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CURRENT STATE OF NATIONAL LEGISLATION OF UKRAINE IN RESPECT TO OF PERSONAL DATA PROTECTION AND ITS ADAPTATION TO THE NORMS AND STANDARDS OF EU LAW

The article provides with the characteristics of current state of national legislation of Ukraine in respect to data protection and its adaptation to the norms and standards of EU law. The author investigates the problematic issues of personal data protection on the basis of current operating legislative norms and outlines the main ways of its adaptation to the norms and standards of EU law.

Key words: *personal data, protection of personal data, adaptation, standards of EU law.*

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Сучасний стан національного законодавства України у сфері захисту персональних даних та його адаптація до норм і стандартів права ЄС

У статті наводиться характеристика сучасного стану національного законодавства України у сфері захисту даних та його адаптації до норм і стандартів права ЄС. Автори досліджують проблемні питання захисту персональних даних на прикладі діючих норм чинного законодавства та окреслює основні напрямки його адаптації до норм і стандартів права ЄС.

Ключові слова: *персональні дані, захист персональних даних, адаптація, стандарти права ЄС.*

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Современное состояние национального законодательства Украины в сфере защиты персональных данных и его адаптации к нормам и стандартам права ЕС

В статье приводится характеристика современного состояния национального законодательства Украины в сфере защиты данных и его адаптации к нормам и стандартам права ЕС. В процессе исследования авторы раскрывают проблемные вопросы защиты персональных данных на примере действующих норм законодательства и определяет основные направления его совершенствования и адаптации к нормам и стандартам права ЕС.

Ключевые слова: *персональные данные, защита персональных данных, адаптация, стандарты права ЕС.*

Statement of the issue and its urgency. The issue of protection of information and information space is especially topical nowadays. This issue is considered on the highest level not only within one particular country but also on the summits of global communities and organizations such as the North Atlantic Treaty Organization, the European Union, the Big Eight, etc., because it affects the security of States, their military, economic, social and human resources.

Protection of personal data is treated in European legal tradition as one of the essential basis of insuring the fundamental human right to inviolability of private life, which in turn is fundamental to modern democracy with its primacy of respect for human rights and dignity. Now this point of view is widely recognized in the world: the inviolability of private life, including personal information, is one of the fundamental rights, enshrined in both major international documents of our time and in most national legislations in the world.

In the Ukraine – EU Summit, held in Brussels on November 22, 2010, Ukraine has received from the European Union the Action Plan for liberalization by EU visa regime for Ukraine. According to the Action Plan one of the requirements of EU in respect to Ukraine was the adoption of the law on personal data protection and the establishment of an independent supervisory body for the protection of personal data, and the implementation of the Law of Ukraine «On Personal Data Protection», as well as assuring effective functioning of an independent supervisory body for protection of personal data, including through the provision of necessary financial and human resources.

Ukraine has committed itself to adapt national legislation and the system of personal data protection to the European standards.

There is a need on the legislative level to improve the confidential regime of information on an individual person, to determine offenses in this area and specific sanctions for their commission. The creation of unified for Ukraine and EU statutory and regulatory «game rules» in the field of personal data protection will allow to apply progressive European experience in solving these problems and facilitate the full deployment of exchanges, contacts and cooperation in the political, business, finance and many other fields. The above said causes urgency of this article.

The analysis of researches and publications.

The issues of data protection and keeping of personal data are extremely important in the XXI century, and, therefore, these issues are investigated by many foreign and Ukrainian scholars such as: V. Kozak, A. Paziuk, V. Averchenkov, M. Hutsaliuk, S. Klymchuk, O. Rohova, and others. The issue of protection of personal data is reflected in the works of V. Drobiazko, S. Hnatiuk, S. Mukhachev, S. Kotaleichuk. Research papers of these scientists have made the theoretical basis of the article.

The adoption of the Law of Ukraine «On Personal Data Protection» opens a new page for researching the legal aspects of this issue. Such issues as the organizational and legal mechanisms for implementation of the provisions of the Law, guaran-

tees for the protection of personal data, including virtual space, remain poorly investigated.

The aim of the research is to analyze the mechanisms of adaptation of national legislation of Ukraine in the field of data protection to norms and standards of EU law.

Representation of the main research material. According to Article 2 of the Law of Ukraine «On Protection of Personal Data», personal data are regarded as data or collection of data about an individual person who is identified or can be specifically identified [2]. This definition is almost identical to the definition, given in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [6] and the Directive 95/46/EU, where personal data are stated as «... any information, concerning an identified individual person or individual person that can be identified...». As you can see, the definition is extremely wide. It is not and cannot be specific. After 30 years since the Convention has been signed on January 28, 1981, a lot of things have changed. Data, which were not regarded as personal before, became personal now due to the rapid development of information technology.

Thus, as V. Kozak correctly states, the concept should be wide enough to cover all the processes of personal data processing existing today, both already known for us and also the processes that will appear tomorrow and will be subject to this determination [11, p. 14].

The idea of protection of person firstly appeared in the Universal Declaration of Human Rights [5], adopted at the third session of the General Assembly of the UN and signed on December 10, 1948. The Declaration states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

«Data Protection is made in Europe. Strong data protection rules must be Europe's trade mark. Following the U.S. data spying scandals, data protection is more than ever a competitive advantage», the EU's Justice Commissioner, Viviane Reding said. By these words she marked the adoption by

the European Parliament of new Data Protection Regulation in March 2014.

A huge amount of personal data circulates daily between business organizations, government agencies and individuals. Inconsistency between the laws of different countries on information exchange may result in the loss or misuse of obtained personal data. That's why at EU level there were introduced common rules on the usage and protection of personal data, and in case of violation of the relevant rights an individual person may apply to the relevant authorities for protection of their interests in the context of the personal data usage [8].

To compare the legislation of Ukraine with the EU legislation in the field of data protection, let's mention some definitions of the relevant legislation taken from different resources. The European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed in Strasbourg on January 28, 1981 states that personal data refer to information relative to particular individual or a person that can be identified [6]. The Law of the Russian Federation «On Personal Data», dated from June 27, 2007, defines personal data as any information relative to an identified person or an individual that can be identified on the basis of such information (subject of personal data), including surname, given name, patronymic, year, month, date and place of birth, address, family, social, property status, education, occupation, income, other information [7]. The Law of Ukraine «On Personal Data Protection», dated from September 21, 2012, defines personal data as data or collection of data about an individual person which is identified or can be specifically identified [2].

Thus, in Ukrainian legislation a typical European legal understanding of personal data is enshrined. This is expressed by a relevant definition with its continuous adaptation to European standards. However, we must recognize that effective protection of personal data should be considered as an integral part of the overall system of fundamental human and civil rights. And in this case we are talking about one of the most important liberal and democratic freedoms, that is the right to privacy. This is the exact circumstance, pointed out by Ma-

rie George, who is an expert on data protection of the National Commission of France on Information Technology and Freedoms. In her analysis of one of the editions for the Law of Ukraine «On Protection of Personal Data» she states, «Name of the Law shows us that it refers to the protection of personal data». This expression is somewhat confusing, because it seems to deal with the protection of data only, while neither the Constitution of Ukraine nor the Convention № 108 or the EU Directive use this term. European texts define the purpose and object, using a wider and much more comprehensive formulation, «to ensure protection of the fundamental rights of individuals and in particular their right to privacy with respect to the processing of personal data about them». These words give nice illustration of the modern European understanding of the correlation between personal data protection and human rights, as well as the enormous attention that is paid in the Council of Europe and especially in EU as for compliance with these notions.

The development of the Ukrainian system of Protection of Personal Data after the ratification of the Council of Europe in 1981 on Convention, regarding the Protection of Personal Data and its Additional Protocol and its implementation, which has to become a prerequisite for concluding agreements with Eurojust and Europol, including the exchange of operational information, is one of the key objectives of Ukraine in the implementation of commitments under the Ukraine – EU Association Agenda.

In November 2011 there were expert missions to Ukraine, held by the European Commission and Eurojust. The aim of these missions was to inspect the current operation of the competent authority of Ukraine on protection of personal data (the State Service of Ukraine on Protection of Personal Data). According to the results of expert missions, there were given reports in which the main issues that need further decision were amendments to the Law of Ukraine «On Personal Data Protection» based on the recommendations of European experts; and ensuring the independent operation of Ukrainian authorized body on protection of personal data.

Thus, the Verkhovna Rada of Ukraine adopted the Law of Ukraine as of November 20, 2012 № 5491-VI «On Amendments to the Law of

Ukraine «On Personal Data Protection» [3], which entered into force on December 20, 2012. This law made changes to the Law of Ukraine «On Personal Data Protection» on the basis of the recommendations of European experts, particularly in the areas of legal regulation changes, improvement of conceptual apparatus, registration of personal data base, and cross-border transfer of personal data.

In addition, the Verkhovna Rada of Ukraine on July 3, 2013 has adopted the Law of Ukraine № 383-VII «On Amendments to Certain Legislative Acts of Ukraine, Regarding Improvement of the Protection of Personal Data» [4], which entered into force on January 1, 2014. The law, among other things, has amendments to the Law of Ukraine «On Personal Data Protection», which gave for the Parliamentary Commissioner for Human Rights authority in the sphere of protection of personal data.

To assess the implementation by Ukraine of the Action Plan on visa liberalization with EU [8], the EU Assessment Mission took place in Ukraine in September 2013. Its aim was to assess progress in implementing the first (legislative) phase of the Action Plan on visa liberalization. According to the results of the mission, European experts did not express incisive comments as for the legal and institutional system of protection of personal data in Ukraine.

In addition, on May 13, 2014 the Verkhovna Rada of Ukraine adopted the Law «On Amendments to the Laws of Ukraine related to the Activity of Parliamentary Commissioner for Human Rights in the sphere of Protection of Personal Data». It's determined that this act of law, in cases stipulated by law, also applies to relations, arising between legal entities of public and private law and individuals within the territory of Ukraine [9].

The recently adopted EU Regulation contains requirements to introduce standardization and certification in the field of protection of personal data, i.e. elements of conformity assessment with the indication of protection levels. This particular General Regulation also provides for the need to develop, especially for the protection of personal data in various information systems, hardware and software for data protection by design and by default, tools for general use, such as the Internet browsers,

so that the personal data of the users could have maximum protection. Of course, there will be introduced conformity assessment procedures of such tools with established requirements. Taking into account these innovations there is a need to continue improving the national legislation on protection of personal data in accordance with the dynamics of EU legislation.

However, if the situation in the field of personal data protection is quite satisfactory on the governmental and expert levels, the average Ukrainian citizens demonstrate indifference to this legal practices which are new for them and show the lack of understanding of the notion of personal data and the importance of personal data protection in today's world, more so on the Internet. In late 2012, the Ukrainian public organization «Ukrainian Association of Personal Data Protection» initiated and conducted the first study in the framework of public monitoring of the openness and transparency of personal data on the Internet. The authors also state, «It is safe to conclude that the vast majority of national web resources, perhaps, more than three-quarter do not provide the openness and transparency of data processing, ignore demands of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ratified by Ukraine, the Law of Ukraine «On Personal Data Protection», recommendations of the Committee of Ministers of the Council of Europe № R (99) 5 as of February 23, 1999 for Member States of the Council of Europe «On Protection of Privacy on the Internet» [10].

In order to increase public awareness as for the protection of personal data, Ukraine also joined the celebration of the Data Protection Day, which is celebrated in the EU countries. On April 26, 2006 the Committee of Ministers of the Council of Europe decided to establish a day of protection of personal data, which is celebrated every year on January 28.

Conclusions. Thus, having analyzed the foregoing, we can state that all the requirements for the implementation of (legislative) phase of adaptation of national legislation regarding the protection of personal data are satisfactorily fulfilled by the Ukrainian side. However, the modern domestic le-

gal provisions on data protection should be continuously complying with the European standards. It should be implemented with the active participation of the Commissioner for Human Rights and his staff through the activities of the European dimension in discussing achievements and areas of improvement of the existing legislation; taking into account the future experience of European countries to regulate relations related to cyberspace, storing data in the «clouds» and its usage. Effective protection of personal data on today's Internet also depends on a user not less than on the national controller or an online service provider. So, a user must also be responsible, careful, have a certain amount of specialized knowledge for proper use and combination of available security tools, and comply with certain «healthy» usage of network resources, etc. In other words, we are talking about the kind of a user's online security «culture» and the need to popularize it globally.

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