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LEGAL REGULATION OF PERSONAL DATA PROTECTION

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The author examines contemporary principles of legal regulation regarding the protection of personal data, driven by the relevance of issues directly related to personal data protection, including the proliferation of digitalization in society and daily internet usage. This will make it possible to address the challenges and threats arising within the framework of modern development of civil society and the democratic and legal state in Ukraine, including unauthorized dissemination of personal data on social media, primarily containing negative legal characteristics. Therefore, attention is drawn to the necessity of optimizing the legal regulation of personal data protection, especially concerning the search for the most effective and reliable methods and means of their protection. Considering that the issue of personal data protection on the Internet concerns both the data subject (individual) and the state, a robust legislative framework is necessary, as data recipients do not always (sometimes not fully or selectively) adhere to legal norms. The state's advantage in guaranteeing the protection of personal data, and, furthermore, its duty of legal regulation and observance of the individual's right to the protection of their personal data, is proven. Additionally, the obligations of the parties involved in the use of personal data to ensure the protection of such data, particularly in terms of preventing unlawful access to them and information compromise, are substantiated. Therefore, it is noted that the legal regulation of personal data protection provides for a vertical of state services and authorities with corresponding powers to act exclusively within the framework of ensuring protection against unauthorized use of personal data. It has been clarified that one of the most common reasons for the danger and unauthorized use of personal data is primarily digital illiteracy (or its low level) among Internet users, especially concerning social networks, in terms of the availability of legal and technically secure means to safeguard personal data, both individual and state-wide. The study made it possible to conclude that, firstly, it is the state which is obliged to create the most effective regulatory and legal means of personal data protection, and, secondly, legal regulation of personal data protection provides for a set of preventive measures aimed at suppressing offences, applying coercion to offenders, and restoring the violated rights of an individual in terms of protection of his/her personal data.

Key words: law; personal data; personal data protection; legal regulation; Internet; digitalization.

Formulation of the problem. Despite certain legislative developments, sociological studies and reports from authorized agencies indicate an insufficient level of personal data protection in Ukraine. For

instance, according to the report of the Ministry of Digital Transformation of Ukraine “Analysis of Legislation on Personal Data Protection in Ukraine” (2020), in the sphere of personal data protection, it is extremely necessary to take into account: 1) active regulatory and legal requirements, which are important within the limits of maintaining a high level of processing of personal data (to a greater extent, which concerns the public media sphere); 2) the rapidly changing data processing environment at the international level; 3) the necessity of higher level of protection for children and minors regarding their personal data. 4) updating industry data protection standards as a beneficial opportunity for Ukrainian businesses (both for businesses aiming to operate internationally and for the purpose of attracting external investments) from the perspective of competitive positioning in the global market; 5) Ukraine’s commitments to other countries and international organizations based on international law (for example, the Association Agreement between Ukraine and the EU) [1, pp. 47–48]. Implementing these recommendations will primarily contribute to the modernization of the personal data protection mechanism according to societal needs and to bringing domestic legislation closer to European standards [2, pp. 31–36]. Therefore, this issue does not only concern the internet user directly as the owner of personal data, which may be unlawfully used and have negative moral, psychological, and legal consequences for the individual. It should be addressed comprehensively: by the owner of personal data, who should possess the necessary minimum knowledge about personal data and technically protect them in their personal cabinets or accounts; by recipients of personal data – companies with whom the owner of personal data “communicates” and grants consent for processing and use within the limits defined by the legislation [3, pp. 20–24]. They should ensure maximum protection of personal data databases from unauthorized dissemination; by the state – as the guarantor of personal data protection, which creates a legal mechanism for personal data protection and restoration of violated rights related to their unauthorized dissemination or use.

Analysis of the problem research. Achieving this goal involves analysing the works of researchers who have studied various issues of personal data protection in general. References to their works and developments will be provided in the text of the scientific research with justification of the foundations that became the theoretical and methodological basis of this article. Accordingly, **the purpose of the article is** to examine contemporary principles of legal regulation regarding the protection of personal data.

Presentation of the main material. Everyone is guaranteed the right to protection against interference with their privacy, confidentiality of correspondence, telephone conversations, correspondence (including e-mails) and other information relating to personal data. These constitutional provisions are the basis for the further development and updating the current legislation in terms of ensuring the appropriate level of personal data protection. In general, ordinary Internet users often lack basic knowledge of the possibilities of protecting their personal data. Companies and organisations of various forms of ownership that own personal data databases often do not use all available mechanisms to protect them from unauthorised use or openly neglect them. The state, as the guarantor of personal data protection, should develop more up-to-date legislation designed in order to respond more effectively to modern challenges and risks posed development of society and relevant information technologies.

The legal act that most fully regulates social and legal relations concerning the appropriate level of personal data protection are reflected in the Law of Ukraine “On the Protection of Personal Data” [4]. The limits of activity of the specified Law lie in the part of regulation of social and legal relations, which are directly intertwined with ensuring the proper level of protection and processing of personal data. At most, this Law provides for the provision of an adequate level of protection of key rights and freedoms of a person and a citizen, including, of course, the right to inviolability of personal life related to the processing of personal data. Again, this legal act is aimed at protecting the fundamental rights of a person, approved in the Constitution of Ukraine. The Law states that the personal non-property rights to personal data that every individual has are inalienable and inviolable. Everyone is guaranteed the right for the proper protection of personal data against their unlawful use, processing or even loss or destruction, damage, etc. or discreditable to the honour, dignity and business reputation of an individual. A person has the right to

claim protection his/her rights in relation to personal data of representatives of state authorities and local self-government offices authorised to protect personal data, as well as apply for legal protection if a violation of current legal norms concerning the direct protection of personal data is found.

The codified legal acts that contain provisions on personal data protection include the Criminal Code of Ukraine and the Civil Code of Ukraine. The Criminal Code of Ukraine [5] contains several provisions on personal data protection. Thus, Article 163 provides for criminal responsibility for disclosing the secret of correspondence, telephone conversations, any other correspondence transmitted by means of communication or through the network. These are the ways in which people can transfer their personal data to a specific individual or legal entity, but do not want it to be re-transferred to third parties. Article 182 of the Code defines it an offence to illegally to accumulate, store, process or transmit personal data without personal consent in public speeches, public presentations of one or another product, or speaking in mass media. A person who has been subjected to the actions specified in these articles is guaranteed the right to judicial protection. Owners of personal data bases must use them exclusively within the law.

In the Civil Code of Ukraine [6], the legislator classified personal data as personal non-property rights and defined the method of their protection against unlawful encroachments through judicial procedure. The essence of personal non-property rights constitutes the ability of an individual it is free to predict personal behavior based on personal perception. Naturally, such behavior should not cause harm to other members of society, violate their rights, or freedoms.

Despite the need for certain improvements in the sphere of personal data protection, domestic legislation possesses an effective organizational and legal mechanism for protecting personal data. This mechanism combines legislative norms directly related to personal data protection, which regulate legal relations in this field, with methods for ensuring the effective functioning of these norms and monitoring compliance with them. For example, the Constitution of Ukraine (Articles 21, 31, 32) stipulates that all individuals are free and equal in terms of personal dignity and personal rights. And human rights and freedoms are absolutely inviolable and inalienable. Everyone has the right to non-interference in personal life and private activities, except for those cases specified in the norms of the Constitution of Ukraine. Therefore, the processing, storage, use or distribution of personal information without the consent of its owner is not possible, again except for the cases provided for by the current legislation, and then only in the interests of the national security of the state and the protection of human rights [7].

Modern research demonstrates the challenges faced by data recipients in the sphere of personal data protection on the Internet, which exist today. Despite the existence of a legislative framework, data recipients do not always fully or selectively comply with legal requirements. Hence, the issue of personal data protection on the internet concerns both the data subject, the data recipient, and the state.

Firstly, the individual who provides their personal data to third-party individuals or legal entities must take care of their basic protection. An internet user (subject of personal data), for the purpose of protecting their personal data, should: know what constitutes personal data; use strong passwords for their personal accounts or profiles; only use verified websites that require consent for processing personal data; always carefully read the consent document for personal data processing (it must specify what information is being collected and how it will be used; conditions under which the information may be transferred to third parties; provision for data deletion by the user; concise and understandable description of the company's privacy policy).

Internet users spend most of their time on social media, where they share information about themselves and find a lot of information about others. This information also constitutes personal data. Therefore, it is always important to understand that the published information can be used by other individuals. Nowadays, all social media platforms and messengers have a feature to save information from other accounts or profiles. Thus, even after deleting certain publications or records, you cannot be sure that the information is permanently deleted, as someone may have saved it (although social media platforms now have corresponding tools where you can see who saved certain publications, photos, or videos).

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When installing new software on one's computer or phone, it is advisable to always check the "Settings" section, where one can limit the amount of data collected and processed, prohibit certain categories of social media or messenger users from viewing materials. If a person no longer plans to use a specific social network or personal account on a company's website, it is necessary to completely delete their account. Additionally, when changing devices, one should delete their personal data to prevent them from falling into the hands of the next device owner.

Ultimately, all these recommendations are rather technical aspects that need to be followed to protect personal data. This is the necessary minimum of actions that data subjects must take to safeguard their personal data from unauthorized use.

In Ukraine, Regulation (EU) 216/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/ EU (General Data Protection Regulation) is applied [8]. This is an international regulatory act concerning the proper and high-quality protection of personal data in the Internet space, the mandatory application of which was approved by the Verkhovna Rada of Ukraine. This document is relevant today, as Internet users often fill out various application forms to register on websites, leaving their personal data. Therefore, the issue of protecting personal data from unauthorized use with subsequent negative consequences (in some cases, legal) for the personal data subject is one of the state's priority tasks within the limits of a high level of protection of human and citizen rights and freedoms. The developers note: "Rapid technological development and globalisation lead to modern challenges to the protection of personal data. The level of processing and transfer of personal data has greatly increased. Technology is enabling both private companies and public authorities to use personal data on an unprecedented scale to carry out their activities. Individuals are increasingly making personal information available to the public and on a global scale. Technologies have transformed both the economy and social relations, and therefore they should continue to facilitate the free movement of personal data within the EU and ensuring a high level of protection of personal data in cases of their provision to third countries or international organizations. Such changes require a stronger and more coherent data protection framework in the EU, with a proper enforcement mechanism in place, taking into account the importance of building trust to enable the development of the digital economy at the internal market level. Individuals should have control over their personal data. Legal and practical certainty should be strengthened for individuals, businesses and public authorities" [8]. The emergence of this document in the European legal space demonstrates the priority of human rights for the international community and determines the focus of its activities. Today, it can be assessed as a timely response to the demands of society: the rapid development of information technology and its growing role in human life force the state to develop "rules" that will regulate relations in this area of society and the state. Therefore, it is the state that guarantees the protection of personal data; its task is to create an organisational and legal mechanism that would effectively protect human rights related to personal data; form a set of preventive measures and measures to minimise the commission of offences in the field of personal data protection; and restore violated rights related to personal data protection as soon as possible. Nevertheless, personal data subjects must also contribute to their safety by performing a set of legal and technical actions to minimise possible negative consequences for themselves. The organisational component of the personal data protection mechanism is formed by bodies and officials authorised to perform state functions in this area. The law vests them with powers aimed at protecting personal data and monitoring compliance with personal data legislation. Article 22 of the Law of Ukraine "On Personal Data Protection" defines an exhaustive list of bodies that monitor compliance with personal data protection legislation within the powers provided by law. These include: The Ukrainian Parliament Commissioner for Human Rights and the courts.

The powers of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine include the following norms: "1) acceptance of proposals, complaints or other appeals from individuals or legal entities in terms of ensuring the protection of personal data, as well as making relevant decisions within their consideration; 2) to conduct on-site and off-site, scheduled and unscheduled inspections of personal

data owners or managers within the legal limits determined by the Commissioner, with access to the premises where personal data are processed in accordance with the law; 3) to receive at his/her claim to receive and gain access to any information data (documents) of owners or managers of personal data; 4) to approve regulatory legal acts in the field of personal data protection in cases stipulated by this Law; 5) upon the results of inspection, consideration of an appeal, to issue binding requirements (instructions) on prevention or elimination of violations of the legislation on personal data protection, including on modification, deletion or destruction of personal data, provision of access to them, provision or prohibition of their provision to a third party, suspension or termination of personal data processing; 6) provide appropriate instructions regarding the practice of applying current legal norms in terms of ensuring the protection of personal data, clarifying the relevant rights and obligations of responsible persons at the request of personal data subjects, owners or managers of personal data, structural units or persons responsible for organising work on personal data protection, and other persons; 7) to interact with structural subdivisions or responsible persons who, in accordance with this Law, organise work related to the protection of personal data during their processing; publish information about such structural subdivisions and responsible persons; 8) to submit proposals to the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, other state bodies, local self-government bodies, their officials regarding the adoption or amendment of regulatory legal acts on personal data protection; 9) responding to the appeal of the relevant public associations or legal entities, accordingly provides conclusions related to the norms of the code of conduct within the limits that provide for the proper protection of personal data; 10) to draw up protocols on bringing to administrative liability and send them to court in cases provided for by law; 11) to inform about the legislation on personal data protection, problems of its practical application, rights and obligations of subjects of relations related to personal data; 12) to monitor new practices, trends and technologies of personal data protection; 13) to organise and ensure interaction with international subjects of social and legal relations related to the protection of personal data, including those related to the implementation of the norms of the Convention on the Protection of Individuals with regard to the Automated Processing of Personal Data and the Additional Protocol to it, and all other foreign treaties of Ukraine in the field of personal data protection; 14) to participate in the work of international organisations on personal data protection” [4]. The importance and relevance of this area of work of the Ukrainian Parliament Commissioner for Human Rights is evidenced by the need to include a report on the state of compliance with the provisions of the law relating to the proper protection of personal data during the annual report within the appropriate level of observance and protection of human and citizen rights and freedoms in Ukraine.

A personal data subject has the right to apply to court for the restoration of his or her violated right. According to a letter from the Ukrainian Parliament Commissioner for Human Rights, the court has mechanisms to monitor compliance with personal data protection legislation within the powers provided by law. It states: “Article 22 of the Law of Ukraine “On Personal Data Protection” provides for the Commissioner and the courts to monitor the level of compliance with the law in terms of personal data protection with valid powers provided for by law. Thus, the mechanism of exercising the control by the courts should be based on the legislation on the judiciary, i.e. in the course of court proceedings (civil, administrative, criminal and in the course of consideration of cases on administrative offences), as well as by providing the Plenum of the highest specialised court, based on the results of generalisation of court practice, with explanations of a recommendatory nature on the application of legislation by specialised courts in resolving cases of the relevant court jurisdiction (paragraphs 2 and 6 of part two of Article 36 of the Law of Ukraine “On the Judicial System and Status of Judges”)” [9]. Finally, the organisational and legal mechanism for personal data protection unites public authorities, local self-government bodies, personal data owners and managers by granting them certain rights and imposing certain obligations in the field of personal data protection. Pursuant to the Law of Ukraine “On Personal Data Protection”, a structural unit or a responsible person shall be established (designated) in institutions of local self-government and representative offices of state power, including in personal data owners or managers that

process personal data only if there is a notice in accordance with the specified Law regarding the organization of ensuring adequate protection of personal data at the time of their investigation.

For example, in 2019 and 2021, a nationwide survey of the level of digital literacy of the Ukrainian population was conducted [10]. With regard to the level of awareness of the possibilities of protecting one's data on the Internet, the following has happened: since 2019, cases of fraudulent actions on the Internet have become more frequent (an average of 11 % increase in the number of people who have experienced security-related unpleasant cases due to the use of Internet space in the last 12 months); the most common online misconduct faced by people, as in 2019, is receiving fraudulent messages, referral to fake Internet resources with the aim of encroaching on personal data for fraudulent use of a credit or debit card; basic digital literacy courses are in the highest demand: online security; reliable and quick information search in the Internet space; the difference between verified and unverified sources of origin of this or that information; and using Internet banking services. In other words, Ukrainians want to improve their digital literacy primarily for security reasons – to protect their data from unauthorised use.

Along with the technical capabilities of personal data protection, a person must also know his or her rights and obligations related to personal data protection and the restoration of his or her violated rights through legal means.

Conclusions. The state guarantees the protection of personal data, i.e. it creates all conditions for effective protection and prompt restoration of violated rights related to personal data. The activities of subjects of social and legal relations directly related to work with personal data necessarily provide for protection the protection of this data from unlawful processing, as well as from unlawful access to it. Such entities must take a set of legal and technical actions aimed at the highest possible level of personal data protection on the Internet. In the end, the set of legal acts analysed above constitutes the legal regulation of personal data protection in the Internet space. Together, they are designed to form and guarantee an effective mechanism for ensuring information security of a person, minimising the possibilities of unauthorised use of personal data and promptly restoring violated human rights related to the dissemination of personal data.

Legal regulation consists of two elements – organizational and legal. The organizational element represents the form of carrying out certain actions. In a broader sense, it is the totality of organizational and managerial actions that ensure the effective implementation of set goals and tasks. Considering the subject of our study, the organizational element of the personal data protection mechanism is the activity of bodies, services, and officials empowered by law to perform certain actions for the processing, storage, and protection of personal data. The legal element is a structural component of the organizational-legal mechanism, which, through the available means and methods in a particular national legal system, regulates social relations in a specific sphere to ensure law and order. The legal element of the personal data protection mechanism is the existence of an effective regulatory framework (legislative base). Therefore, the organisational and legal mechanism for personal data protection is a set of legal provisions and a set of preventive measures taken by the relevant state authorities, services and officials aimed at protecting personal data, suppressing offences, applying coercion to offenders and restoring violated human rights related to personal data.

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ПРАВОВЕ РЕГУЛЮВАННЯ ЗАХИСТУ ПЕРСОНАЛЬНИХ ДАНИХ

У статті досліджено сучасні засади правового регулювання захисту персональних даних, що зумовлено актуальністю питань, пов'язаних безпосередньо із захистом персональних даних, зокрема поширенням діджиталізації суспільства і щоденним використанням інтернету. Це дасть можливість урахувати виклики та загрози, що виникають у межах сучасного розвитку громадянського суспільства та демократичної і правової держави в Україні, серед яких і несанкціоноване поширення персональних даних у соціальних мережах, що передовсім містить негативну правову характеристику. Тому звернено увагу на необхідність оптимізації правового регулювання захисту персональних даних, особливо стосовно пошуку найефективніших та найнадійніших методів і засобів їхнього захисту. Зважаючи на те, що проблематика захисту персональних даних в мережі Інтернет стосується і власника (особи) персональних даних, і держави, то необхідна потужна законодавча база, адже не завжди (деколи не в повному обсязі або ж вибірково) одержувачі персональних даних дотримуються норм закону. Власне, доведено перевагу держави в гарантуванні захисту персональних даних, і, щоби більше, її обов'язок правового регулювання і дотримання права людини на захист її персональних даних. Також обґрунтовано обов'язки суб'єктів відносин, пов'язані із використанням персональних даних, забезпечувати захист цих даних у частині недопущення незаконних доступу до них та інформаційної обробки. Тому констатовано, що правове регулювання захисту персональних даних передбачає вертикаль державних служби та органів із відповідними повноваженнями діяти виключно у межах забезпечення захисту несанкціонованого використання персональних даних. З'ясовано, що однією із найпоширеніших причин небезпеки та несанкціонованого використання персональних даних є насамперед цифрова необізнаність (або ж низький її рівень) користувачів мережі Інтернет, особливо соціальних мереж, стосовно наявності правових і технічно захищених засобів убезпечення персональних даних – і особистих, і загальнодержавних. Виконане дослідження дало підстави для висновку, відповідно до якого, по-перше, саме держава зобов'язана створити найефективніші нормативно-правові засоби захисту персональних даних, а, по-друге, правове регулювання захисту персональних даних передбачає комплекс превентивних заходів, спрямованих і на припинення правопорушень, і на застосування примусу до правопорушників, і на відновлення порушених прав особи в частині захисту її персональних даних.

Ключові слова: право; закон; персональні дані; захист персональних даних; правове регулювання; мережа Інтернет; цифровізація.