

THE DATA PROTECTION IN ALBANIA AND THE ENHANCING OF THE RESPECTIVE COMMISSIONER IN THE FRAMEWORK OF LAST LEGAL REFORMS

Paulina Hoti* and Florian Bjanku**

Abstract:

Protection of personal data is now a priority for the legislature and executive and independent institutions in our country. In this context and to align with the EU legislation, important changes were made to the basic law for the protection of personal data. Knowing and awareness of aspects of the field of personal data, strengthening of the role of the Commissioner for Personal Data Protection and disciplining the work of controllers and processors in our country remains one of the main objectives of the authority responsible for the protection of personal data.

Meanwhile, European protection that is being booked to personal data is increasing and the legal framework governing the protection of personal data in the EU soon is expected to undergo changes.

At the conclusion of the work we emphasize that it is necessary the identification of all controller and processor subjects, public and private personal data, their depth monitoring to identify cases affecting personal data, and the application of administrative measures against them. Also, the European protection of personal data increases towards real protection of the citizens and in response to developments in the modern digital era

Keywords: Data Protection, Legislation, Privacy, Human Rights.

INTRODUCTION

The acknowledgement with the legislation that regulates the field of personal data protection, with the rights of personal data subjects, and with the risks to which these entities are faced, who many times expose their private lives in an unconscious way, is not moving at the same level with the development of technology and the opportunities of communication.

We find ourselves in front of an extraordinary technological development with the speed of communications, remote communications, data transfer, their processing and storage. This development requires legal regulation to ensure the protection of personal data and the right to privacy. Personal data can be stored in computers, mobiles of the latest technology or digital archives etc (Revista (2013), “Ligj dhe privatesi”, fq. 17).

*Ph.D. in Law, also lecturer at; University of Shkodra, Faculty of Law; Address: Sheshi “2 Prilli”, Shkoder, Albania
Phone: +355 67 4014426; E-mail:paulinahoti@yahoo.fr

**Ph.D. in Law, also lecturer at; University of Shkodra, Faculty of Law; Address:Sheshi “2 Prilli”, Shkoder, Albania
Phone: +355 69 2068819; E-mail: bjanku@gmail.com

Even, there are being increased a lot of companies, which offer in a direct way or use on behalf of others the storage of data including and personal ones, in online database, on servers located in the so-called company of "cloud computing". To face this situation is needed a legal intervention to ensure the protection of personal data, but without prejudice to the right of competitiveness and economic development.

The right to privacy, enshrined in international acts and internal right in Albania means the protection of personal data. "*Everyone has the right of respect for his private and family life, home and his correspondence*" provided in the European Convention of Human Rights. For the protection of personal data is necessary to establish protective mechanisms (*directive 95/46 CE, 13.12.1995, JO L 281 du 23.11.1995*). Albania has created a special authority, the Commissioner for the Protection of Personal Data in accordance with Law no. 9887, dated 10.3.2008 "*On protection of personal data*", as amended. Even in other countries are created respective authorities responsible for the protection of personal data.

The realization of these rights presents its difficulties, even faced with the reality of the Albanian media, it must be said that often results impossible to respect these two rights. We are facing the fact that in media the individual becomes prey of news that do not respect neither the right to privacy, nor the right of protection of personal data.

Without any exception, all of us are before a possible risk, the violation of the personal data and of privacy through unfair or unlawful processing of personal data. Processing of personal data can cause harm to individuals because they are: inaccurate or not updated, redundant or irrelevant; held for a longer time than the purpose for which they are collected and processed, they are spread to them that they should not have, used unjustly and unlawfully for other purposes, are not kept in safe mode.

Certainly, we rarely ask ourselves whether we are aware that any information, any personal data, every part of our lives when we publish or share with friends on social network can be stored, used or altered in ways not always appropriate? While the power of the Internet and the digital world in our private lives and on our personal data is growing. We do not know for how long are stored and processed our personal data. (- Suffice it to mention here Edward Snowden, issue which has sparked alarm light in France and in other countries of the EU) (<http://www.lavie.fr/actualite/societe/suites-de-l-affaire-Snowden>, 2013).

Although the protection of personal data is considered as a right of the individual, and like all other fundamental rights its special protection is provided by a European legal framework, the latest technology developments and economic exchanges and competition, show the need for improving the legal framework to increase protection of personal data.

On this issue, in the stage of discussions in the European Parliament, is already a prepared draft directive from the European Commission, that responsive to concerns of increasing guarantees protection of personal data for European citizens.

This output will present an overview of the general legal framework that regulates the field of personal data protection in Albania (first part of the paper) and the importance given to the protection of personal data in the European area (second part of the paper).

1. PROTECTION OF PERSONAL DATA AS A FUNDAMENTAL RIGHT IN ALBANIAN LEGISLATION.

We live in a society of technology and information which is developing by giant leaps and has brought a new way of social, economic and political communication. Faced with this development is the possibility of easily violation of individual rights and freedoms, particularly the right to privacy (Crossman G. & etc., 2007, :26) and the right of protection of personal data.

The Albanian legislation in the field of personal data is based on:

- the Albanian Constitution, especially its Article 35, which states that "*... No one can be forced, except when is required by law, to make public information relating to his person...*";
- in the Convention of the Council of Europe in January 1981 "On the protection of individuals with regard to automatic processing of personal data" and its additional Protocol, November 2001 " On the protection of individuals with regard to processing automatic personal data by the supervisory bodies and the cross-border movement of personal data ",
- the Directive no. 95/46/EC, dated 24.10.1995 of the European Parliament and the Council "On the protection of individuals with regard to the processing of personal data and on the free movement of such data", and other acts of the EU in the field of personal data"

The Directive no. 95/46 EC, dated 24.10.1995 is the basic document of the EU dedicated to the protection of personal data and aims the protection of individuals with regard to the processing of their personal data and the free movement of such data. This Directive requires Member States to guarantee fundamental rights and freedoms of the individual during the processing of personal data, and in particular their right to privacy in order to guarantee the free movement of personal data in the Community. To achieve these objectives, the directive requires the establishment of an independent national authority responsible for the protection of personal data for each Member State.

For the implementation of this Directive in Albania is set up an independent institution, the Commissioner for Personal Data Protection, which, in the quality of the responsible authority, observes and monitors the protection of personal data, in accordance with Law no. 9887, dated 10.3.2008 "*On protection of personal data*", as amended. The Commissioner for Personal Data Protection cooperates and coordinates the activity with the controllers and processors of personal data, as well as international counterpart institutions for data protection of the Albanian citizens with law no. 9887, dated 10.3.2008 "*On protection of personal data*".

The lawful processing of personal data shall respect and ensure the individual rights and fundamental freedoms and, in particular, the right to privacy (Rodota S. (1995): 1-6). The protection of personal data is done through several principles envisaged in the Law "On protection of personal data" and is based on processing in an honest, fair and legitimate way. Personal data may only be used for the specified purpose. If the controllers want to use personal data for another purpose, then they have to ensure that the processing for the new purpose should meet all the new principles for the protection of personal data and the individual concerned should be informed about the new purpose. They should collect only the data they need without exceeding the purpose for which they were collected.

Personal data should always be accurate and updated if used frequently. Sometimes personal information may be stored for a long time and it should not be used. However, they need to be updated when they start to have active use, providing that inaccurate and irregular data to be deleted or changed. Controllers can only hold personal data for as long as they need them, on the purpose for which the data are collected and further processed. Once the data are not required, the controller must destroy, keeping in mind the need for security.

According to the definition given by law, "Personal Data" is any information about a person, who is identified or identifiable (Çabej. F., Gjoleka A., Shala A.(2010): 8).

The elements, with which the identification of a person is realised, directly or indirectly, are ID numbers or other special factors physical, psychological, economic, social, cultural, etc.. Based on this definition the elements can be: name, surname, father's name, mother's name, date of birth, place of birth, place of residence, education, profession, scientific title, nationality, marital status, etc. Also elements can be: references to individuals in documents, in different pages and Internet networks, information on bank accounts or their insurance policies, commercial data networks, doctor records, hotel, airport, vehicle records, in acts of social security, in judicial acts and of the police, etc.

In order to guarantee the protection of personal data, the Commissioner for Personal Data Protection conducts an administrative investigation and has the right of access to personal data processing, and has the right to collect all the necessary information for the performance supervision. His activity consists in the implementation of controls plan, inspections without notice, intending to verify the complaints and violations, and aims the minimization of violations in handling of personal data by controllers and processors.

The Commissioner has the authority to order the blocking, deletion, destruction or suspend the illegal processing of personal data, by sanctions. To strengthen the role and authority of the Commissioner for an approximation with EU legislation law "On protection of personal data necessary changes were made in 2012.

After a five-year activity of the Commissioner for Personal Data Protection in Albania (Raportet vjetore te viteve 2009, 2010, 2011, 2012), we can conclude that:

- there is a growing awareness of the public on the issues of personal-data protection;
- an increasing number of re-inspections in order to measure the level of protection of personal data and the verification of the legal requirements;
- there is monitoring of the activity of controllers and processors of personal data in order to identify the cases that affect the individual's personal data;
- there is a commitment protection by the Commissioner of Personal Data in the direction of a complete identification of control and processing subjects, and their registration in the register of respective subjects;
- The Commissioner is also committed to provide legal opinions in the preparation and revision of the draft laws and regulations related to the field of personal data protection.

2. EUROPEAN DEFENCE ENSURED TO PERSONAL DATA

In the field of competence of the European Union, is included the protection of human rights and fundamental freedoms and since the Treaty of Lisbon, the right of protection of personal data for Europeans is considered one of fundamental human rights (Rodota S.:1995: 7). The protection of personal data is a fundamental right in itself, as other fundamental rights, especially the right to property, the right for respect of private life and the right to freedom of expression. It is often combined with economic and commercial principles, particularly in the field of consumer protection and advertising rules.

There is already a European legal framework that protects personal data. This framework implies a basic directive and other complementary legal acts. Directive 95/46/CE of 1995 (JO L 281 du 23.11.1995) guarantees to citizens the protection of personal data from a national institution for the protection of personal data (Commissioner for Personal Data Protection in Albania, the National Commission of Informatics and Liberties in France, Guarantor in Italy).

This directive does not define either the nature or the competences of the institution. According to it, except for the cases of public interest, no public or private actor can collect data in an arbitrary manner. Data collection should be done according to the principle of proportionality and to justify the purpose why they are collected and the duration of storage. Directive 2002/58/CE guarantees the private character of e-mails and telephone calls. In 2008 was made a legal regulation in the field of using the personal data, intending the police and judicial cooperation in criminal matters.

The protection of personal data is recently the object of an important European debate (<http://www.eur-lex.europa.eu/LexUriServ.do-uri>). The European Commission has presented a draft regulation on the protection of personal data since the date January 25, 2012. This draft regulation revises the European legal framework of this field since 1995th (Directive 95-46 of 1995). The main purpose of the project is to increase the protection of citizens' rights and better opportunities for their processing from the controllers and processors. At the same time is prepared a draft directive on the research and investigation of criminal offenses. They both serve

to improve the current legal framework regarding the development of the Internet and digital world since 2000.

We all need to see our private life guaranteed properly, in a universe that has changed a lot these last ten years through the digital world where we are exposed towards others' detection, of our work data and our health, of purchases and our fields of interest.

Naturally, some questions arise: could it be created a new way of managing personal data so that personal data to be an advantage for enterprises (processor and controller), a new space for individual rights and an opportunity to strengthen European integration? Do we have the skills to adapt to today's reality of digital, web and social networks, recognizing the time of video surveillance or in a large database, but also at the same time maintaining a high level of protection of the individual? What is the balance between the individual's expectations, public policy objectives, concretely security and those of enterprises that want to assess their digital potential? Which are the ways and the means to achieve it?

However it is necessary to find an appropriate balance between the right to personal data protection and freedom of citizens to use personal data by enterprises in the name of freedom, to undertake and to achieve multiple benefits, without being curbed from any charged legislation.

European institutions are working to improve current legislation since 2012 due to the necessity to align legislation with the development of the Internet, with the speed and the distance of data spreading from collector to the receiver and social networks, as all present risk to personal data. The European Commission's proposal relates to the completion of the current framework with rights and new concepts that enable the protection of the individual from the distribution of Internet data and modifying their nature in order to harmonize the national legislation related to the protection of the personal data. Meanwhile, according to European Parliament individuals should be in possession of their data at any time. This according to European Commission deals with partial or complete data, to enable the person identification. To enable it, it is necessary the individual to give "consent". One of the updates of the project is the introduction of new concepts, such as "Consent" and "Transparency of data handling" and the new rights as "the right to forget". "Consent", according to the project, relates to consent to the use of those data that could lead to the violation of fundamental rights. Initially, the project provided consent to the use of data for all types of use. "Transparency of data handling" under the project requires several measures that guarantee the individual the opportunity to become familiar with the handling of his data and the possibility of de recourse. "The right to forget" means a right to prohibit the use of data even when the data were collected.

The project prepared by the European Commission envisages strengthening the role of national institutions for the protection of personal data. In this field, is envisaged the obligation of Member States to give a minimum of competencies, among them the right to impose sanctions and to ensure independence from the state.

The Commission proposes the creation of a “European authority for personal data protection”. This authority is to be called the European Committee of Personal Data Protection and will consist of the heads of national authorities of personal data protection. The Committee competences will include the supervision of personal data protection in the European area and making mandatory recommendations for certain issues.

CONCLUSIONS

- Albania, as well as Europe and the rest of the world, is facing the issues of personal data protection of its citizens. Important tasks in the work of the Commissioner for Personal Data Protection should be the measuring of the level of personal data protection and the verification of the fulfilment of legal requirements for the processing and storage of personal data. Therefore, the activity of personal data controllers and processors must be monitored continuously. It is necessary the continuous awareness of personal data subjects on their rights, recognized by law for the protection of proper personal data. The drafting of new legal and sublegal acts should be made in accordance with the requirements of the law on personal data protection.

- There are questions arising more and more: does internet has any power over our private lives? How about our personal data? How are personal data stored and processed? The main objectives of the reform on personal data protection, that are being prepared by EU institutions, deal with the necessity of providing a real protection of citizens, the respect for human values of Europe, and the appropriate response upon the use of the digital world.

REFERENCES

Crossman G. & etc., (2007), *Overloaded: Surveillance and personal privacy in modern Britain*, ed. Liberty, The Nuffield Foundation.

Çabej. F., Gjoleka A., Shala A.(2010): *Komentari i Ligjit “Per mbrojtjen e te dhenave personale”*, Tirane.

Rodota S.:(1995) *E drejta e privatesise*,
http://www.kmdp.al/web/pub/e_drejta_e_privatesise_s_rodota_509_1.pdf

Revista (2013), “*Ligj dhe privatesi*”, nr.1, botim i Komisionerit per Mbrojtjen e te Dhenave Personale.

Directiva 95/46 CE, 13.12.1995, JO L 281 du 23.11.1995

Fjalor terminologjik i Komisionerit per Mbrojtjen e te Dhenave Personale.

Raportet vjetore te viteve 2009, 2010, 2011, 2012 te Komisionerit te Mbrojtjes se te Dhenave Personale.

<http://www.eur-lex.europa.eu/LexUriServ.do-uri>

<http://www.lavie.fr/actualite/societe/suites-de-l-affaire-snowden>