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INCREASING RESILIENCE
IN SURVEILLANCE SOCIETIES

Subject access in a [new] democracy (The case of Hungary)

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Does it matter how old a democracy is?

Data protection / information privacy is a modern right

- ▶ developed in well-established democracies
- ▶ imported by new democracies

→ virtual advantage of the newcomers

- ▶ but without the organic development of the rights

→ positive influence on law and practice

- ▶ but in a different milieu, social and political traditions

*Ctrl+C
Ctrl+V?*

"new"

"old"

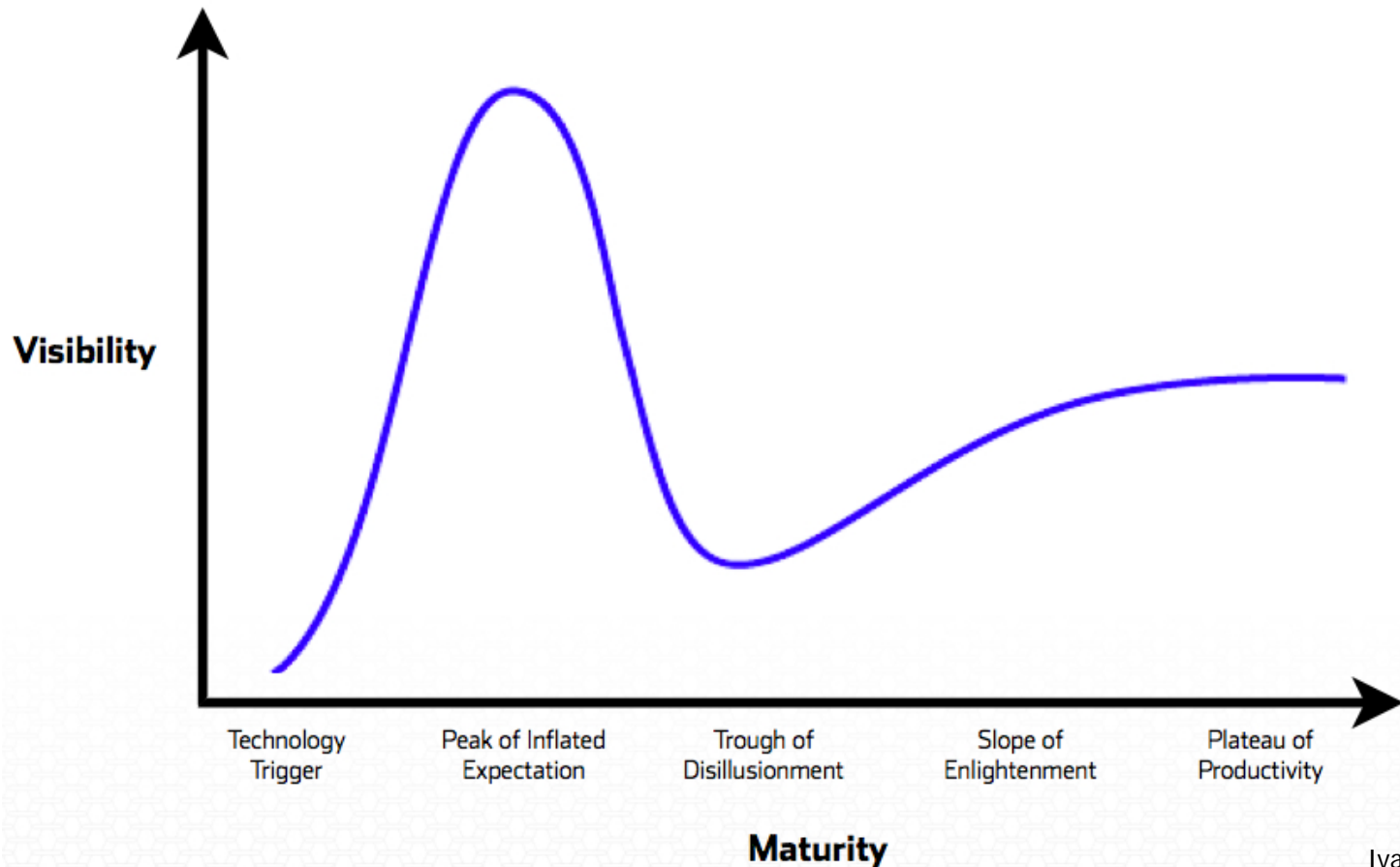
"new"

"new"

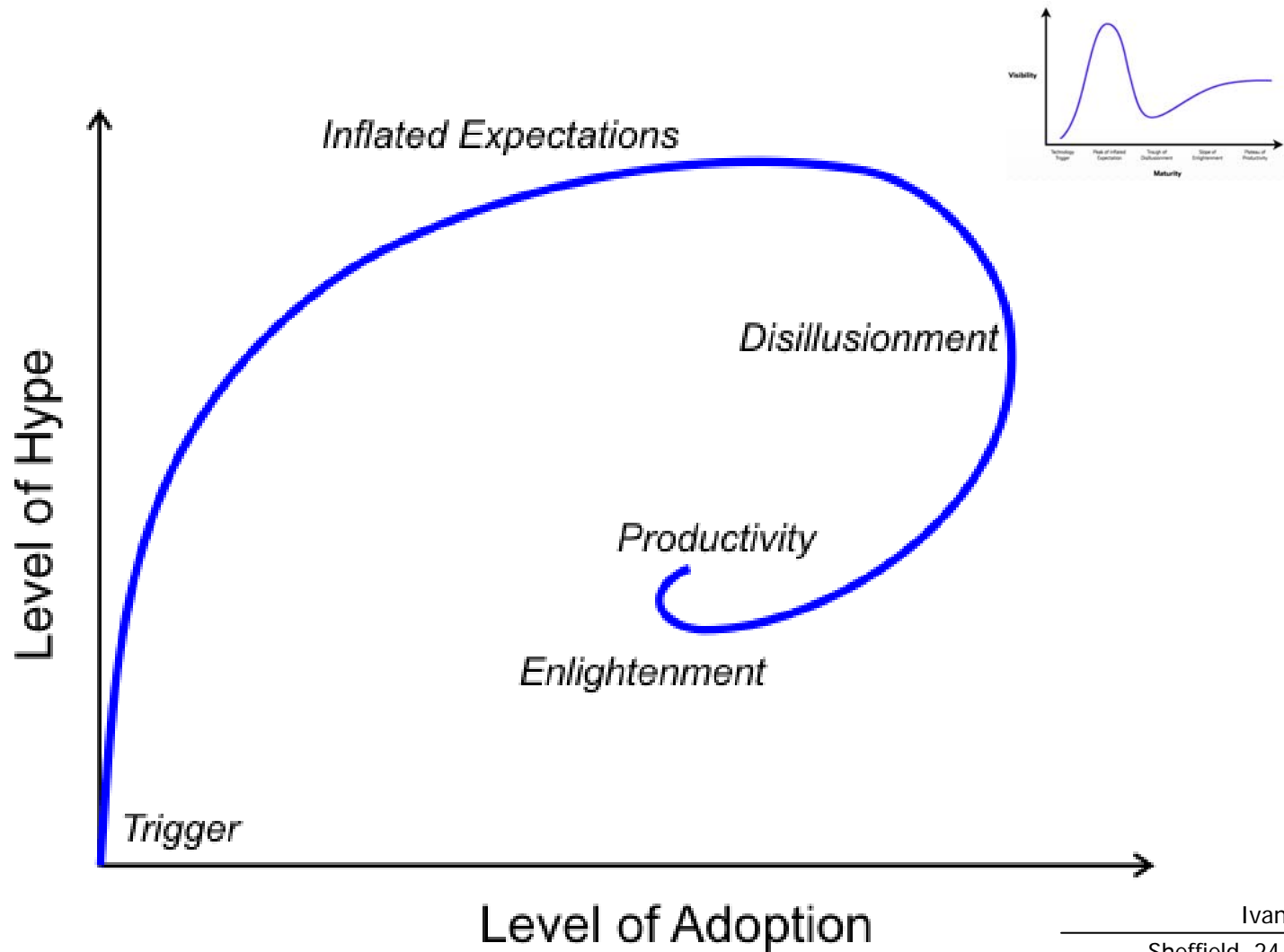
*"old"
but different*

*the region is
not uniform!*

The hype curve of [new] democracies

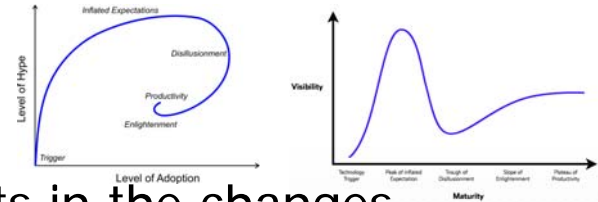


The hype curve of [new] democracies



The hype curve of [new] democracies

"Trigger": the collapse of the old regime, the role of information rights in the changes



"Inflated Expectations": new laws and institutions established in a euphoria, rights and freedoms become important, ombudsmen serve as a panacea, the development of fundamental rights seems to be a one-way road

"Disillusionment": social inequalities grow, economic crises hit; new/related capitalism becomes norm, a new generation grow up with new/old values

"Enlightenment": individuals and social groups learn the usefulness of the new rights

▶ *"Productivity"*: exercising of the new rights become practice

The frame of the research in Hungary

- The right to privacy and data protection in the Constitution (recently replaced by a Basic Act)
- The German model of informational self-determination
- An ombudsman-type parliamentary DPA (recently replaced by a government authority)
- General law/sectoral law model, with high number of sector-specific provisions
- Important decisions by a strong Constitutional Court (with recently weakened competence)

Findings (legal)

- Main rules of subject access: Act on Informational Self-determination and Freedom of Information
- Sector-specific provisions: Police Act, Public Space Supervision Act, Personal and Property Protection Act, Passenger Transport Act, Electronic Communication Act
- Certain sector-specific laws stipulate that the requester needs to prove her legal interest

Findings (legal) contd.

- No soft laws on surveillance in general and CCTV in particular
- The existing codes (e.g. on distance selling, direct marketing or property protection) do not contain provisions on subject access
- The number of court cases involving subject access complaints are low, no compensation are sanctioned

Findings (empirical)

- Subject access requests per se are extremely rare
- Educated researchers cannot act as lay requesters (small country, low number of requests, known experts)
- Identifying data controllers (31 sites) was relatively easy but submitting requests and access to data (19 sites) was more difficult
- Data controllers do not regard the requested data as
 - “personal data” (rather business or service data)
- CCTV signage: missing or deficient

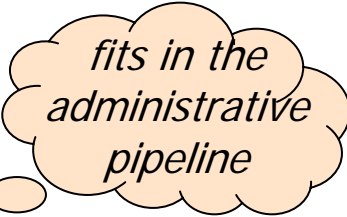
lack of awareness?

suspicion?

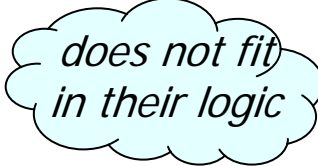
too abstract?

Strategies of compliance and denial

- General customer service procedures can seamlessly accommodate subject access requests.
- In the lack of such a procedure service providers interpret access requests as “complaints”
- Some data controllers tend to interpret the right of access narrowly, and the restricting provisions broadly (contradicting to the dogmatics of fundamental rights)



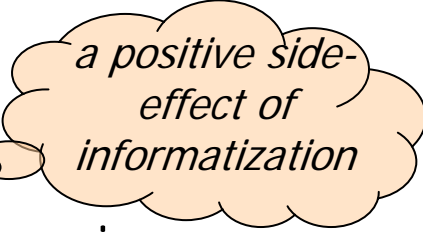
fits in the administrative pipeline



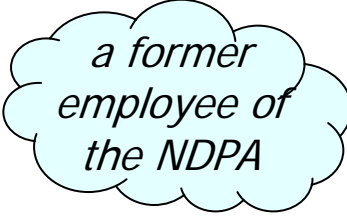
does not fit in their logic

Strategies of compliance and denial contd.

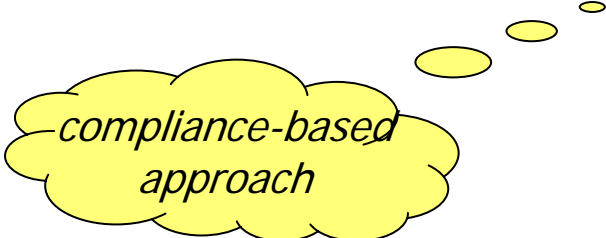
- Government authorities have a better record than business organizations; multinational companies are the worst (lack of service in national language)
- Expertise in data protection can also be used for deceiving and misinforming the requester
- Access requests in some cases generated a learning process: the data controller overruled its earlier decisions, organized internal courses, or turned to the NDPA for guidance



a positive side-effect of informatization



a former employee of the NDPA



compliance-based approach

General conclusions

Factors *decreasing* differences between “old” and “new” democracies:

Globalization in the business sector, technological convergence, trends in public management, EU data protection regulation

Factors *emphasizing* differences between “old” and “new” democracies:

National and regional traditions
(differences not only between “old” and “new” democracies)

▶ *Individual* (organizational) factors:

Personal attitudes and knowledge of the contact persons, organizational culture


Final conclusions

Without coherent guidelines requesters are subject to the arbitrarily restrictive interpretation of the relevant legal provisions by the data controllers •



*task of the
NDPA?*

- ▶ The very content of subject access right is ambiguous: Receiving *information* about one's own data, or access to (a copy of) the data themselves?



*task of
national and
EU regulation*



Thank you for your attention!

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