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Spiros Simitis – his legacy: Europeanisation and Internationalisation

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Contents

I.Introduction..... 3

II. The three possible ways of professional involvement with the law: Spiros Simitis excelled in all of them 4

III. The “father” of data protection 5

IV. The guardian of data protection 8

V. Excelling in fundamental research on data protection law, as well10

VI. Some concluding, and personal, remarks12

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I. Introduction

Speaking after so many important contributions on Spiros Simitis' multifaceted work and anticipating also the contribution of Paul Schwartz on data protection that follows, it is difficult for me to present any new information to an audience that is already familiar with his involvement in the various fields of law that he chose to serve. This difficulty, however, immediately brings to light the first of a series of points that I would like to raise today as regards Spiros Simitis' European and international work: although many among us are familiar with aspects of his international work, be it in Europe or beyond, I imagine that only a handful of people, in fact only his closest collaborators, are familiar with the full breadth of his international involvement. In essence, Spiros Simitis pursued all different fields of law presented here today (legal philosophy, family law, labour law, data protection law) to the fullest extent possible, both at national and at international level; these fields laying far from one another, a detailed account for all of them would be practically impossible.

It is in view of this, objective, limitation (and also because of a subjective one: I am afraid that I am only an expert in data protection law) that attention here will be given to the European and international aspects of Spiros Simitis' involvement with personal data protection law only. This arbitrary choice undoubtedly does an injustice to the other fields of law that he chose to serve; at the same time, however, it serves as evidence of the immense difficulty for anybody else simply to follow the paths that he not only opened but in which he also excelled.



II. The three possible ways of professional involvement with the law: Spiros Simitis excelled in all of them

In an attempt to somehow organise the different lines of activity that Spiros Simitis took up while working on personal data protection law, so as to present them in a coherent way, I will make the (modest) assumption that any one can deal professionally with the law in any one of the following three ways: they can either write new law, or take care (ie. expand) already existing law, or practice law. Admittedly, the first two categories fall under the same chapter, ie. law-making; however, I felt that I needed to differentiate between the rare cases of writing new law as opposed to the more usual ones of working on already existing texts of law. The third category, from its part, is a general category intended to accommodate both professional and academic legal activity.

If agreement can be broadly reached as regards the above three ways of dealing professionally with the law, then it would perhaps not be far-fetched to assume that each one of us here today (supposing that everybody attending this commemorative ceremony is a legal scholar) is engaged in at least one of the above ways with the law, meaning that they either have written new law (these days being particularly fruitful in this regard, at least for those involved with the regulation of new digital technologies), or have tried to improve already existing law, or are practicing law as academics or legal practitioners. It can also be the case that some among us, if they are lucky and good enough in what they do, they may have engaged in even two of the above activities, for example being law professors who have also participated in law-making committees for their respective fields of law, or legal experts who have worked for the formulation of new law and are also assisting its implementation in practice.

My second point therefore today is that Spiros Simitis was a unique case of a legal scholar that excelled in all three ways of professional involvement with the law. Essentially, Spiros Simitis took personal data protection under his wing: he wrote the first data protection act, he subsequently took care that the newly introduced field of law survived and



that nobody tampered with it, while, at the same time, carrying out academic fundamental research of the first order. In this way, Spiros Simitis accomplished more than anybody else in the field of personal data protection law, excelling in all three possible ways of involvement with it. (It is needless also to mention in front of this distinguished audience that, although the analysis that follows will focus only on the European and international aspects of his work substantiating my claims, Spiros Simitis accomplished all of the above at national, German, level as well.)

III. The “father” of data protection¹

Spiros Simitis wrote the first data protection act, the, famous by now, first Hessian Data Protection Act of 1970.² While, admittedly, due acknowledgement to that Act has been given in each and every introductory text to data protection surveying its background, perhaps less attention has been paid to the influence that this legal text exercised in all data protection acts that followed – including today’s GDPR.³ Basically, in a 17-articles’ law, all the important elements are there: individual data protection rights, the Data Protection Authorities (including their independence), the notification system (replaced in the GDPR by the principle of accountability), confidentiality, data minimization, etc. Most importantly, however, a new field of law was baptized: the reason that we talk today about “data protection” and not “information protection” or “files protection” (not to mention the clear distinction with privacy and any property-like rights on data protection) is because that first law talked about “data protection” (Datenschutz) and “data protection authorities” (Datenschutzbeauftragter).

However, his involvement with the drafting of new law did not stop at national level – in fact, for Spiros Simitis it had only started. During the 1970s law-making work at international level was undertaken by two international

¹ In the words of Francis Aldhouse, deputy to the first UK Information Commissioner (formerly Data Protection Registrar), “His Master’s Voice: In his 1985 Thomas Jefferson Lecture, Professor Spiros Simitis – one of the distinguished fathers of data protection and first Commissioner for the German state of Hesse - told us [...]” (Aldhouse F, *A reflection on the priorities of a data protection authority*, Computer Law & Security Review, Volume 34, Issue 4, 2018).

² Hessisches Datenschutzgesetz vom 7. Oktober 1970.

³ 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).



organisations, the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe (CoE). In fact, work between these two (neighbouring, both being headquartered in France) organisations took place in parallel: the OECD set up a law-making committee in 1978 and the CoE followed suit.⁴ Spiros Simitis participated in

both of them.⁵ Then, in the early 1980s two basic texts for international data protection came out almost simultaneously: The OECD published its Guidelines in late 1980,⁶ and the CoE its Convention 108⁷ a few months later, in early 1981.

Both texts were of tremendous importance for international data protection, each one for its own reasons. The OECD text was the first to exit the boundaries of Europe: until its release personal data protection was more or less considered an intra-European case, with Sweden, Germany and France having released their own national data protection acts but, for example, the USA refusing to do so. The OECD Guidelines therefore opened up the scene for third countries to enter the data protection scene, and indeed, for example, Australia, and Canada took up this opportunity. Convention 108, for its part, developed into a text of historic significance for global data protection. Even after the release of the EU Data Protection Directive 1995 it continued to be relevant to EU Member States because it was the only text that applied also to security-relevant personal data processing.⁸ Outside the EU, it constituted the global data protection standard.⁹ Spiros Simitis participated in the drafting of both texts – their provisions remained in effect for decades; in fact, they were amended more or less around the time that the GDPR was released, the OECD Guidelines in 2013¹⁰ and the CoE Convention 108 (that is by now called 108+) in 2018.¹¹

⁴ See Stadlen G, *Survey of National Data Protection Legislation*, Computer Networks (1976), Volume 3, Issue 3, 1979, p.176.

⁵ See Kirby M, *The history, achievement and future of the 1980 OECD guidelines on privacy*, International Data Privacy Law, Volume 1, Issue 1, February 2011, p.9.

⁶ OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, adopted on 23 September 1980.

⁷ Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28 January 1981, European Treaty Series - No. 108.

⁸ See Paul de Hert / Vagelis Papakonstantinou, *The Council of Europe Data Protection Convention reform: Analysis of the new text and critical comment on its global ambition*, Computer Law & Security Review, Volume 30, Issue 6, 2014, p.635.

⁹ See Graham Greenleaf, *'Modernising' data protection Convention 108: A safe basis for a global privacy treaty?*, Computer Law & Security Review, Volume 29, Issue 4, 2013.

¹⁰ OECD Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013) [C(80)58/FINAL, as amended on 11 July 2013 by C(2013)79].

¹¹ CoE, Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, 17-18 May 2018.



During the 1990s it was time for Spiros Simitis to turn his focus to the EU. By that time almost all EU Member States had enacted national data protection laws, and harmonisation among their various provisions and models became a pressing matter. The European Commission intervened, and after prolonged negotiations the EU Data Protection Directive 1995 was released.¹² Spiros Simitis served as an advisor of the European Commission, assisting it in providing

the first draft and also during the long and tenuous negotiations, which led to a Directive heavily influenced by the German data protection act, which of course, in turn, was influenced by his ideas.

The pinnacle, however, of Spiros Simitis' involvement with the drafting of new (EU) data protection law came a bit later. In the late 1990s he served as the Head of the EU's Committee for new Fundamental Rights that was established by the European Commission after the Treaty of Amsterdam. It was this Committee that, under his guidance, drafted Article 8 of the EU Charter of Fundamental Rights, that (through ratification by the Lisbon Treaty) remains in effect today and also led to Article 16 TFEU that in turn led, among others, to the GDPR.

The above sum up Spiros Simitis' involvement with the drafting of new data protection law. In fact, he was the one that wrote the first relevant act (baptising the whole field of law in the process) and also the one that made sure that a new human right, the individual right to data protection, was adopted at the highest possible level, in the text of the EU Treaties. From birth, therefore, until maturity, it was Spiros Simitis that made sure that this new field of law would endure, and prosper, within political and market conditions that, as everybody in this audience is well aware, were not always favourable to a new human right regulating, and thus placing controls on, information processing.

¹² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995.



IV. The guardian of data protection

Spiros Simitis left nothing to chance when it came to data protection law. Having written the first data protection act and served as one of the first data protection commissioners,¹³ he co-shaped implementation at European and international level, making sure that this new field of law was applied, and furthered, as necessary.

It was in this context that during the first, sensitive, years after the introduction of Convention 108, Spiros Simitis stayed close to the CoE, serving as the Chair of its Committee of Experts on Data Protection from 1982 until 1986.¹⁴ The CoE monitored and furthered implementation of its data protection provisions, as continues to be the case today, through an administrative mechanism whereby a permanent Consultative Committee (the so-called T-PD Committee, established in Chapters V and VI of Convention 108 and 108+, respectively) is systematically assisted by external experts. It is within the T-PD Committee that implementation work is taken up, in the form of new guidelines, recommendations, accession assessments etc. While participation in the T-PD Committee itself is reserved for members of national DPAs or Ministries' employees, Spiros Simitis even after 1986 practically never stopped assisting it as an external expert – his latest contributions appearing as late as in 2000.¹⁵

¹³ Spiros Simitis served as the Data Protection Commissioner in the German state of Hesse from 1975 to 1991.

¹⁴ See Lee Bygrave, *Data Privacy Law in Context*, Data Privacy Law: An International Perspective, Oxford University Press, 2014, p.20.

¹⁵ See Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data (ETS No. 108) (T-PD), *Abridged report of the 16th meeting (Strasbourg, 6-8 June 2000)*, available at <https://rm.coe.int/168050a022>, accessed on 3 March 2024.



During the same period of time, as already discussed, Spiros Simitis served as an advisor to the European Commission,¹⁶ first when the focus was turned from Strasbourg to Brussels, for the release of the EU 1995 Data Protection Directive, and, later, in a formal capacity of the Head of the EU's Committee for new Fundamental Rights.

In this way, Spiros Simitis made sure that data protection implementation in Europe would not falter, achieving, while doing this, to be listed among a closed group of international data protection experts about whom it was noted that

“While [such policy entrepreneurs] have usually exercised influence under the aegis of particular organizations, they have sometimes succeeded in stamping their personal vision on the policy of the respective organization.”¹⁷ It is at this, highest possible, level that Spiros Simitis attended already existing data protection law, within the second alternative way to engage with it discussed above.

¹⁶ See Martin Rost / Constanze Kurz, *Spiros Simitis: "Man spielt nicht mehr mit dem Datenschutz!"*, netzpolitik.org, 13 October 2015, available at <https://netzpolitik.org/2015/spiros-simitis-man-spielt-nicht-mehr-mit-dem-datenschutz/>, accessed on 3 March 2024.

¹⁷ See Lee Bygrave, *ibid.*



V. Excelling in fundamental research on data protection law, as well

As far as the third of the alternative ways for anyone to engage with the law discussed above is concerned, meaning to practise it, Spiros Simitis, in his academic capacity within the University that today hosts this ceremony, carried out research of the first order both nationally (which is of course something already well-known to this audience), as well as, internationally, both in Europe and beyond, exploiting to the fullest extent possible both his multilingualism and, as it would seem, his indefatigable willingness to travel.

In an age of online library catalogues and huge internet repositories for any and all academic scholarship it makes little sense for me to list, or even try to somehow summarise, Spiros Simitis' extensive scholarship on data protection outside (and, of course, also inside) Germany. A simple internet search would suffice, in this regard. Similarly, it makes little sense for me to highlight today any personal favourites among his non-German language scholarship: again, internet metrics being relentless, texts such as "from the market to the polis"¹⁸ will remain classics within international personal data protection scholarship.

What I think does make sense, therefore, today, is for me to only make some general remarks about Spiros Simitis' Europeanisation and Internationalisation project (because I think that this is how he treated it) for personal data protection. My first point is that in the mid-1970s he hurried to publish a first international collection of data protection

¹⁸ Spiros Simitis, *From the Market to the Polis: The EU Directive on the Protection of Personal Data*, Iowa Law Review 1995 March; 80(3).



laws.¹⁹ This, to me at least, seems like a deliberate move: at a time when he knew that data protection laws were being drafted in Germany and France and also in the OECD and the CoE, he chose to publish a book proving to legislators that they were in the right path – and also setting the tone, for the same purposes.

The second point I would like to raise is that Spiros Simitis was academically at home on both sides of the Atlantic – something that is far less, if at all, done today in the field of data protection. For many years during the 1980s and the

1990s, he held visiting academic positions in a number of USA universities; some of his best articles on personal data protection appeared in US academic journals. Again, this does not seem haphazard: during that time the issue whether the USA would adopt a federal data protection act remained still open. Spiros Simitis must have felt that his presence in the USA would help the data protection cause.

Finally, Spiros Simitis made active use of his multilingualism (he was fluent in French, German, Greek, and English, with also very good knowledge of Italian and Spanish) to give countless interviews in various press outlets on data protection matters around the globe. Although in this case the internet fails us, because press organisations are far less meticulous in keeping their archives online than universities,²⁰ the fact remains that, whenever European data protection needed a public face (and this was relatively frequent, given that data protection regularly became and becomes political and occupies headlines), Spiros Simitis was always willing, and able, to provide it.

¹⁹ Ulrich Dammann / Otto Mallmann / Spiros Simitis, *Data protection legislation : an internaional Documentation*, Metzner, Frankfurt am Main, 1977.

²⁰ For example, an important interview to an online press outlet that has been referenced by the OECD in its *The OECD Privacy Framework*, 2013, available at https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf (accessed on 3 March 2013) is, apparently, no longer available online.



VI. Some concluding, and personal, remarks

This is, therefore, the point where I would like to conclude: Out of the three possible ways for anybody to engage with the law, Spiros Simitis excelled at all three at the highest possible level both inside and outside Germany: he not only wrote new law, but also furthered it in the decades that followed, achieving among others to create a new human right, and while, during all this time, producing academic research of the highest quality. Nobody else, even among the highly distinguished individuals that formed the small group of people who treated personal data protection as their personal cause during the 1970s, 1980s and 1990s, was able to accomplish this.

However, now turning from objective to highly subjective remarks, if you would allow me to take up a few more minutes of your time, I do not believe that we have gathered here today in order simply to celebrate a career, even one as distinguished as that of Spiros Simitis. A distinguished career can be had, it may well be the result of circumstances, of luck and opportunity. The critical question would therefore be, were all of the above performed by luck or by choice? Were all the formidable accomplishments of Spiros Simitis described above achieved through circumstance, because he happened to write the first data protection act and later he wanted, and was able, to defend his brain-child as best as he could? Or, did he choose to be so actively involved with this new field of law?

Of course, I could not reply to this question, very few people could. What I could do, however, is to try to address it from experience, my personal one of Spiros Simitis as my “Doktorvater”. As an undergraduate student in the Athens Law School, I never expected to study in Germany. Because I liked public law, I learned French as a second language, Germany being the first option mostly for those interested in private or criminal law. However, during these same



years I also discovered that I liked computers and, while desperately trying to combine the two, it was during a short stay for an LLM in the UK that, to my great surprise, I discovered that a Greek professor in Germany was prominent in the personal data protection field. Although I did not know any German, Spiros Simitis kindly accepted me as his Ph.D. student and was always there for me, to resolve even personal, relocation difficulties. When my language skills did not progress as fast as my Ph.D., he kindly offered to help, unearthing a provision in this University's statutes that allowed for dissertations in English. I may be among the first students in this University, or even in Germany, to have taken advantage of these provisions.

What I did not know back then, being a newcomer in the field, was that during these years, in the late 1990s, Spiros Simitis was at the top of his involvement with global data protection, serving as the Head of EU's Committee for new

Fundamental Rights, holding various academic positions globally and also consulting the CoE. But, still, he always found the time to go out of his way in order to help an, apparently endlessly demanding, Ph.D. student.

This, I think, could therefore provide a reply to the question above, whether his deep and substantial involvement with personal data protection at European and international level came by chance or by choice. Spiros Simitis was not simply a law-maker who happened to draft the first data protection act, a brilliant academic and a forceful data protection proponent who, having done an excellent job, used his formidable abilities to protect his brain-child. He was a person who chose to do it, who chose to be involved and who chose to serve human rights locally and internationally, out of a genuine wish and willingness to help his fellow humans. And this is what, to me at least, it actually is that we are commemorating here today.