

LEGAL STATUS OF PARTICIPANTS OF LEGAL RELATIONS ON CIRCULATION AND PROCESSING OF PERSONAL DATA

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SUMMARY

Determined that the legal status of legal entities on circulation and processing of personal data is not the same as each of them appears in his special role as persons in each case will use specific rights and bear responsibilities as subjects information relations. We study the powers of the holder of the personal data, distinguishes his rights and obligations. The propositions for improving the current legislation of Ukraine on the legal status of the holder of the personal data.

Key words: personal data, personal data base, holder of personal data base, circulation of personal data, personal data processing.

АНОТАЦІЯ

У статті визначено, що правовий статус юридичних осіб щодо обігу й обробки персональних даних не є однаковим, оскільки виявляється в їхній особливій ролі, бо особи в кожному конкретному випадку будуть використовувати специфічні права й нести обов'язки як суб'єкти інформаційних відносин. Досліджено повноваження власника персональних даних, відокремлено його права та обов'язки. Підготовлено пропозиції щодо вдосконалення чинного законодавства України про правовий статус власника персональних даних.

Ключові слова: персональні дані, база персональних даних, власник бази персональних даних, обіг персональних даних, обробка персональних даних.

Statement of the problem. The subject of law is one of the basic categories as a general theory of law in general, and in particular the right information. The presence in the structure of the legal entity is the basis law realization processes that give normal right status of the regulator of social relations.

Given that any relationship – a relationship between specific persons working with the information, the number of subjects here may be different, depending on the nature and complexity of legal information, but not less than two.

Accordingly, parties who exercise their in the information sector should also be at least two [1, p. 52]. According to experts in the field of computer science, information transfer process requires the mandatory presence of two elements: the person who sends, and the one who receives.

Just having that passes, and that takes the forms, as they now say, a system of communication in which information can be transferred [2, p. 74].

Adding that third mandatory element, which is called in the relevant specialized sources, is the environment in which the transfer of information from one element to another, as the process of transfer of information in space occurs if and only if this information is taken and the consumer can only be combined with the consumer [1, p. 52].

Moreover, the value of this information is not the same for different users. Thus, it makes no sense to talk about the information content of any source of information (books, pictures, radio, human speech), unless otherwise specified user of this information, even if tentative, and, secondly, the value or consistency of information received from the source is not constant, which is determined by the well depends on consumer information [2, p. 74].

The legal status of the subjects is not the same as each of them appears in his special role, because persons in each case will use specific rights and bear responsibilities as subjects of information relations.

Analysis of foreign law shows that many countries follow the concept, according to which the laws on the protection of

personal data apply only to individuals. However, there are other approaches.

The International Council of Europe recommendations concerning the processing of personal data to provide member states of the Council of Europe to spread the principles of the Recommendation on data belonging to groups of persons, associations, institutions, companies or other organizations that are composed directly or indirectly of individuals, regardless of owning or not these organizations legal status.

In a changing attitude to private property and social-economic formation is important for the government adding to groups of individuals of the concept “related entities associated with the processing of personal data” [3, p. 86].

It should be noted that in our time the problem of circulation and processing of personal data in general, and partly subject composition of these relationships involved in many Ukrainian scholars, including A. Baranov, V. Brizhko, J. Bazanov, V. Galagan, A. Zhukovska, A. Pazyuk. In the western legal science on these issues worked F. Agre, K. Bennett, L. Brendeys, J. Borkin, S. Warren, T. Hrapel, B. Daskala, S. Deyvis, R. Clark, M. Kosinski, W. Kotshi, M. Korbi, W. Prosser, M. Rotenberg, D. Stilluell, D. Fleherti and others.

However, immediately the legal status of the holder of the personal data of members of both turnover and processing of personal data remained outside the attention of legal theory and practice. It determines the relevance of the chosen research topic.

The main material. Relationships, consisting of over personal data of citizens are quite diverse. They form, as already noted, a separate, specific legal institution, subject composition is quite wide.

However, the legal status of the subjects is not the same as each of them appears in his special role (in this case, there may be a combination of several of these legal entities under applicable law information), so people who in each case will be in specific rights and obligations bear just as subjects of information relations.

The literature indicates that the practical information and legal activities concept is sometimes the subject of information law is

divided into two categories – the subject of rights and obligations of the entity in the information sector. However, in the opinion of M. Rassolov, an information law is a specific person, which has just the right information, but she does not bear responsibilities. An duties in this case – a person (say, a developer of applications of the algorithm, the defendant in court), which has only duties but could use a small range of rights or, in certain circumstances, do not enjoy the rights [4, p. 43].

This separation of entity and entity responsibilities in the area of information and regulatory activity, according to these authors, is not always justified as a result of the indissoluble connection information rights and obligations in general [1, p. 52]. According to A. Kochanowski, the participants of legal information can be classified as other than the above, subjects. Their range of process improvement and development of information legislation is constantly expanding. In addition, virtually every one of the subjects can take part in the information relationships that develop in different areas of public life and activity [1, p. 53]. Law of Ukraine “On Personal Data Protection” does not allocate specific criteria that allow to characterize the entity as a party we have studied relationships (for example, in terms of age, the amount of legal capacity, citizenship, etc). According to Article 4 of the Law of Ukraine “On Personal Data Protection” legal subjects related to personal data are:

1) The subject of personal data is an individual whose personal data are processed;

2) The holder of personal data is individual or legal entity that defines the purpose of the processing of personal data, these data establish the structure and procedures of processing, unless otherwise provided by law;

3) The administrator of personal data is natural or legal person to whom the personal data of the owner or legally have the right to process this data on behalf of the holder;

4) The third person is any person except the subject of personal data of the holder or manager of personal data and the Verkhovna Rada of Ukraine on Human Rights, which the owner or administrator of personal data the transmission of personal data;

5) The Commissioner of the Verkhovna Rada of Ukraine on Human Rights is the authorized state body on data protection (in the context of the law) [8].

It should be noted that V. Kopylov, based on a specially developed his model information sphere, identifies the main groups of subjects of information relations: 1) the producers or creators of information, including the authors; 2) the holder of the information (information objects); 3) consumer information [5, p. 132]. Detailed classification of economic relations is given by the author in conjunction with an analysis of their behavior related to legal information objects in the information sector.

With this model, according to him, it is easy to explore the behavior of subjects depending on the types of relationships and modes of production and transformation and organization of information and information objects and make a classification of information relations [1, p. 53].

Following the proposed classification by V. Kopylov, the following groups of subjects of information relations regarding personal data: 1) the subject of personal data is individual serving manufacturer of personal data; 2) the holder of personal data as information objects of personal data; 3) consumers of personal data carried out by direct circulation and processing of personal data.

However, in our opinion, to determine the legal status of the holder of the personal data in the system of economic relations information regarding personal data and define challenges of legal regulation of its status must be based on the concept of “personal data base”.

Enshrined in the law of Ukraine “On Personal Data Protection” concept “database of personal data” has established three mandatory features 1) personal information database is always named; 2) unambiguously the existence of personal data is an electronic form and / or form of data files; 3) the base of personal data is a set of ordered exclusively personal data, which together generated a debate among legal practitioners and academics on the spread of the regulatory framework for the personal data which, because of the subjective or objective reasons have been named the holder of and / or do not contain an ordered set of personal data, and / or different from the online form or forms of data files.

The presence of a significant number of inconsistencies and conflicts in legislation and regulation of the processing of personal data because this area of legal regulation is new to Ukraine, and its constant changes (Law of Ukraine “On Protection of Personal Data” № 2297-VI dated 01.06.2010 entered into force 01.01.2011 and has undergone many drastic changes that came into force from 21.09.2012 dated 20/12/2012 dated 06.09.2013 dated 01.01 2014 and on 04.19.2014 the year the year) are developed on the values political expediency rather than legal validity.

It should be noted that instead of replacing imperfect notion of “personal data base”, which has created opportunities for subjective interpretation of legislative provisions that duty holders of personal data to register such facilities and to defend their content Parliament of Ukraine followed by replacing the term “holder personal database” to “holder of personal data” [7].

That is why today there is not necessity to determine the presence or absence of personal data as any personal data processed are subject to the protection of the law and impose appropriate obligations on the owners and managers. However, the concept of personal data base continues to exist in Article 2 of the Law of Ukraine “On Personal Data Protection” and in the system because of the content of other articles creates rights and obligations.

Admittedly, the choice of personal data by its nature is a kind of database as defined in the legislation of Ukraine was formed long ago and set out in Article 1 of the Law of Ukraine “On Copyright and Related Rights”: database (a compilation data) – a set of works, data or any other independent information in any form, including – electronic, selection and arrangement of parts which and its arrangement is the result of creative work, and which components are available individually and can be found at using a special search engine based on electronic means (computer) or other means [6].

Based on the fact that the base of personal data are derived from the database can be concluded that the base of personal data is a result of the creative work of individuals, and thus there are subjects of legal relations of personal data in databases:

1) the subject of personal data is individual, personal data which are in circulation and / or processed in the database;

2) developer of the personal data is an individual who has developed logically linked elements framework;

3) the holder of the personal data is an individual and / or entity that has obtained ownership of the database makes it filling personal data, defines the purpose of trafficking and / or processing of personal data, the procedures circulation and / or treatment;

4) Managing the personal data is physical and / or legal entity to which the holder of personal data by law or the authority for circulation and / or processing the data on behalf of the holder;

5) the authorized state body on data protection;

6) the third person is any person except the subject of personal data, the owner or administrator of personal data and state authority on the protection of personal data, which the

owner or administrator of personal data is transfer of personal data.

It should be that the above-mentioned subject of information relations in the field of processing and treatment of personal data can be as separate legal entities and combine several legal statuses simultaneously.

According to Art. 24 of the same law on legal subjects related to personal data are obliged to protect the personal data that appears in the status of the holder of the personal data through this system of rights and duties:

1) Registration of personal databases. According to the original version of the Law "On Personal Data Protection" all of the personal data subject to state registration. Given the huge number of registered legal entities and individual entrepreneurs in Ukraine, before the entry into force of the rules on administrative liability for failure to register in the State Service of Ukraine on protection of personal data received millions of applications for registration of such bases. Applications for registration are submitted in early 2012, has still not been processed, despite the legislative period of 30 days from the date of filing, and the process is likely to drag, on for decades. However, if the documents confirming application, the owner of the personal data may be held accountable for failure to register [10]. It must be that the January 1, 2014 the responsibilities of the State Service of Ukraine on protection of personal data must comply Parliament Commissioner for Human Rights.

2) Compliance with the requirements for collecting personal data. Right to the processing of personal data must be provided to the owner of the personal data or by the subject of personal data, or the law.

According to a previous version of the Law "On Personal Data Protection" consent of the subject of personal data is Any documented, including written, voluntary expression of an individual to provide permission for the processing of personal data in accordance with the objectives set out processing.

Thus, the companies involved in the processing of personal data, it was necessary to obtain documented consent from individuals (which is often interpreted as written), and only send a written notification of personal data to the database. It should be noted the positive development of the legal concept of "the consent of the subject of personal data" which is defined as last amended how the voluntary will of the individual (provided his knowledge) to permit the processing of personal data in accordance with the objectives set out their treatment, expressed in writing or in a form which suggests origination. However, you should pay attention to the following, rather controversial, as we consider, innovation Legislation amending as the abolition of the obligation to notify the owner of the business including their personal data to database in writing; abolition of the obligation to notify the subject of the transfer of its personal data to third parties, etc. [9, p. 4–6].

3) The organization of protection of personal data. In accordance with the first paragraph of Article 24 of the Law of Ukraine "On Personal Data Protection" owner, administrators and personal data by third parties are obliged to ensure the protection of personal data against accidental loss or destruction of illicit trafficking and processing, including unlawful destruction or access to personal data.

In some, if the manager or owner of the personal data carried out by circulation and / or processing of personal data are required to notify the Commissioner (according to the Law "On Personal Data Protection"), the holder is required to create (define) or structural unit responsible person who organizes the work related to the protection of personal data in their treatment and processing.

In turn, private entrepreneurs, including physicians who are licensed attorneys, notaries personally ensure the protection of personal data held by them, as required by law.

4) Using of personal data and transfer them to third parties (including the transfer of personal data abroad). Given our view that the protection of personal data is a separate activity of the holder of the personal data to ensure data security during their treatment and processing, pursuant to Article 10 of the Law "On Personal Data Protection", we consider that the using of personal data implies and action with respect to the holder of circulation and processing of these data, as well as actions to provide partial or full right treatment and / or processing of personal data to other related entities associated with personal data carried out with the consent of the subject of personal data or under the law and within the particular purpose treatment and / or processing which must be stated in the laws and other legal acts, regulations, statutory or other documents regulating the activities of the holder of personal data, and comply with the legislation on protection of personal data.

The using of personal data by employees related entities connected with personal data should only be carried out in accordance with their professional or official duties or employment. These workers are required to prevent the disclosure in any way personal data that has been entrusted to them, or who have become famous because of their professional or official duties or employment, except as required by law. This obligation shall survive the termination of activities related to personal information, except as required by law [8].

Article 29 of the Law "On Protection of personal data" regulates the relations of personal data to foreign relations to subjects related to personal data and establishes that such transfer shall be made only on condition that the relevant state adequate protection of personal data in cases established by law or international agreement of Ukraine, and also provides that personal data may not be reproduced for purposes other than that for which they were collected.

Conclusions. Thus, on the basis of the above, we can state the following:

Firstly, the Parliament of Ukraine instead of replacing imperfect notion of "personal data base", which has created opportunities for subjective interpretation of legislative provisions that duty holders of personal data to register such facilities and to defend their content legally unfounded followed by replacement of the concept "holder of personal data" to "holder of personal data";

Second, the legal entities in respect of personal data in the databases are:

1) The subject of personal data is individual whose personal information in circulation and or processed in the database;

2) The developer of the personal data is individual has developed logically linked elements framework;

3) The holder of the personal data is an individual and / or entity that has obtained ownership of the database makes it filling personal data, defines the purpose of trafficking and / or processing of personal data, the procedures circulation and / or treatment;

4) Managing the personal data is physical and / or legal entity to which the holder of personal data by law or the authority for circulation and / or processing the data on behalf of the holder;

5) The authorized state body on data protection;

6) The third person is any person except the subject of personal data, the owner or administrator of personal data and state authority on the protection of personal data, which the owner or administrator of personal data is transfer of personal data;

Thirdly, the holder of the personal data can act as a separate legal entity and combine several listed above legal statuses simultaneously, namely the subject of personal data, the developer of the personal data administrator of the personal data;

Fourth, in the case of separate existence of the personal data of the holder and manager of the personal data, in our opinion, expedient approval of the treatment and processing of personal data in the databases of personal data with a clear division of competence;

Fifth, the responsibility of the holder of personal data, in our opinion, should be classified as;

- 1) The registration of personal data;
- 2) The legitimate collection of personal data;
- 3) Organization of protection of personal data during their treatment and processing;

Sixth, among the fundamental rights of the holder of the personal data, we consider it appropriate to include the following:

- 1) The actual implementation of the treatment and processing of personal data;
- 2) The transfer of personal data to third parties, including overseas in the Law of Ukraine "On Personal Data Protection" procedure.

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