

# **REPUBLIC OF AZERBAIJAN**

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## **ABSTRACT**

of the dissertation for the degree of Doctor of Philosophy

### **INTERNATIONAL AND NATIONAL LEGAL ASPECTS OF PERSONAL DATA PROTECTION**

Specialty: 5603.01 – “International law; human rights”

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## GENERAL CHARACTERIZATION OF THE OF THE DISSERTATION

**The actuality of the subject.** Scientific and technological advances have led to a significant increase in the amount of data processed automatically. At the same time, public relations related to the processing of information containing personal information of people are developing dynamically. These relations need to be legally regulated.

The widespread use and application of information technologies, methods of automatic data processing, the formation of global information systems that can be obtained from virtually anywhere in the world - these are the features of the evolving digital age. On the one hand, the free access to information ensure the realization of one of the fundamental, democratic rights of citizens directly to freedom of information, and the maintenance of large-scale automated databases significantly optimizes various training and decision-making processes. This includes services ranging from credit cards to creating biometric portraits and predicting possible diseases. On the other hand, the widespread dissemination of personal information by government agencies, businesses and public organizations significantly increases the risk of unauthorized intrusion into a person's private life, threatening to violate one of his fundamental natural rights, the right to privacy. The legal literature notes that the right to privacy intersects with the right to the protection of personal data, but they are not the same and differ significantly.<sup>1</sup> The processing and use of a citizen's personal information without providing any information to the citizen can raise serious doubts about the integrity and transparency of the

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<sup>1</sup> Savelyev, A.I. Scientific-practical post-commentary to the Federal Law "On Personal Data"». – M.: – 2017, – p. 31–39.

company or organization, and can seriously damage e-government-citizen and employee-company relations.<sup>2</sup>

At present, one of the main tasks of the state is to ensure the interests, rights and freedoms of the individual in the process of formation of the information society in the Republic of Azerbaijan. The widespread use of modern information technologies, especially big data technologies, cloud technology, Internet of Things, artificial intelligence, etc., not only brings comfort and time to our lives, but also creates new problems and threats such as the threat of uncontrolled collection and processing of information. In addition, there are problems in collecting and processing information about an individual that could be used in a potentially negative or undesirable way. Thus, the protection of personal data becomes a more important element of a person's legal status, aimed at ensuring information security.

It should be noted that the countries of the European Union (EU) and the United States of America (USA) already have a well-established judicial practice in disputes over the violation of the rights of personal data subjects. Documents such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe Convention for the Protection of Individuals in the Automated Processing of Personal Data, the EU Charter on Fundamental Rights and the EU General Regulation on the Protection of Personal Data are the main tools in the formation of the legal regulation mechanism. At the same time, the European Court of Human Rights (ECHR) and the European Court of Justice have established a common European experience in the protection of fundamental rights and freedoms in legislation, law enforcement and jurisprudence. Abraham L. Newman, Samuel D. Warren and Louis Brandays, leading experts in the field of information law, and other researchers consider the European approach to the protection of

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<sup>2</sup> Alguliyev, R.M., Alakbarova, I.Y. Assessment of social credit of citizens in the electronic state environment on the basis of personal data: problems and prospects // Problems of the Information Society, – 2019, № 1, –p. 3-13.

personal data as a single, systematic, holistic, consistent and reliable doctrine.<sup>345</sup>

Unlike other global issues (e.g. environment, counter-terrorism, food security), data protection requires a more integrated approach that involves working together with a wide range of actors (data processors, data subjects, regulators, etc.).<sup>6</sup> It is in this sense that the issue of international legal regulation is relevant. Christopher Kuner, one of the leading experts in the field of personal data protection, notes that in order to build a global legal framework for data protection, at least the following questions must be answered: What should be the form of legal cooperation? Should an existing tool be used or should a new one be developed? What are the standards that will be the basis for a mechanism? Who should be the coordinating body? How wide should the mechanism be?<sup>7</sup>

The phrase "collection, storage, use and dissemination of information about one's private life without one's consent" mentioned in the third part of Article 32 of the Constitution of the Republic of Azerbaijan contains an important rule. With the adoption of the Laws of the Republic of Azerbaijan "On Information, Informatization and Data Protection", "On Personal Data", etc., the new information environment was not ignored. At the same time, the process of forming a comprehensive legal system for personal data protection was completed. In this sense, based on international and national

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<sup>3</sup> Newman, A.L. What the "Right to Be Forgotten" Means for Privacy in a Digital Age // – Science. – 2015. Vol. 347. No. 6221. – p. 507–508.

<sup>4</sup> Warren, S.D. The Right to Privacy / S.D.Warren, L.D.Brandeis // Harvard Law Review, – 1890. Vol. 4. No. 5, – P. 193–220.

<sup>5</sup> Reyers, C.L. The US Discovery – EU Privacy Directive Conflict: Constructing a Three – Tiered Compliance Strategy // Duke Journal of Comparative & International Law, – 2009. Vol. 19. No. 2, – pp. 357-387.

<sup>6</sup> Bennett, C. Application of a Methodology designed to Assess the Adequacy of the Level of Protection of Individuals with regard to Processing Personal Data: Test of the Method on Several Categories of Transfer. European Commission Tender No. XV/97/18/D, September 1998.

<sup>7</sup> Kuner, C. An International Legal Framework for Data Protection: Issues and Prospects // Computer Law & Security Review, – January 24, 2009, Vol. 25, – pp. 307-317.

legislation, the relevance of the above issues should be determined along with the study of the situation in advanced foreign countries.

**Object and subject of research.** The object of the study is the public relations in the field of international and domestic legal protection of personal data. The subject of the research is international legal acts in the field of protection of personal data, decisions and resolutions of international organizations, decisions of international courts, legislation of the USA and EU countries, legal norms established by the legislation of the Republic of Azerbaijan.

**Degree of scientific development of the topic.** A study of a significant number of sources suggests that the legal aspects of the problem of personal data protection have not yet been fully explored and therefore require extensive comparative research. The legal research in the practice of the AR is almost non-existent.

In the dissertation work a number of local scholars conducting research in the field of international law, human rights, information problems – A.I. Aliyev, L.H. Huseynov, R.F. Mammadov, Z.A. Asgarov, A.I. Mustafayeva, V.A. Gasimov, R.M. Aliguliyev, M. Gakbarov , S.T. Majidli, R.S. Mahmudova, E.A. Aliyev, G.A. Rzayeva, Z.Q. Jabrayilova; from foreign scientists, first of all, from Russian scientists I.L. Bachilo, V.A. Kopilov, V.N. Lopatin, V.A. Pojilikh, M.M. Rassolov, A.A. Fatyanov, M.A. Fedotov, A. Pazyuk, M. Sokolova, V.D. Elkin, V.M. Baranova, M. Bashlikova, E. Brodskiy, M.Y. Yemelyannikova, K.A. Zanina, N.G. Belqorodtseva, I.A. Velder, A.V. Dvoretzkiy, A.V. Kucherenko, N.I. Petrykin, O.B. Prosvetova, Y.S. Telina, A.S. Fedosin; Western European and American scholars R. Walters, S.D. Warren, L.D. Brandeis, M. Lend, A.F. Westin, D.A. Solove, J. Witman, D.M. Vicente, L. Feyiler, E. Brauer, M. Zalnirut, P. Fischer, C. Kuner, C. Hoffman, A.C. Evans, M. Ouen, S. Qutvirt, F. Biqnami, M. Medina, M. Bakhoun, D. Kamarinou, J. Drexl, J. Dumas, J. Hölzel, B. Valtisson, J.F. Albrecht, J. Stoddart, A.L. Gardner, P. Van den Bulk, E.A. Salami, F. Boexm, D. Grey, N. Terry, M.J. Blanke, L. Sotto, S. Hodges, M.U. Brennan, C.L. Reyers and others have been analyzed.

**Objectives and tasks of the research.** The main purpose of the dissertation is to identify and remedy the theoretical and practical problems of the legislation of the Republic of Azerbaijan in the relevant field based on the analysis of the experience of the EU, the United States and developed countries in the field of personal data protection. In addition, the purpose of the dissertation research is to develop scientifically sound proposals for the development and improvement of legislation to ensure the protection of personal data.

In order to achieve these goals, **the following tasks** have been identified in the research:

- To consider the historical aspects of the formation of the legal framework and the development of the right to privacy, the right to personal and family secrets when working with personal data;

- To determine the legal nature of personal data and its relationship to the rights and freedoms of the individual and, above all, to personal and family secrets;

- To generalize and systematize the existing views in the scientific literature on the main theoretical and practical problems of the formation and development of the right to protection of personal data at the international and national levels;

- To study the experience of individual foreign countries (EU countries, USA) in the field of personal data protection in a comparative and comprehensive way, to identify existing trends in this field and to identify opportunities for their use in the activities of government agencies of the Republic of Azerbaijan;

- To determine the preconditions for the formation of a relatively independent regulatory complex regulating public relations in the field of protection of personal data, to determine its place and role in the legal system of the Republic of Azerbaijan;

- Investigation of the norms of the current sectoral legislation determining the issues regulating the protection of personal data in the Republic of Azerbaijan, as well as the constitutional basis for the protection of personal data;

- To prepare proposals for the improvement of the legal regulation of public relations in the field of protection of personal

data in the Republic of Azerbaijan, as well as the material, organizational and technical support of this activity;

- Analyze the norms (civil, criminal) establishing legal liability for violation of the rules related to personal data and make recommendations for their improvement within existing international practice;

- Carrying out a comparative legal analysis of the existing international and national legislation in order to identify opportunities for improving the national legislation on the protection of personal data in the Republic of Azerbaijan;

- Making specific proposals and recommendations to improve the legislation of the Republic of Azerbaijan in the field of protection of personal data.

**The novelty of the research** should be linked to the fact that the current research is the first research work devoted to the study of the general development and regularity of the right to protection of personal data. For the first time, the study provides a comparative analysis of international law and national legislation and judicial practice of different countries, which determine the current trends in the legal regulation of public relations related to the protection of personal data; Prerequisites for the formation of the institute and basic elements of personal data protection in the Republic of Azerbaijan were announced, the role and place of this field of law in the legal system of the Republic of Azerbaijan were defined, its complex nature and intersectoral significance were substantiated; the purpose of protection of personal data and the theoretical and legal content of the relevant subjective right are clarified; the features of legal relations related to the protection of personal data at the doctrinal level are disclosed; gaps and conflicts were revealed in the legal regulation of the considered public relations; Proposals have been developed to improve the legal regulation of public relations in the field of personal data protection.

**The main provisions of the defense.** The following provisions reflecting the scientific novelty of the research are submitted for defense:

1. In the United States and Western Europe, the term "privacy" is used instead of "right to privacy." There is no single approach to defining the content of the right to privacy in the legal science of foreign countries, but in practice several directions have been formed. In countries with a "written" constitution, the right to privacy includes honor, dignity, personal and family life, intimacy, name, surname, voice and image, inviolability of the home, confidentiality of messages (mail, telegraph and telephone communications (negotiations)). In Anglo-Saxon legal systems, the right to privacy is generally understood as a "right to be left alone" (for example, in the United Kingdom) or a "right to be alone" (for example, in the United States). In this context, this right covers the rights to communications, home and office space, the environment, physical integrity, protection from wrongdoing, freedom of sexual conduct, the right of everyone to independence, and a number of other rights protected by the state from interference in a person's private relations or activities.

2. The legal system of a relatively independent normative complex, which combines various legal norms regulating public relations related to the protection of personal data of individuals in the post-Soviet space, including Azerbaijan along with states with a long history, judicial and normative experience in the relevant field. There are prerequisites for its formation and development as a separate field. The point is that, unlike the legal system of Western European countries, the right to the protection of personal data in the post-Soviet countries was formed as a legal institution, rather than a subjective right. A complex legal institution based on international public and private law, as well as constitutional, administrative, civil, criminal, labor, information and other areas of national law - the "Institute for the Protection of Personal Data" has been formed.

3. The legal regulation of the protection of personal data is based on the understanding that this right is one of the fundamental rights of a person living in the information society, but it somewhat differs from the right to privacy. Each of these rights has specific features, the joint use of which improves the mechanism of

protection of individual interests. Both rights are based on the need for legal regulation, the principles of lawful use of information, the availability of adequate and effective methods of legal protection of violated rights. Although there are some fundamental differences in content, both laws require a joint and comparative approach.

4. The EU General Regulation on the Protection of Personal Data, which entered into force in May 2018, provides for the protection of fundamental human rights and freedoms in the EU, in particular privacy, as enshrined in the EU Charter on Fundamental Rights and the EU Treaty. It reaffirmed the EU's commitment to the right to data protection. At the same time, it was emphasized that the Union was ready to accelerate the achievement of the goal of creating a single internal market, which is the basis for the development of economic relations, the unimpeded movement of personal data. The General Regulation not only unifies the rules for all member states, but also eliminates regulatory conflicts between member states that existed at the time of the Data Protection Directive 95/46 / EC, and give legal entities full control over their confidential information. In addition, changes in EU legislation on the protection of personal data as a result of reforms have been adapted to the current level of development in the field of information technology. At the same time, it remains to be seen how effective their practical implementation will be.

5. At present, a clear system of protection of personal data has been formed in the European space, which allows them to be transmitted not only to EU member states, but also to third countries. The existing EU-US interaction on personal data protection reflects the latest achievements in this area and should become a model for developing cooperation with other third countries in the field of personal data protection.

6. It is worth noting the development of a sustainable trend in the analysis of modern international experience in the field of legal protection of personal data, as well as the experience of individual countries, the formation of general (supranational) approaches to the legal regulation of public relations related to the protection of personal data and the development of consistence in this area. In the

relevant field, international standards play the role of a legal guide (or principle) in the development of AR legislation and law enforcement practice, creating legal mechanisms for the protection of personal data.

7. The analysis of the current legislation of the Republic of Azerbaijan in the field of protection of personal data gives us reason to say that the legal norms governing the processing and protection of personal data are within many areas of law. As the Law of the Republic of Azerbaijan on Personal Data regulates relations in the field of personal data, regardless of the amount of data used, it creates a basis for inter-sectoral regulation of relations in the field of personal data. Its main task is to protect the rights of citizens in this area, the rights and responsibilities of those who process and use this information. This fact shows that the public relations arising from the processing of personal data of the subjects are regulated by various sectoral legal norms related to them.

8. The conclusion that the rapid development of information technology, innovative nature of intensive changes and, most importantly, the insufficient level of protection of personal confidential information in the process of e-government building generally characterizes the effectiveness of the existing system of normative legal acts. It also indicates an objective need to develop a legal framework for working with personal data. In this case, the need to adopt a number of normative legal acts, as well as provisions on the addition and amendment of new legal norms to existing legislation should be considered.

**Research methods.** The methodological basis of the research is the method of dialectical cognition, historical, systematic, complex, target approaches to the problem under study, as well as special methods of cognition. At the same time, formal-logical, formal-legal, comparative-legal, as well as abstraction, modeling, etc. methods were also used.

**Theoretical and practical significance of the research.** Based on the results and provisions of the dissertation on a comprehensive study of the legal and theoretical basis in this area;

Normative activity aimed at improving the legal regulation of public relations related to the protection of personal data in the Republic of Azerbaijan; fundamental and applied research devoted to the problems of protection of personal data within the framework of legal theory, human rights, information law, as well as field legal sciences; It can also be used in the training of specialists in the field of information security and protection of personal data.

**Approbation and application.** The main provisions of the research work are reflected in the author's scientific works on the topic of the dissertation published in prestigious scientific journals of Azerbaijan and Ukraine, as well as in the materials of the international scientific conferences in different languages (Azerbaijani, English and Russian).

**Name of the organization where the dissertation work is performed.** The dissertation work was carried out at the UNESCO Chair of Human Rights and Information Law of the Law Faculty of Baku State University, discussed and recommended for defense.

**The structure of the research.** The research consists of Introduction, five chapters, Conclusion and a Bibliography. The title page of the dissertation consists of 322, Table of Contents consists of 1596, Introduction consists of 28078, the main content consists of 214524, Conclusion consists of 11220 and the Bibliography consists of 21165 characters, totaling 276905 characters.

## MAIN CONTENT OF THE RESEARCH

In the **Introduction** of the dissertation the relevance of the topic, the degree of its development is substantiated, goals and objectives, research methods, defense provisions are defined, novelty, theoretical and practical significance of the research, approbation and application of the research work, name of the dissertation organization, separate structure of the dissertation is provided.

The **first chapter** is "**The essence of the protection of personal data and modern legal issues**" and consists of three paragraphs.

The **first paragraph** examines the origins, definition, and mechanisms of protection of the right to privacy.

According to the modern doctrine of constitutional law, person, his rights and freedoms are considered the highest value. The inviolability of private life is one of the basic, constitutional rights of every citizen. Its main content is that there is a certain protection against any intrusion into the private life of any person, third parties, including the competent authorities and officials of the state.

In Anglo-Saxon legal systems, constitutions traditionally do not explicitly state the right to privacy. There is no written constitution in England, and this right is guaranteed in a very limited way based on court precedents.

An article named "The Right to Private Life" in the December 15, 1890 issue of the Harvard Law Review, written by lawyers Samuel D. Warren and Louis Brandeis, is also accepted as the primary basis of this law in the United States. In the development of the concept of the right to privacy, it is important to note the importance of a number of precedents of the US Supreme Court that interpret the laws of the country in terms of protection of privacy. Although the US Constitution does not explicitly provide for the right to privacy, the Supreme Court has ruled that the First, Third, Fourth, and Fifth Amendments to the Constitution provide for the right to state intervention.

At the international level, the right to life, liberty and security of person is guaranteed by Article 3 of the Universal Declaration of Human Rights of 10 December 1948. Article 12 of the Declaration states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or his honor and reputation. Later, this norm was reflected in the International Covenant on Civil and Political Rights in almost the same context.

The analysis shows that in continental law countries and in countries where the Anglo-Saxon legal system operates, there are

significant differences in approaches to the definition and regulation of the right to privacy. Although the constitutions of the Anglo-Saxon legal system do not explicitly state the existence of the right to privacy, the supreme laws of countries with a continental legal system provide for this right separately.

The **second paragraph** analyzes the definitions given to personal data in different jurisdictions and these concepts in the context of the right to privacy.

The right to privacy is a complex legal concept that combines many separate powers of the individual. One of the main components of the right to privacy is the right to protection of personal data. There are several similar approaches to what personal data is and its scope. For example, the recommendations of the Council of the Organization for Economic Co-operation and Development on the basic provisions on the protection of privacy and the international exchange of personal data, the Council of Europe Convention on the Protection of the Rights of Individuals in Automated Personal Data Processing (Convention 108). Different approaches are reflected in Directive 95/46 / EC of the Parliament and the Council, Regulation No. 679 of 2016.

The **third paragraph** summarizes the development directions of international legal cooperation on the protection of personal data.

As early as the 1960s, it became clear that data protection required a more integrated approach by a wide range of actors - information processors, data subjects, regulators.

In this regard, the normative legal acts regulating the protection of personal data at the international level include the Universal Declaration of Human Rights, Article 16 of the Convention on the Rights of the Child, the Council of Europe Convention on the Protection of Individuals in Automated Data Processing, the African Union Convention on Cyber Security and Personal Data Protection. International cooperation in the field of protection of personal data continues in the XXI century.

The **second chapter** is "**Protection of personal data within the European Union**" and consists of three paragraphs.

The **first paragraph** provides an overview of the protection of personal data in the European Union.

The main sources for the protection of personal data in the European Union are the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe Convention for the Protection of Personal Data in the Automated Processing of Personal Data, directives on the protection of personal data, the EU Charter 2000; Regulation No. 679. At the same time, the adoption of national laws of the EU member states aimed at regulating the protection of personal data has had a positive impact on the development of this process in general.

One of the first important acts adopted in the European Union in this area was Directive 95/46 / EC, the General Regulations for the Protection of Persons in the Automatic Processing and Free Movement of Personal Data (EU 45/2001), Privacy in Personal Data Processing and Electronic Communications. The Directive 2002/58 / EC on the protection of secrets should be especially noted.

At present, the authors of the draft EU Constitution in the "Freedoms" section of the EU Charter on Fundamental Rights separate the categories "respect for privacy and family life, home inviolability and confidentiality" and "the right to privacy" and recognize them as independent, fundamental rights. Therefore, it should be noted that the European approach is based on the understanding of this right as one of the fundamental rights of a person living in the information society.

The **second paragraph** emphasizes the importance and characteristics of the newly enacted General Regulation on the Protection of Personal Data.

On 27 April 2016, the European Union and the Parliament adopted Regulation 2016/679 (General Regulation on the Protection of Personal Data). GDPR came into force on May 25, 2018. This document is not a recommendation, but a binding act and should be applied directly in EU member states.<sup>8</sup> As rightly noted in the

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<sup>8</sup> Rosas, A. EU Constitutional Law: An Introduction. – Hart Publishing, – 2012, – p. 61-62.

literature, GDPR significantly increase the existing requirements for the protection of personal data by expanding their scope, the rights of citizens, as well as the application of special requirements to financial institutions.<sup>9</sup> GDPR recognizes the concept that right to privacy is a fundamental human right.

GDPR is characterized by several important innovations. First, the Regulation is more detailed and comprehensive than the 1995 Directive.<sup>10</sup> Second, the Regulation also applies to institutions registered in third countries, so that persons in the European Union are not deprived of the protection provided in accordance with this Regulation. Third, Part 1 of Article 83 of the GDPR authorizes supervision bodies to impose administrative penalties for violations of these Regulations. Fourth, the Regulation gives the data subject the right to demand compensation from controllers/processors for material or non-material damage as a result of violation of its provisions. Article 51 of the GDPR also provides for the establishment of one or more independent supervision bodies responsible for the observance and monitoring of the provisions of this Document.

GDPR is, so to speak, a document aimed at forming the basis and action plan for the protection of personal data and the right to privacy in the world and has already achieved certain serious results in this area. By adopting GDPR, the European Union reaffirmed its commitment to the protection of fundamental human rights and freedoms, in particular the right to privacy, as enshrined in the Charter of Fundamental Rights and the Treaty on the Functioning of the European Union.

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<sup>9</sup> Crowe, D., Knoipner G., Marksteiner L. DPO concept according to GDPR: basic principles of creation of the authorized representative in the bank / D. Crowe, G. Knoipner, L. Marksteiner // Banking Review. BankNadzor application, - 2018. № 1, - p. 36-40.

<sup>10</sup> Gribanov, A.A. General regulations for the protection of personal data (General Data Protection Regulation): ideas for the improvement of Russian legislation // Law, - 2018. № 3, - p. 149–162.

The **third paragraph** highlights the transfer of personal data to third countries, as well as explains the conditions for the use of personal data by law enforcement agencies.

One of the notable issues is the cross-border transfer of personal data to third countries. Such transfer shall be based on the laws of the Union governing the relevant sphere and on special agreements concluded in this field.

The most dynamic cooperation in this area has developed with the United States. The Safe Harbor Agreement between the European Union and the United States was declared invalid in its October 6, 2015, decision against Maximillian Schrems v Data Protection Commissioner.<sup>11</sup> The European Commission's decision of 12 July 2016 launched a new transatlantic data transmission mechanism called the Privacy Shield, which provides the European Union with adequate data protection in the United States.<sup>12</sup> According to this mechanism, the procedure established for the transfer of personal data between the European Union and the United States should comply with the requirements of the General Regulations in force from 25 May 2018, as well as the latest requirements in the field of personal data protection.

In addition, the European Union and the United States signed an agreement dated June 2, 2016 on the protection of personal data related to the prevention, investigation, detection and investigation of criminal offenses. A similar agreement with Canada is being discussed.

Articles 45 and 47 of GDPR set out other grounds for the cross-border transfer of personal data.

Rules for the processing of personal data by law enforcement or the police are a complex and insufficiently studied area. In this area, we can mention the Directive No. 2016/680 dated April 27, 2016 on the protection of information by law enforcement agencies.

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<sup>11</sup> Case C-362/14: Judgment of the Court (Grand Chamber) of 6 October 2015.

<sup>12</sup> Griller, S. *Mega-regional Trade Agreements: CETA, TTIP, and TiSA : New Orientations for EU External Economic Relations* / S.Griller, O.Walter, E.Vranes, – New York: Oxford University Press, – 2017, – p. 183-184. 327 p.

The directive sets European standards for the exchange of information between law enforcement agencies.

Thus, summarizing the above, it can be concluded that at the European level, the legal regulation of the processing of personal data by law enforcement agencies is more advanced due to the adoption of the General Regulation of 2016 and Directive 2016/680 of that date. By adopting a new legal framework for data protection, the European Union has established a global golden standard. We hope that other countries will take advantage of this initiative.

The **third chapter** is "**Rules for the Protection of Personal Data in the US Legal System**" and consists of two paragraphs.

The **first paragraph** discusses the characteristics of the protection of personal data in the US legal system.

One of the important features of the right to protection of personal data in the Anglo-Saxon legal system is related to the fact that this right was previously formed by court precedents and legal doctrine.

The doctrinal approach to the formation and development of the right to privacy in the United States in the modern sense is described in the famous article "The right to privacy" by S.D. Warren and L.D. Brandeis, published in the Harvard Law Review on December 15, 1890.

There is no specific article in the US Constitution on the inviolability of private life. However, the activity of the courts in this country has revealed the constitutional basis for the protection of privacy rights in the broadest sense from the free interference in certain confidential areas of private life. It is based on the protection of individual liberties from state interference and is enshrined in the Fourth, Fifteenth and Fourteenth Amendments to the Constitution.

In general, the United States has a sectoral approach to data confidentiality. There is no specific federal law that guarantees the confidentiality and protection of personal information. Instead, legislation at the federal level primarily protects data in certain sectors. These acts apply only to specific areas such as "health,

education, communications, protection of children's rights and financial services, or cases of data collection on the Internet."

Judicial practice and court decisions made at different times play an important role in regulating legal relations in the field of personal data protection in the United States.

It should be noted that until the 1970s, the decisions of the US courts did not provide the necessary protection of privacy. 1977 *Whalen v. In Roe's case*, the Supreme Court unanimously ruled that the registration of a specific centralized database in New York State containing the names and addresses of persons prescribing certain drugs does not violate the right to privacy.

Significant decisions include the decision of the Ninth Circuit Court of Appeals in the case of *US v. Westinghouse*, the decision in the case of *Katz v. US*, the decision in the case of *Roe v. Wade*, *Eisenstadt Bayer*. decision in the case against (*Eisenstadt v. Baird*), *Griswold v. Decision on the Connecticut Case*, *Southeast Pennsylvania Planned Parenting v. The case against Casey* is noteworthy.

These judgments have a limited scope and do not seriously affect the private sector, where there are many questions about privacy and confidentiality.

The **second paragraph** considers various aspects of the operation of control mechanisms for the protection of personal data.

It is important to note the importance of the Federal Trade Commission, an independent US law enforcement agency, in the protection of personal data. The Federal Trade Commission plays a leading role in ensuring the protection of personal data related to fraud and unfair trade transactions and law enforcement. The commission also has the power to impose enforcement measures to stop violations and to force companies to take positive action to correct their illegal behavior.

Congress empowers the Federal Trade Commission to enact a number of sectoral laws, including: the Loan Allocation Act, the Child Privacy Act, the Equal Credit Opportunity Act, and the Honest Credit Reporting Act.

At the federal level, a number of other important pieces of legislation are in force, including the protection of personal data: the Financial Services Modernization Act (Graham-Leach-Bliley Act); Health Insurance Mobility and Accountability Act (HIPAA); Law on Unwanted Pornography and Marketing (CAN-SPAM Act); Law on Confidentiality of Electronic Data; Law on Computer Fraud and Violence.

Thus, the development of the right to privacy in the United States has evolved from the recognition of doctrinal and judicial precedents to the formation and improvement of a system of specific legal acts that comprehensively regulate the right to privacy in various fields of human activity. However, modern EU standards place higher demands on the protection of personal data than American standards.

The **fourth chapter** is "**Protection of personal data in the Republic of Azerbaijan: theoretical and practical problems**" and consists of three paragraphs.

The **first paragraph** describes the evolution of the institute of protection of personal data as an interdisciplinary legal institution in the Republic of Azerbaijan.

The Institute for the Protection of Personal Data is a legal institution that is part of the right to information. The right to information mainly regulates the relations arising in the field of information exchange activities.

It should be noted that the right to privacy, which is the core of the right to protection of personal data, is a constitutional right and is directly enshrined in the Constitution of the Republic of Azerbaijan. In the Referendum of March 30, 2009, Part III was added to Article 32 of the Constitution of the Republic of Azerbaijan, which states that "the collection, storage, use and dissemination of information about one's private life without one's consent is not allowed." Paragraph V attached to this article reflects this provision: "Except for the cases established by law, everyone may get acquainted with the information collected about him. Everyone has the right to demand the correction or removal (cancellation) of information

collected about him, which is not true, incomplete, as well as obtained in violation of the law.

As we know, international agreements to which our Republic is a party are an integral part of the legislative system of the Republic of Azerbaijan. Therefore, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms should be emphasized among the relevant norms of international law. This article states that the exercise of this right by public authorities is not allowed, except as provided by law and necessary in a democratic society.

The **second paragraph** analyzes the theoretical and practical problems of the development of sectoral legislation on the protection of personal data.

Currently, the legal framework for the protection of personal data is formed in two directions: specialized (or special) legislation and other (general) laws. Other laws contain legal norms that guarantee the protection of personal data only in certain matters and regulate the protection of certain types of personal data.

The special legislation includes, first of all, the Law of the Republic of Azerbaijan on Personal Data. General laws include: Law of the Republic of Azerbaijan on Information, Informatization and Protection of Information, Law of the Republic of Azerbaijan on Access to Information, Law of the Republic of Azerbaijan on Biometric Information, Law of the Republic of Azerbaijan on Telecommunications, Law of the Republic of Azerbaijan on Mass Media and others. Various articles of these laws also contain provisions on the protection of personal data.

In addition to the above-mentioned special and general laws, the protection of personal data in national legislation is provided by a mechanism called "professional secrecy". We are talking about such concepts as medical secret, bank secret, lawyer's secret.

The national legislation on the protection of personal data in our country is at a satisfactory level and is developing steadily. However, there are still some shortcomings and uncertainties in this direction.

The **third paragraph** clarifies the legal basis for the processing of personal data by the competent state authorities, explains the grounds and conditions of legal liability for violation of the norms for the protection of personal data.

Restrictions on the processing of personal data are inevitable. In each case, such restrictions must be justified. We are talking about the interests of society, public interests, national security.

The Constitutional Law “On Regulation of the Implementation of Human Rights and Freedoms in the Republic of Azerbaijan” stipulates that the right to personal immunity enshrined in Article 32 of the Constitution only protects the interests of state security, health and morals, rights and freedoms of others, crime without changing the essence of this right. This may be restricted in the interests of the prevention of riots, the maintenance of public order and the economic well-being of the country.

As for the supervision bodies over the processing of personal data in our country, it is the Ministry of Transport, Communications and High Technologies of the Republic of Azerbaijan. It is important to note the activities of the ministry. In addition, one of the most effective mechanisms for the protection of human rights and freedoms in democratic societies is the institution of the Commissioner for Human Rights or the Ombudsman. However, one of the main features of the Commissioner for Human Rights in the Republic of Azerbaijan is that he has no power function. Its activity does not lead to reconsideration or cancellation of the decisions of state bodies ensuring the protection and restoration of violated rights and freedoms.

The legal protection of confidential information of a personal nature must be addressed in a comprehensive manner, such protection cannot be resolved within the framework of norms of one area of law, it will result in legal liability depending on the relationship of the violated legal relationship (labor, civil, administrative, criminal, etc.).

It should be noted that the legislation is currently being drafted, where violations are drafted and adequate sanctions are applied

depending on the degree of public danger. Criminal law has a broad approach to confidential information and provides for liability for its intentional and reckless dissemination. This can be found in a number of articles of the Criminal Code.

Within the framework of civil liability, the subject of personal data may demand compensation for damages and (or) moral damages in court.

It should be noted that according to Article 23.4 of the Civil Code of the Republic of Azerbaijan, a person whose honor, dignity or business reputation has been tarnished has the right to demand both refutation of such information and compensation for damage caused to him as a result of such dissemination.

Summarizing the above, we note that in general, the norms providing for legal liability for violations of the rules in the field of protection of personal data are at a satisfactory level. A lot of work has already been done within the Civil Code of the Republic of Azerbaijan, the Criminal Code, the Code of Administrative Offenses and other normative legal acts, and an effective legal framework has been formed.

However, there are some shortcomings and there is a need for improvement. The main shortcoming of the existing legal liability for violations of the rules related to personal data is that in some cases, consistency and coherence between different areas of personal data circulation is not followed.

The **fifth chapter** is "**Application of international experience in the field of personal data protection in the Republic of Azerbaijan: the problem of improving the legislation**" and consists of two paragraphs.

The **first paragraph** considers the application of best international practice to improve the legislation in the field of personal data protection in the Republic of Azerbaijan, the importance of international legal norms in the formation of legislation and judicial practice in the field of personal data protection.

Examples of Azerbaijan's international obligations on the right to privacy and personal data include the International Covenant on Civil and Political Rights of 1966, the European Convention on Human Rights, the Council of Europe Convention on the Protection of Persons in Personal Data Processing, and Cybercrime, the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on Child Trafficking, Child Prostitution and Child Pornography.

One of the important elements of the mechanism of application of international law at the national level is the application of these rules by national courts. For the correct application of the provisions of international agreements in national legal systems, it is important not only to create a law, but also to apply these agreements directly or indirectly by national authorities. In any case, the application of international law is acceptable to national courts. Although this is a controversial issue, neither national legislation nor international norms prevent this step. The issue of application of international agreements by national courts in our country is not widely reflected in the legislative practice.

The **second paragraph** explains the ways and means of improving the legislation in this area.

International legal norms on the protection of personal data, including the practice of applying the precedents of the European Court of Human Rights in the national courts of the Republic of Azerbaijan, is still in its infancy. However, it should be noted that slander, libel, and intrusion into private life are already common in court practice.

It is important to note the importance of the decisions of the Constitutional Court and the Plenum of the Supreme Court of the Republic of Azerbaijan in the field of protection of personal data. Respect for and observance of human rights and freedoms in the use of personal data on a legal basis is also reflected in a number of decisions of the Constitutional Court of the Republic of Azerbaijan and the Plenum of the Supreme Court of the Republic of Azerbaijan.

In general, the decisions of the Constitution and the Supreme Court of the Republic of Azerbaijan can be considered useful as a step forward in terms of protection of personal data, restriction of the right to privacy and, in general, the settlement of these issues on the basis of international law.

The supremacy of international law is recognized in Azerbaijan. The country's legislation uses the concept of international agreements to which our Republic is a party. International agreements to which our country is a party have direct legal force in the Republic of Azerbaijan, provided that the agreement does not preclude direct legal force, ie it does not provide for the adoption of a special domestic act. We also consider it expedient to touch upon the issue of the norms of international law, which have a direct impact, when investigating the issue of the legal force of the norms of international law. The question of whether an international treaty itself is enforceable is a matter of domestic law, and its solution varies from state to state. The solution of the conflict problem is also of special importance in terms of the impact of international legal norms on the national legal system.

Law enforcement activities in the field of improving the legislation in the field of protection of personal data in the Republic of Azerbaijan, the application of court precedents, in particular, the precedents of the European Court of Human Rights are of particular importance. In examining the recognition of the decisions of the European Court of Human Rights as a source of law, we inevitably encounter the fact that judicial precedent and case law are not officially included in the system of legal sources of the Republic and are not recognized by national legal doctrine.

Unlike countries with a common legal system, the doctrine of judicial precedent does not exist in Azerbaijan. The reason for the scientific controversy is that, in fact, the decisions of the supreme judicial bodies of the Republic of Azerbaijan and the decisions of the European Court of Human Rights have begun to act as a source of law in the Republic of Azerbaijan. When considering this issue in relation to the Republic of Azerbaijan, it should be noted that the

court precedent is not officially mentioned among the sources of national law.

The **Conclusion** of the dissertation notes the important proposals and results obtained in connection with the research. In general, they can be expressed as follows:

1. It should be noted that some international legal acts poorly reflect the main trends in the development of modern society. In this regard, it is necessary to develop and implement international and regional international documents that provide effective international protection of the right to privacy.

2. Given the importance of cooperation in the field of law enforcement, in recent years there has been a need to use new, more advanced control mechanisms in the field of personal data protection.

3. There is a need to attract highly qualified personnel with the necessary knowledge in the technical, legal and other spheres in the field of personal data protection. There is very little information about the protection of personal data of citizens, the operation of legal mechanisms in this area. Therefore, it is important to carry out educational activities in this area among the population, especially the younger generation.

4. In most countries of the world, there are official government agencies responsible for protecting the personal data of citizens. For example, in Australia, Canada, Germany, Switzerland, and the United Kingdom, there are agencies called Data Protection Commissioners. It was also planned to establish the position of the Information Commissioner in the Republic of Azerbaijan. However, in accordance with the amendments made to this Law in 2012, this task was assigned to the Commissioner for Human Rights. Unlike other countries, the Commissioner for Human Rights in the Republic of Azerbaijan does not submit separate annual reports on the state of information rights in the country.

5. At present, the norms related to the regulation of confidential information of a personal nature are not fully systematized in the Republic of Azerbaijan. However, these norms do not solve the problems that arise today in the field under consideration, because

the norms are general, declarative. In this regard, there is a need for further development and specification.

6. The main shortcoming of the existing legal liability for violation of the rules related to personal data is the weakness of the interaction between the various areas of personal data circulation. Other shortcomings include the lack of comprehensive legal liability for violations of personal data, the lack of a systematic approach to the legal protection of personal data, and significant shortcomings in the legal and technical structure of personal data protection crimes.

7. Based on the fact that the dissemination of confidential information of a personal nature poses a more significant public threat to specific citizens, the issue of regulating the dissemination of personal information is important and should be considered expeditiously.

8. One of the existing legal problems is that neither the civil nor criminal legislation clarifies the concept of "private life" in the existing norms. Terminological differences in the legislation do not allow us to speak with confidence about the possibility of effective protection of personal rights in case of violation.

9. The experience of the EU legal system should be used in the process of improving the legal framework of the Republic of Azerbaijan in the field of protection of personal data. The established EU legal practice on the protection of personal data should be used in the legislation of the Republic of Azerbaijan to ensure the protection of personal data and to ensure the free exchange of information between the Republic of Azerbaijan and other states.

**The main content of the research work is reflected in the theses and articles published below:**

1. Consent as a legal basis for processing of personal data – elements and legal aspects // Proceedings of International Scientific-Practical Conference on Processes and trends of modern development of legal science in Azerbaijan, – 02-03 October – Baku: 2018, – p. 336-339.

2. International legal aspects of protection of personal data // Proceedings of Internatioanl Scientific Conference of Doctoral

Students and Researchers, – Baku: 2018, – p.2. – p. 109-111. (in Azerbaijani)

3. The Right to be Forgotten – Google Spain case and its implications // Proceedings of International Scientific-Practical Conference on Modern integration trends of legal science in the integration of the Republic of Azerbaijan into the international community and the rule of law, – 14 December – Baku: 2018, – p. 94-96.

4. Data portability from the perspectives of EU law // –Baku: Baku University News, – 2019. №1, – p. 53-59. (in Azerbaijani)

5. Privacy and workplace monitoring – perspectives of Azerbaijani data protection laws // – Baku: International law and Integration problems , – 2019. № 2 (57), – p. 56-61.

6. Rules of Protection of personal data in the legal system of the U.S. // Law Review of Kyiv University of Law, – 2020. № 2, – p. 481-484. (in Russian)

7. International legal cooperation on protection of personal data - development directions and possible trends // - Baku: Azerbaijan Law Journal, – 2020. № 2, – p. 106-111. (in Azerbaijani)

8. The concept of personal data and the importance of its protection // Baku: Azerbaijan Law Journal, – 2020. №3, – p. 145-151. (in Azerbaijani)

9. Protection of personal data and development of sectoral legislation in the Republic of Azerbaijan // Proceedings of International Scientific-Practical Conference on Interrelation and application of legal fields in modern times: theory and practice, – 3 June – Baku: 2020, – p. 523-528. (in Azerbaijani)

10. Global information security and the changing landscape of data protection laws // Proceedings of 7th International Conference on Control and Optimization with Industrial Applications, – Baku, Azerbaijan, – 2020. Vol. 2, – p. 302-304.

11. The rules for the protection of personal data by the institutions of the European Union // Proceedings of International Scientific-Practical Conference on Strategic directions of crime prevention at national and transnational levels, – Khanty-Mansiysk: 2021, – p. 238-241. (in Russian)

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