

In a free democratic society, there is to be found a *fair balance* between the requirements of Security and the respect for the cited freedoms.

Democracy requires an adequate freedom of information, because people need a pluralism of information to develop a personal political opinion and to prepare political decisions. Also, the “Right to know” leads to more transparency which is essential for anti-corruption measures.

Democracy requires an adequate freedom of speech and freedom of assembly to reach a political discourse.

Finally, democracy requires the respect for privacy, also in a sense of data protection. Why? Privacy means to be able to make free decisions – and to follow these decisions. Therefore data protection as a fundamental right is a necessary element of a liberal system of communications. Participation and involvement in political decision-making and free trade require the ability of every citizen to base his actions on his own informed opinions and free will. If I

⁴ E.g. note Article 1 Par. 1 German Constitution (“Grundgesetz”); Art. 2 Par.1 Const. Greece; Art. 1 Const. Port.; I § 2 Par. 1 Const. Sweden.

⁵ N. Chapter IV Treaty 9, UNTS = German BGBl. II 1990, p. 246.

⁶ Note Bundesverfassungsgericht (German constitutional court), BVerfGE 109, p. 279, 311.

am not able to predict, which personal data are disclosed to my social surrounding, I will try to avoid attracting attention. For example: If I foresee being perceived at an assembly, I may stay away from it.⁷ As a result, privacy and data protection are key factors for democratic decision-making processes.

According to these aspects: Which necessary steps do we have to take concerning security technology? In my point of view security technology shall guarantee

- Transparency
- Openness
- Careful Treatment and
- Respect for legal requirements.

Transparency means, that security technology usually has to be recognized by the supervised citizen. There have to be very important reasons for secret surveillance. Citizens have to get the chance to get information about established security technology, as it is required e.g. by Article 12 Data Protection Directive⁸.

Openness requires truthful information about the pros and cons of security technology in special contexts. In a view of a democratic decision-making process the non-disclosure of evaluation results concerning security technology are seen as highly problematic.

Security technology shall enable **careful treatment**. It has to realize processing without specific personal referencing, for purposes other than applications relating to persons or which can be related to persons. Where personal referencing is not necessary for security purposes, it must be avoided. Possibilities of erasure, anonymisation or aliasing are to be used. In this sense, careful treatment is an intrinsic part of proportionality, which is accepted as a high value provided in the law of European Union.⁹ Universal surveillance of a person violates his human dignity. Therefore security technology shall provide interfaces only when it is necessary (comparable to the principle of "occam´s razor").

Security technology also has to verify compliance with **legal requirements**. For example, Article 12 b) Data Protection Directive guarantees the rights of rectification, erasure or block-

⁷ This link between privacy and democracy is stressed by Bundesverfassungsgericht, BVerfGE 65, p. 1, 42-43.

⁸ Directive 95/46/EC.

⁹ E.g. Court of Justice of the European Communities, Judgement in Case C-275/06 (footnote 3).

ing of data. Security technology has to support the performance of these rights. Proof of causality should also be facilitated.

Finally, security technology has to be embedded in a **good privacy practise**. For example, information signs make closed circuit television transparent, business companies shall establish a good data protection management etc.

Realizing these requirements security technologies are able to contribute a significant way to a democratic society. Thank you.